

Sin Papeles:

THE UNDOCUMENTED IN TEXAS

January 1980



—A report of the Texas Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Texas Advisory Committee.

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ATTRIBUTION:

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

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LETTER OF TRANSMITTAL

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

January 1980

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Sirs and Madam:

In this nation, widely recognized as the melting pot of the world, there is a new class of immigrants who have come "sin papeles," without proper documentation. This group is a new minority not totally protected by civil rights statutes and not always welcomed. Because of the impact that this group has on the citizens of this country, the Texas Advisory Committee to the United States Commission on Civil Rights chose to study this large issue. In September 1978, the Texas Advisory Committee conducted a 2-day open meeting in San Antonio to receive testimony on five major aspects of immigration in Texas: practices and policies of the Immigration and Naturalization Service (INS), employment of minorities and women by the INS, education of undocumented children, allegations of abuse and exploitation of the undocumented, and the characteristics of this population in Texas.

This report attempts to provide comprehensive, documentable research on this too often discussed and superficially studied group. The testimony received at the open meeting is summarized as are two companion studies that were released and explained by the researchers at the meeting. The studies incorporated in chapter 4 shatter the myth that the undocumented population is draining the economy of this country by contributing very little and consuming the social services paid for and available to citizens and legal residents of limited financial means.

The information the Advisory Committee received was enlightening and at times shocking. It is our hope that the Commission will support our recommendations and use its influence to expedite drastically needed changes in this area of crucial concern to the Texas Advisory Committee.

Respectfully submitted,

Most Reverend Patrick F. Flores, D.D., *Chairperson*
Texas Advisory Committee

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ACKNOWLEDGMENTS

This report was prepared under the direction of J. Richard Avena, Director of the Southwestern Regional Office, U.S. Commission on Civil Rights.

Sections of this publication were written by J. Richard Avena, Gloria Cabrera, Ernest Gerlach, and George Korbel.

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Final preparation for publication was the responsibility of the staff of the Publications Support Center.

Much of the information gathered for this report was obtained during a 2-day meeting held in San Antonio. This meeting was conducted by a subcommittee of the Texas Advisory Committee. Members of the subcommittee were: Martha P. Cotera, Arnulfo Guerra, and Milton I. Tobian; the subcommittee was chaired by Luis Alfonso Velarde of El Paso.

The Texas Advisory Committee wishes to acknowledge the effort undertaken by one of its former members, former INS Commissioner Leonel Castillo, in carrying out affirmative action within the United States Immigration Service and bringing the Service closer to the people.

One example of this effort is the regional outreach program on immigration benefits. This program was designed to inform organizations and individuals who have direct contact with aliens as to their rights and benefits under the immigration law. In carrying out this program, Commissioner Castillo was also able to sensitize his own agency to the needs of the general public.

Commissioner Castillo also undertook to bring a larger number of minorities and women into the Service. One example was the appointment of the first female Mexican American district director.

Additionally, an effort was made by the former Commissioner to upgrade alien detention facilities to the standards of the U.S. Bureau of Prisons.

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Introduction

A Historical Perspective

It is not possible to understand the complexities of current immigration issues along the United States-Mexican border without understanding the history of the people who settled this area—their culture and motivations together with the development of the U.S.-Mexican border is truly unique because of the geography and because of the people who live along the border. There are several major lessons in understanding this area.

The 2,000-mile border separating the United States from Mexico, one of the longest in the world, is dotted with communities ranging in size from the twin cities of Ciudad Juarez and El Paso with a combined population of well over 1 million to small rancherias where the border is largely ignored and cattle, goats, and people freely move from one side to the other. The area includes flat and dry desert, snow-covered mountains, and deep gorges cut by several major rivers. The borderlands were settled by three major racial or ethnic groups. (See map.)

First were the Indians who lived along the major rivers and grew cotton, corn, and other crops. What we know today as the Rio Grande, Rio Conchos, and the Pecos were the providers of life-sustaining water. These rivers essentially pulled these people together.

Second came the Spaniards who from the early 16th century had explored the borderlands and established presidios (military outposts) and missions all along the Rio Grande and west of California.

Many Spaniards married native or Indian women, and there developed a new “race” of Indio-Hispanos or what today we know as Mexicans. By the early 1800s, the Spanish government had lost its hold on the northern line of its empire roughly from San Antonio to Santa Fe, and by 1821 Mexico had declared its independence from Spain.

The early 1800s also saw the first arrival in large numbers of the third major ethnic group—the Anglo American—into that part of the Mexican republic known as Texas. The American pioneer was moving west, constantly coming into conflict with the Plains Indians and the Mexicans along the Rio Grande. The first Anglos came to what is now Texas, without legal sanction from any government, to catch wild horses, trade, or explore the area. Later, Moses Austin and his son Stephen negotiated with the government in Mexico for a grant to the area between the Colorado and the Trinity Rivers in what may be the richest agricultural part of the State. The Austins, who had lived in Missouri when that State was under Spanish domain, presented themselves to the Spanish rulers in Mexico as patriots who wished to return to their former status as Spanish subjects.¹ Even after Mexico declared its independence from Spain, the new government favored the Austin settlement in Texas. In fact, in 1825 Mexico passed a general colonization law that encouraged all foreigners, especially Americans, to settle in Texas.² It was envisioned that in this way the settlers would become a buffer zone against the

¹ Walter Prescott Webb, *The Texas Rangers, A Century of Frontier Defense* (Austin: University of Texas Press, 1965), p. 10.

² *Ibid.*

Indians who had become a problem to the Spanish. Mexico, perhaps naively, set down strict but largely unenforceable restrictions under which settlement was to be permitted. Among other things, the new settlers were to become citizens of Mexico and uphold the laws, but generally these conditions were ignored. By 1830 the Anglo American population of Texas numbered well over 20,000 and probably exceeded the number of Mexicans and Indians combined. Although the great influx of Anglo-Americans into Texas caused alarm among Mexican government officials, they could effectively do nothing to stop it. Many Americans coming from Louisiana, Missouri, and other States simply ignored the border and settled in places where other Americans were found. They refused to blend into the cultural traditions of Mexico and tended to stick together. Thus, it became hard for the Mexican authorities to determine the exact number of Anglos who had entered Texas without documents.

This concern was communicated to the central government and in 1830 Mexico passed another law in an attempt to keep these new immigrants out of the country.³ In retrospect, Mexico may have regretted its early policy of allowing the Anglo Americans in, for this was their undoing. Friction and problems developed between the Mexican Government and the new settlers of Texas, and the government tried to take away some of the rights it had given them. The Americans, joined by some of the Mexicans, revolted and a series of events developed that led to the proclamation of the Republic of Texas. In 1845 Texas became the 28th State of the United States. Mexico saw this as an act of hostility and there ensued the war between the United States and Mexico. According to most historians, the conflict between Mexico and the United States was little more than a war of conquest—an effort by the United States to take almost half of Mexico by force. But its larger significance lies in the development of intense racial and nationalistic hatred on each side. Hostilities formally came to an end in 1848 with the signing of the Treaty of Guadalupe Hidalgo, and virtually all Mexican territory north of the Rio Grande River was ceded to the United States. This included all or parts of Colorado, Utah, Nevada, Arizona, New Mexico, Texas, and California. The Mexican Government realized that many of its former citizens would now be living

on land that was part of the United States and insisted that land and civil rights be protected for its former citizens. This included the right to retain their language, religion, and cultural practices, such as observing traditional fiestas without interference. While the Mexicans who lived in the newly annexed areas did have a choice of returning to Mexico, most chose to stay, feeling secure that their rights would be protected. Indeed, many were descendants of people who had lived in the area for more than 300 years under several governments. Undoubtedly, others were unaware of the legal changes in their status.

The *first* major lesson in understanding the borderlands is this: the 80,000 to 100,000 Mexicans who remained in the Southwest were not immigrants to the United States—they did not cross the border—the border crossed them.

The period after the end of the Mexican-American War was one that saw the intensification of the American migratory push from east to west. The guarantees of protection for land rights of the former citizens of Mexico were largely ignored. Through a series of quasi-legal maneuvers, deceptions, and outright acts of violence perpetrated against them, the Mexican Americans lost their land.⁴

This paved the way for early Anglo speculators and land investors to “develop” the West. Agriculture, ranching, mining, railroads, banking, and other industries quickly grew up. Indians were placed on reservations, and the Mexican Americans, after losing most of their land, became almost totally dependent upon the Anglo for employment and subsistence.

The *second* lesson vital to understanding the borderlands is this: the Mexican people of this area and their descendants have historically been the providers of cheap labor to the industrial and agricultural interests of the United States. United States immigration policy has tended to reflect the social and economic perspective of the “Mexican” as a cheap labor commodity to be barred in times of recession or imported in great numbers when needed.

Of equal importance is the fact that this relationship has not been based only on caste but on “race” as well. Once the Indians were under control, the two major ethnic groups left were the Mexicans and

³ Ibid.

⁴ Vernon M. Briggs, Jr., Walter Fogel, and Fred H. Schmidt, *The Chicano Worker* (Austin: University of Texas Press, 1977), p. 4.



the Anglos. The differences between these two groups were many. While the history of the Mexican population from 1850 to the early 1900s is not well documented, we do know that the Mexican was perceived by the Anglos as a member of an inferior race and subjected to abuse and persecution. We also know that many Mexicans migrated north from the interior of Mexico in order to find a better life along the border. Up to this point, people crossed the border at will in either direction.

In the early 1900s a report of a Federal commission set up to study immigration into the United States reflected typical Anglo attitudes:

Because of their strong attachment to their native land, low intelligence, illiteracy, migratory life and the possibility of their residence here being discontinued, few became citizens of the United States. Insofar as Mexican laborers came into contact with natives or with European immigrants they are looked upon as inferiors. . . . Thus it is evident that in the case of the Mexican he is less desirable as a citizen than as a laborer.⁵

In fact, the Anglo Americans had settled Texas while it was still part of Mexico and they had no intention of becoming Mexicanized, and the Mexican who remained in or came to Texas for economic opportunity carefully avoided becoming "agringado" (anglicized). Significantly, few Anglos bothered to learn Spanish, but Spanish remained the primary language for Mexican Americans.

Although language was a focal point of the difference, in fact, the Mexicans settled on land (in many areas becoming well over 90 percent of the population) that was owned and controlled by Anglos and dominated by non-Mexican laws, traditions, and mores. Historian T.R. Fehrenbach concludes:

The Anglo attitude progressed through a number of gradual changes. During the long years of border stagnation, the few Anglos, who had "complete" economic control, continued to look on Mexicans as a useful underclass. Mexicans were small, superstitious, ignorant, and dark by Nordic standards. They performed a function similar to that of the slave caste. Inevitably, the first Texan's reaction was to

equate ethnic Mexicans, almost unconsciously, with Negroes.⁶

The differences in cultural and social values, religion, and government were augmented by intense racial dislike on both sides. According to Fehrenbach:

The real underlying cause of the Texas Revolution was extreme ethnic difference between two sets of men, neither of whom, because of different ideas of government, religion, and society, had any respect for the other. Added to this was the inherent distaste of Anglo-Americans for the racial composition of the Mexican nation. This attitude was not peculiar to Americans: every European traveler of the time, including Spaniards, commented openly on the vices of a mixed, or Mestizo, race. The 19th century was quite intolerant of mixed blood, and very honest about it. As Rivas wrote: "They [the Texans] were, in fact, always ready to conform to laws they understood, but, that had been their custom and the custom of their fathers for many generations. They would never submit to the domination of a race they regarded as inferior; they despised Mexicans, as they despised Negroes and Indians."⁷

This was the environment that set the stage for a continuing immigration from Mexico. Violence continued on both sides of the Texas-Mexico border. Thieves, cattle rustlers, and murderers roamed the border area and crossed at will. This period also saw the creation of the Texas Rangers who were to be much hated and feared by the Mexican population and referred to as "Rinches." After violently disposing of the "Indian problem," the Texas Rangers turned their attention to the border and soon earned a reputation for ruthlessness and cruelty towards Mexicans. It is interesting that persons of Mexican descent along the border used the word "Rinche" to mean any armed Anglo law enforcement officers, including sheriffs, State police, border patrolmen, and even U.S. General John J. Pershing and his troops who invaded Mexico in pursuit of Pancho Villa.⁸

The early 1900s saw the development of mercury or quicksilver mining in the Big Bend area of Texas. Typical exploitation of Mexican labor occurred in this industry. Describing the salaries paid to Mexi-

⁵ Julian Samora, *Los Majodos: The Wetback Story* (Notre Dame: University of Notre Dame Press, 1971), p. 17.

⁶ T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (New York: MacMillan Publishing Co., Inc., 1968), p. 695.

⁷ *Ibid.*, p. 168.

⁸ Americo Paredes, *With His Pistol in His Hand—A Border Ballad and Its Hero* (Austin: University of Texas Press, 1958), p. 24.

cans by the Chisos Mining Company, one writer says:

Undoubtedly language constituted a barrier, as practically all labor was native Mexican, who worked under Anglo supervision. The low wage scale was another factor contributing to the low efficiency of labor. Of the six states producing quicksilver, Texas ranked lowest in wages paid employees; miners who were paid \$2 per day in Texas would have received \$6 for the same skills in Washington. The Indian roustabout in the Arizona mines who received \$3 per day ranked ahead of the Mexican at Terlingua who received only \$1.25.⁹

Howard Perry, the owner of the mining company, even devised a system of cheating his Mexican employees by paying them in Mexican money:

There was quite a talk over the country about Perry using Mexican money in that [Terlingua] camp. People could never figure it out. Now Mexican money [a peso] was worth about forty-eight cents on the dollar most of the time. They said that he sold stuff out at the store, taking in a peso for a dollar. In other words, he would sell a pair of shoes that sold for \$5—that would cost \$5 in American money—he would sell them to you for five pesos. He did that for years and years. Well, that kept all the business from going to Alpine, and Marathon and Marfa. They couldn't figure out how he did it.¹⁰

In a letter from Perry to his superintendent, the system was explained:

he told them to get \$40,000 or \$50,000 worth of pesos and die stamp them with a large "C" so they could recognize them as the ones they owned. He also told them to watch and see if any additional amount [of Mexican money] came in, for if it did, then they would stop it. Well, where he made his money was in the payroll. He paid them in pesos [worth forty-eight cents] instead of dollars. He got labor for forty-eight cents on the dollar and that was a big piece of money for Mr. Perry.¹¹

Three events were responsible for an impetus in immigration from Mexico to the United States: the Mexican Revolution, World War I, and the development of agriculture in the United States. The Mexican Revolution of 1910 caused many Mexicans from the interior of Mexico to move to the northern

border. Many, as refugees, simply crossed the border and settled in the United States. The immigration of Mexicans to the United States during the revolution represents the only time a major flow of people came from Mexico because of political reasons. On all other occasions, the reasons were economic in nature.

With World War I came a massive draft. Together with the development of war-related industries, a severe labor shortage in the United States resulted. To a great extent, this vacuum was filled by Mexican workers.

In the early 1900s the growing and processing of vegetables, fruits, and other commodities brought about a surge in the agricultural development of Texas, especially in what is known today as the Lower Rio Grande Valley. Because of the great cost of irrigation and transportation (mostly to the great markets of the North and East), the land could only be developed with the cheapest labor possible.

Development of U.S. Immigration Policy

In the early 1900s there was a growing concern about guarding the Mexican border, not so much to control Mexican immigration as to keep out Chinese and unwanted Eastern Europeans. Finding it much more difficult to enter the United States through seaports or across the Canadian border, Chinese soon turned to Mexico as a way to get into the United States. The Immigration and Naturalization Service, in response, created special Chinese inspectors along the Mexican border. It is interesting to note some of the methods used by INS in its early days:

When a man in his forties and mid-fifties appeared in one of Tucson's Chinese establishments, it was fairly easy for us to ascertain that he was a new arrival from Mexico since we had records of all Chinese entering by train. There was very little travel except by train, and our record books already contained the names and addresses of all local Chinese residents. Proving he came from Mexico following an unlawful trip to China, however, was more difficult, for some recent arrivals went to great lengths to hide the illegality of their entry.

. . . For a time the Service hired Mexicans in Nogales, Sonora, to photograph Chinese on

⁹ Kenneth Baxter Ragsdale, *Quicksilver, Terlingua and the Chisos Mining Company* (College Station: Texas A&M University Press, 1976), p. 40.

¹⁰ *Ibid.*, p. 168.

¹¹ *Ibid.*, p. 169.

their arrival by train from the south and, if possible, to take pictures of new arrivals living in Nogales. Such pictures were supplied to the Tucson and other Border Immigration offices, where they were filed by approximate age, shape of face and body shape.

We also arranged to have pictures taken in Tucson of persons suspected of illegal entry from Mexico and sent to ports and agents on the border for referral to residents and officials in or near Mexico. In a number of instances we were able to secure witnesses who could swear in court that the alien had been in Mexico on a certain date. Bringing witnesses in from Mexico to testify in court had to be discontinued after a couple of years, however; they got to making a good thing of it since they received money to cover their expenses up and back. Their credibility suffered when one witness identified our Chinese interpreter, maintained in the office fulltime by the Service, as a man he had seen getting off a train in Mexico.¹²

In 1924 the Immigration and Naturalization Act, besides establishing what today is the Border Patrol, set up immigration quotas for all countries except those in the Western Hemisphere.¹³ Even though excluded from quotas, Mexicans, as well as others, had to pay an \$8 head tax plus other fees. These fees together with other requirements, such as the literacy test, effectively reduced the number of legal Mexican immigrants. Meanwhile, many Mexicans from the interior of Mexico, apparently hearing of the good jobs available in the United States (some employers advertised and contracted in Mexico), moved to the northern border. Upon finding that the immigration laws were being enforced—but that there was little chance of being caught—many had no real alternative but to cross the border without inspection. Thus while legal immigration from Mexico decreased temporarily, illegal entry was on the increase.

The decade of the Great Depression—the 1930s—saw a reversal in the immigration of Mexicans to the United States. For example, the Deportation Act of 1929¹⁴ not only made it easier to deport aliens but it became a felony for a deported alien to reenter the United States illegally. Indeed, the depression led to a near hysteria in this country about “foreigners” holding jobs. Throughout the Southwest, especially

in California, there were mass deportations of Mexicans. Many of these families had come to the United States decades before, had worked hard in building the railroads, agriculture, and other industries, and had settled the border areas. They had simply not become citizens or legal residents and, therefore, were deportable. Some U.S.-born Mexican Americans were among those ejected.

Many complaints were voiced from the Mexican American community about procedures used by the Immigration authorities. Many said that people were stopped and questioned merely because they “looked” like aliens or, essentially, because of the color of their skin.

World War II in the early forties again created a demand for cheap labor. Since the “open border” had now become a much more closed one, new approaches were taken to obtain cheap labor from Mexico.

During the early 1940s the controversial bracero program was introduced, and it remained a part of the border question until its abolition in 1964. Under this agreement with the Mexican Government, almost 4 million Mexicans were brought in to work specifically in agriculture. Although the program purported to establish strict standards in the areas of health, housing, and wages, these provisions were generally ignored.

Far from impeding the influx of undocumented aliens, the bracero program prompted many Mexicans to bypass the red tape and fees involved in gaining access to the program and enter this country without documents.

Many Mexicans found the new opportunities to be a mixed blessing. While they were making much more than they ever could in their homeland, they were greeted by a sometimes hostile and racist environment. Indeed, conditions were so bad in Texas that for some time the Mexican Government would not permit Mexican laborers to work in Texas.

The surge of Mexican migration to the borderlands continued to increase until the late 1940s and early 1950s. By this time, the Mexican alien was being blamed for high crime rates, disease, and unemployment, and in 1954 the U.S. Immigration Service (Border Patrol) geared up for a major campaign against “the silent invasion of the Mexican

¹² Clifford Alan Perkins, *Border Patrol—With the U.S. Immigration Service on the Mexican Boundary 1910-54* (El Paso: Texas Western Press, 1978), pp. 10-11.

¹³ Act of May 26, 1924, Ch. 190, 43 Stat. 153.

¹⁴ *Id.*, as amended, by Act of Mar. 4, 1929.

aliens." Local and State law enforcement officers, Federal agencies, and even the Army and Navy were enlisted in the "war." Significantly, the Commissioner of Immigration was a former military officer, General Joseph Swing.¹⁵

Again thousands of aliens were rounded up and deported. Fear gripped many in the Chicano communities as Immigration officials, Border Patrol, and other law enforcement officers ferreted out aliens (oftentimes legal and illegal alike) from their jobs and homes. For a time the tide of undocumented aliens slacked off—however, this didn't last long and the decade of the sixties again saw a great increase in the apprehension of undocumented persons.

The increased migration of aliens has continued on through the decades of the sixties and seventies. As in the past, there is currently another increase in public reaction against the undocumented alien. The Texas Advisory Committee to the U.S. Commission on Civil Rights has become increasingly aware of complaints of abuse and mistreatment in the enforcement of immigration laws. Some of these complaints include such things as being repeatedly stopped, interrogated, and sometimes unnecessarily arrested on the basis of suspected illegal status.

In addition to dealing with the reportedly large number of aliens crossing the border, there has apparently been an increase in the smuggling of narcotics across the U.S.-Mexican border. Along with the "silent invasion" of people, Mexico has allegedly been a major source of marijuana, cocaine, heroin, and other drugs. In an effort to curb this type of smuggling, law enforcement agencies, including the U.S. Immigration and Naturalization Service, the U.S. Customs Service, the FBI, CIA, Texas Department of Public Safety, local and county police, and the Federal Drug Enforcement Administration, have combined forces in carrying out their missions.

The Texas Advisory Committee has been concerned about the effect this increased enforcement may have on the civil rights and civil liberties of the average citizen, legal resident, or undocumented person. In undertaking this project, the Advisory Committee was concerned about two realities:

(1) the lack of knowledge the average person has about the U.S. Immigration Service and its operations in Texas; and,

(2) the paucity of reliable data about the undocumented alien in this country, especially along the Texas-Mexico border.

The Texas Advisory Committee, through the Commission's Southwestern Regional Office, undertook this study, therefore, to accomplish two things:

1. An evaluation of the U.S. Immigration Service and its administration of U.S. immigration laws and policies to determine how that affects U.S. citizens, legal resident aliens, and undocumented aliens.

2. An indepth analysis of the impact of undocumented aliens in two selected labor markets of Texas.

To accomplish these ends two major components of the study were undertaken: a 3-day open meeting dealing with INS and a survey of 600 undocumented aliens in the Lower Rio Grande Valley and in El Paso.

The evaluation of the operation of the U.S. Immigration and Naturalization Service began by interviews with attorneys, representatives of community advocacy groups, and INS employees at all levels, including Border Patrol officers, investigators, supervisors, and immigration judges.

An analysis was also conducted of INS's employment statistics and equal opportunity policies. An effort was made to determine how minorities (Mexican Americans and blacks) and women were faring in employment at all levels within INS. To accomplish this, a review was made of current EEO complaints against the INS in Texas.

All of this information was gathered and presented at a 3-day open meeting conducted by the Texas Advisory Committee in San Antonio in September 1978. Some facts established by the hearing include the following:

- Although INS in Texas employs a significant percentage of Hispanics, blacks, and women, most are at the lower grade levels. Chicanos, blacks, and women hold very few policymaking positions.

- Until recently one Border Patrol office in Texas had a policy of not assigning two Mexican American patrolmen together for fear they would be too lenient on aliens.

- The Border Patrol and Immigration officers have a policy of "breaking" an alien. This apparently is an attempt to bring enough psychological pressure to bear so a person will be forced to tell the truth. A

¹⁵ Samora, *Los Majodos: The Wetback Story*, p. 52.

pregnant woman was being questioned in this manner when she collapsed and later died.

- A Federal suit was won against the Border Patrol in Texas by an employee of the Immigration Service. At the open meeting, the INS Regional Commissioner, the Regional Personnel Officer, and the new Sector Chief all admitted they had not read the judge's findings of discrimination.

- The INS keeps a special fund to pay informants who inform on other undocumented aliens. Special privileges and parole are given some aliens for information leading to the apprehension of other aliens.

- The INS in Texas has only three immigration judges who speak Spanish.

- INS officers sometimes confiscate and even destroy documents presented by aliens.

- A computer information center (E.P.I.C.) with information on thousands of persons is located in El Paso. This center is virtually unknown to the general public. Agencies that have instant access to this information include the FBI, INS, Texas Department of Public Safety, the CIA, the Drug Enforcement Agency, and others.

In addition to these issues, the Texas Advisory Committee looked at the matter of educating children of undocumented parents. The treatment of innocent alien children—sometimes U.S. citizens—by the education system of Texas seems cruel:

- Even though the State law guarantees that "every child in this State who is a citizen of the United States or a legally admitted alien. . . shall be permitted to attend the public schools free," the policy of the El Paso School District is not to educate children if their parents are not citizens or legally admitted aliens even if the children themselves are U.S. citizens.

- Until recently the El Paso School District assigned staff to monitor the bridges from Ciudad Juarez to El Paso looking for alien children crossing to attend school in El Paso. Some children ignore the bridge and wade the river every morning to attend school.

- Real estate agents in El Paso were accused of renting tool sheds and vacant lots to aliens so they could report an address for school residency purposes.

The final section of this report sets out the findings that resulted from 600 interviews with undocumented aliens. These were conducted in two labor markets of Texas, the McAllen area and El

Paso. This survey was made in an attempt to determine, with more accuracy, the motivations and habits of the aliens. Where in Mexico do they come from? Where do they work? Do they use social services and government benefits? Do they pay taxes? Do they take jobs from American citizens? The conclusions from this survey are reported in chapter 4.

There is little doubt that economic conditions along the Mexican-American borderlands are among the most depressed in the Nation. Even though wages are low and unemployment is high, there is still a marked contrast between the economies of the United States and Mexico. This leads to the final lesson in understanding this area: nowhere in the world is there an international border of such economic and social contrast as the 2,000-mile Mexican-American border. Yet this boundary and specifically the Rio Grande River has been at best an artificial border. Far from separating people, it has historically drawn them together. Although the problems related to enforcing immigration laws and setting policy are not easily solved, we do know that history seems to repeat itself along the borderlands. There are clear cycles in U.S. public policy of first encouraging and then discouraging immigration. Decisions have been made based on expediency and not on long-term consistency.

Enforcement of immigration laws has been determined by the economic concerns of agriculture and other major U.S. businesses from the time during World War I when U.S. immigration laws were suspended to allow Mexican workers to enter the United States. Since then, American agribusiness and industries have virtually controlled the influx of both legal and illegal aliens. The U.S. Government has seemed more than willing to open or close the flow according to the needs of business and the economic conditions of this country. The interests of Mexico, the citizens of Mexico, and of Mexican Americans have seldom, if ever, been considered. But now Mexico has demonstrated the potential of becoming a major oil exporter. As such, its desires can no longer be ignored. What Mexico will demand from the United States in terms of immigration policies in exchange for favorable trade in Mexican oil and gas is not known. But it is a well-known fact that Mexico, while growing economically, still has one of the world's highest birth, illiteracy, and unemployment rates. It is no secret that immigration

from Mexico to the United States serves as a "safety valve."

Another important, if embryonic, development is the increasing aggressiveness of the Chicano community in the Southwest. This group is increasingly

making demands upon American policymakers for fair treatment of aliens and a relaxation of border enforcement policies. Of interest is how the Mexican Government will use these new "allies," if at all.

INS Employment of Minorities and Women

[A]lthough minorities comprise a significant portion of the INS work force in Texas, they tend to be concentrated in the lower grade and salary levels. With respect to female employment, women comprise only a very small portion of the total employment.¹

Overview

One of the key ways to judge the civil rights performance of a governmental agency is to look at its internal equal employment opportunities for minorities and women. This is especially true in the context of a law enforcement agency where allegations of insensitivity or outright hostility toward minorities are often heard. There are two levels involved in such an examination. First is the overall employment picture of the agency to see how minorities and women compare with the total employment. The second level involves looking at the agency's affirmative action efforts and its commitment to equal employment opportunity.²

¹ Texas Advisory Committee to the U.S. Commission on Civil Rights, open meeting on immigration, San Antonio, Tex., Sept. 13-14, 1978, vol. I, p. 35 (hereafter cited as Transcript).

² The following definitions will apply:

Equal employment opportunity: all employees and applicants for employment are judged on individual merit without regard to race, color, national origin, religion, sex, age, physical disability, or political affiliation.

Affirmative action: positive steps taken by the employer to assure equal employment opportunity and to overcome effects of past discrimination.

Affirmative action plan: a written plan of action incorporating measurable goals and timetables indicating what steps the employer will take to bring about equal employment opportunity. It is viewed as a positive management tool to be used at all organizational levels. Source: Southwest Federal Regional Council, *Uniform Interagency Guidelines for EEO Affirmative Action Plans* (Dallas, Tex.: June 1975), p. 1.

³ U.S., Commission on Civil Rights, Southwestern Regional Office, *Employment Profile: Immigration and Naturalization Service* (September 1978) (hereafter cited as *Employment Profile: INS*). This report was prepared by staff of the Southwestern Regional Office and submitted as part of the record at the Texas Advisory Committee open meeting, Sept. 12-14, 1978.

⁴ For the purpose of this report, the following group definitions are used:

The Texas Advisory Committee examined the work force composition of the Immigration and Naturalization Service (INS) from a nationwide, regional, and a Texas perspective.³ In each instance, the Advisory Committee found severe underutilization of minorities and women. Even where these groups constituted a significant portion of the work force, they were typically several grade levels lower than their Anglo male counterparts.⁴

There are, broadly speaking, three levels within the overall organizational and administrative structure of the INS. (Appendix A provides a more detailed picture of the INS structure.)

Anglo/White: a person having origins in any of the original peoples of Europe, North Africa, or the Middle East. The term "Anglo" is widely used in the Southwest to identify that group made up of persons with Anglo-Saxon, Irish, Teutonic, or northern European cultural traits.

Blacks: a person having origins in any of the black racial groups of Africa.

Hispanic: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

American Indian: a person having origins in any of the original peoples of North America and who maintains a cultural identification through tribal affiliation or community recognition.

Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

Other: this designation pertains to those who are not identified. Source: Executive Office of the President, Office of Management and Budget, Circular No. A-46 Revised Transmittal Memorandum No. 6, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" (May 12, 1977).

"Minorities" and "minority groups" as used in this report refer to those population groups who identify themselves as black, Hispanic, American Indian, and Asian American. The category "Hispanic," although not a racial identification, is included as a separate ethnic category and is not included under the "white" or "Anglo" category.

The first level, the Central Office, is located in Washington, D.C., and its functions are mainly related to policy development and overall supervision. On the second level are four regional offices, each covering a particular geographical area. The Southern Region, which includes Texas, covers 13 States stretching from the east coast to New Mexico. Texas is by far the largest State in the region both in terms of land area and population. The regional office is located in Dallas and, like the Central Office, is concerned mainly with supervision and policy development.

The third level consists of the district offices and this level makes up the basic operating unit of the INS. In Texas there are five such offices, located in Dallas, El Paso, Harlingen, Houston, and San Antonio.

In addition, each region has what are called Border Patrol sectors. The Border Patrol has its own administrative structure and each sector office reports directly to the regional office in Dallas. As in the case of the district office, there are five border sectors in the State. These are designated as the Del Rio, El Paso, Laredo, Marfa, and McAllen sectors. However, the Immigration and Naturalization districts and the Border Patrol sectors are not completely coterminous.

Employment Profile

Table 1 describes the composition of the INS work force in Texas by race, ethnicity, sex, grade level, and salary distribution as of 1978. Of some 1,800 employees, 735, or approximately 41 percent, were members of minority groups. Overall, the agency's work force in Texas was 1.3 percent black and 39.5 percent Hispanic. Asian Americans and American Indians together made up less than 1 percent of the total employment.⁵ (See table 1.)

Female employees, on the other hand, were about 15 percent of the work force. As of August 1978, only 276 women were employed by the INS in Texas out of a total work force of 1,800.

Nearly 18 percent of the minority work force was concentrated in grades GS-1 through 4. This grade range encompasses the four lowest grade levels in the Federal General Schedule (GS) pay system.⁶

⁵ The GS pay system refers mainly to white-collar, supervisory, or professional level jobs. The other major Federal pay system is the Wage Board or Salary system, which usually refers to blue-collar or skilled craft occupations.

Within the GS grade system there are 18 levels ranging from GS-1 through GS-18. Within each level there are also a series of 10 steps; each step represents an incremental increase in salary.

Usually, entry level, clerical-type jobs are found in these grades. In contrast to the rather high number of minorities at GS-1 to GS-4, only about 7 percent of the Anglo work force was found there. This is reversed at the other end of the GS grade system—only about 2 percent of all minorities were employed at the GS-12 level and above, but over 10 percent of all Anglo employees were at or above this grade. (See table 1.)

Slightly over one-third of all minority employees were located in the GS-5 through 8 grade range. Within these grades are the basic entry, journeyman, and training levels for the higher grades. These positions are for all practical purposes the stepping stones to the higher midmanagement and supervisory jobs found at and above the GS-12 level.

The largest concentration of minority employees occurs at the GS-9 grade. As of August 1978, 37 percent of all minorities and nearly 39 percent of all Anglo employees were at this grade. Significantly, however, over 70 percent of the Anglo work force was employed at or above GS-9 compared to only 47 percent of the minority group members.

Although there is a close parity between Anglo and minority employees at GS-9, the relationship declines thereafter. At the higher grade levels, Anglo employees clearly occupy most positions. For example, 18 percent of the Anglo work force is located at GS-11, but only 5 percent of the minority work force is at that level. Above GS-12, Anglo employees occupy virtually all of the management, supervisory, and decisionmaking positions. (See table 1.)

Females, as noted previously, constitute about 15 percent of the total INS work force in the State. However, over 90 percent were employed at or below the GS-8 level. Only 19 women were in the GS-9 range and above, and only 1 was employed above GS-11. (See table 1.)

The overall median grade⁷ for Anglo employees was found to be a GS-9 level and for minorities and women, it was GS-7 and GS-4, respectively. This disparity becomes even more pronounced when these groups are compared with the total distribution. For example, while 23 percent of the total work force was at or above the GS-9 level, almost

⁶ The median grade level is that level above and below which one-half of the grades in a particular range fall. In simple terms, the median is the midpoint in a distribution.

⁷ *Employment Profile: INS*, pp. 63-64.

TABLE 1**Immigration and Naturalization Service Work Force by Grade Level, Race, Ethnicity, and Sex Total - Texas/INS
(Vertical Distribution)***

Grade	Salary Range	Black	Hispanic	Native American	Asian American	Total Minority Group	Total White/Anglo	Total	Male	Female							
2	\$ 7,422- 9,645		1	0.1		1	0.1	2	0.1	2							
3	8,356-10,877	5	21.9	38	5.3	43	5.8	78	4.3	16							
4	9,391-12,208	5	21.9	81	11.4	86	11.7	122	6.8	55							
5	10,507-13,657	3	13.0	126	17.8	129	17.5	254	14.1	157							
6	11,712-15,222	3	13.0	55	7.7	58	7.9	81	4.5	68							
7	13,014-16,920			52	7.3	52	7.1	136	7.6	118							
8	14,414-18,734	2	8.7	20	2.8	22	3.0	34	1.9	34							
9	15,920-20,699	4	17.4	267	37.6	272	37.0	685	38.0	672							
10	17,532-22,788			21	2.9	21	2.9	54	3.0	54							
11	19,263-25,041			40	5.6	40	5.4	233	12.9	228							
12	23,087-30,017			2	0.3	2	0.3	60	3.3	59							
13	27,453-35,688			3	0.4	3	0.4	33	1.8	33							
14	32,442-42,171			3	0.4	3	0.4	17	0.9	17							
15	38,160-49,608			3	0.4	3	0.4	11	0.7	11							
16	44,756-56,692			0	0.0	0	0.0	0	0.0	0							
17	52,429-59,421			0	0.0	0	0.0	0	0.0	0							
18	61,449-			0	0.0	0	0.0	0	0.0	0							
Totals		22	100.0	712	100.0	1	100.0	735	100.0	1065	100.0	1800	100.0	1525	100.0	276	100.0

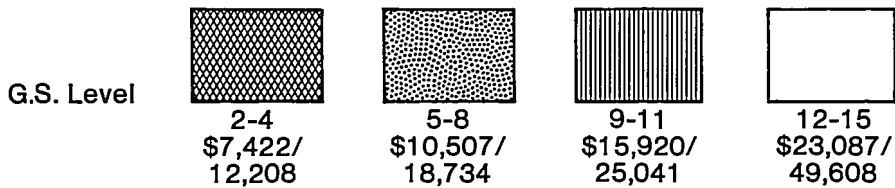
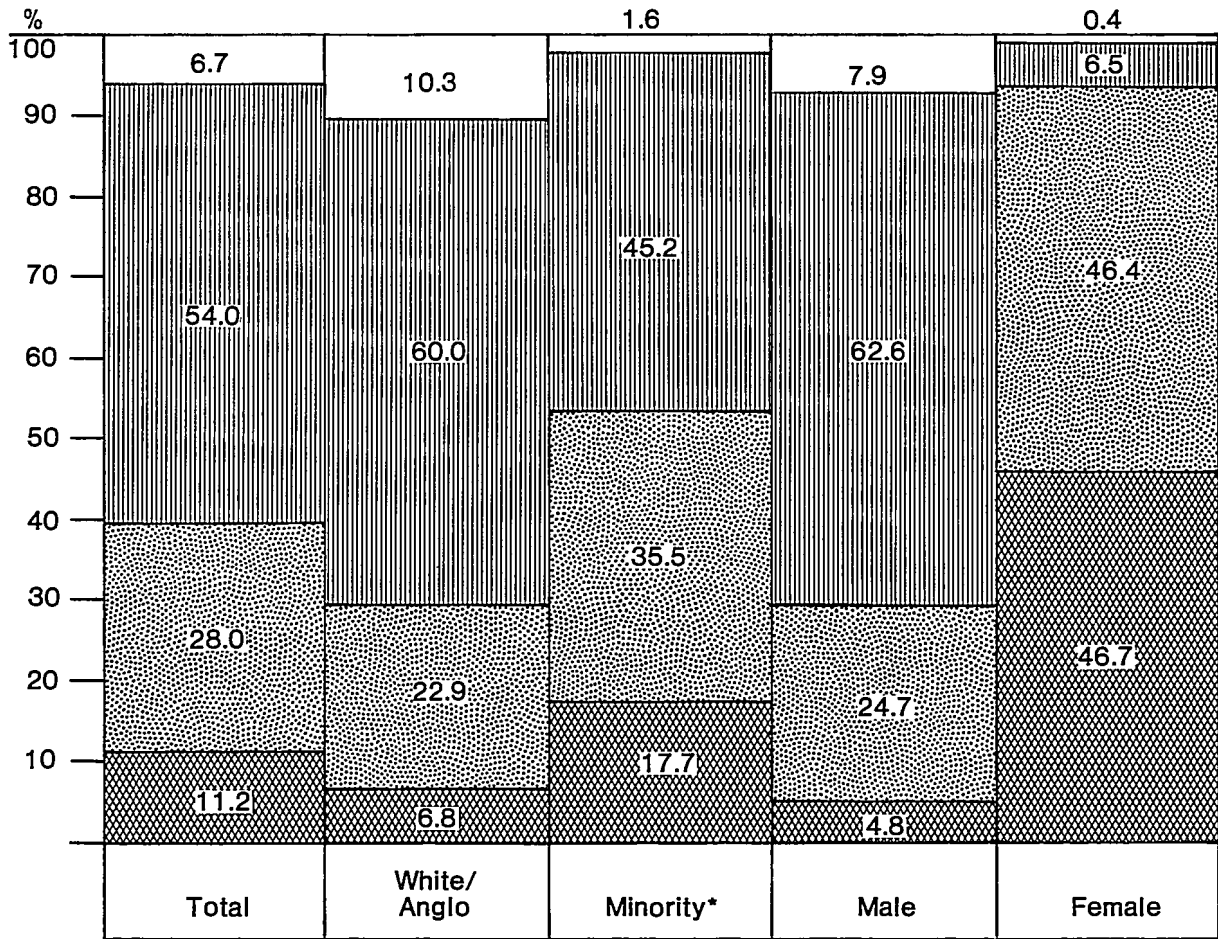
SOURCE; U.S. Department of Justice, Immigration and Naturalization Service, Southern Regional Office, Personnel Department, Dallas, Texas, August 1978.

- * The vertical distribution indicates how many employees of a particular racial/ethnic/gender group are located at a specific grade or salary level.
- * Percentage figures have been rounded off to reflect 100%

FIGURE 1

Distribution of Work Force Immigration and Naturalization Service by Grade Level, Race/Ethnicity, and Sex 1978

Total - Texas INS



*Minority class includes Hispanics, Blacks, Native Americans and Asian Americans.

32 percent of all Anglo employees were at or above this grade. In contrast, only 10 percent of the minority work force and 2 percent of all female employees were at or above GS-9.

Figure 1 describes the overall distribution of the INS work force in Texas by grade level, race, ethnicity, and gender and clearly shows the preponderance of Anglo males at the higher grade levels.

Figure 2 shows the distribution of Anglo and minority employees in each grade and salary range. This chart also provides an overview of the distribution of the work force by gender. Nearly 18 percent of minorities and 47 percent of females earned less than \$12,208 a year. In contrast, only 7 percent of the Anglo and 5 percent of all male employees earned less than this salary. At the other end of the pay scale, over 10 percent of all Anglo employees earned more than \$23,087 a year, and only 2 percent of all minorities were at this level. Less than 1 percent of all females were in this salary bracket.

Over the years, there has been some improvement in the number of minorities and women employed by the INS in Texas. As table 2 shows, there was an overall increase of 271 employees over a 2-year period from July 1976 to August 1978. Of this number, 212, or 78 percent, were minorities (over 90 percent were Hispanic). Minority employment expanded from 34.2 percent in 1976 to nearly 41 percent in 1978. The number of women increased from 185 to 276 over the same period. Stated another way, in 1976 women comprised over 12 percent of the total work force, and in 1978 they made up slightly over 15 percent of the work force.

Looking at the Border Patrol as a separate unit, the employment disparities among Anglos, minorities, and women are even more apparent. As of 1978 the Border Patrol in Texas employed nearly 1,100 persons. Of this number, 371, or 34.3 percent, were members of minority groups. Over 90 percent of these minority employees were Hispanics. Women, on the other hand, comprised only about 6 percent of the total Border Patrol work force in Texas.

Over 90 percent of all minority Border Patrol officers and *all* of the female employees were at or below the GS-9 level. In contrast, only 72 percent of all the Anglo personnel were at or below this grade. At the other end of the spectrum, less than 1

percent of all minorities and none of the female Border Patrol employees were at or above GS-12. Over 9 percent of all Anglo Border Patrol employees were at or above this level.⁸

With respect to salary levels in the Border Patrol, nearly 9 percent of the minority employees and over 70 percent of all female employees earned less than \$11,500 a year. In contrast, only 3 percent of all Anglo workers and less than 1 percent of all male Anglo employees received less than this salary. At the top income levels, 9 percent of all Anglos and about 7 percent of all male employees earned in excess of \$21,800 annually. Less than 1 percent of all minorities and no females were in this salary range.⁹

Table 3 describes the changes that have taken place since 1976 in the composition of the Border Patrol. From July 1976 to August 1978, total employment increased by only 93 employees. However, during this same time period, the number of minority employees increased from 259 to 371. In 1976 they comprised only about 26 percent of the total work force, and by 1978 they made up slightly over 33 percent of the work force. There was also a slight increase in the number of women employed by the Border Patrol. Despite this increase, women still comprise only about 6 percent of the personnel in the Border Patrol in Texas. Thus, the actual increase in the number of minorities and women in the Border Patrol has been negligible.

The four most important occupations in the INS with respect to total numbers of employees are the general clerical, investigator, inspector, and patrol officer job categories. Together, these four job areas encompass over 60 percent of total agency employment. Minorities comprise about 44 percent of all the general clerical jobs in the agency. However, they make up only 12 percent of the investigators, 19 percent of the inspectors, and 19 percent of the patrol officer jobs.¹⁰

Female employees are concentrated mainly in clerical jobs. Over 90 percent of all stenographers, secretaries, and clerk typists are females. In the four major job categories, female employees occupy 42 percent of the general clerical jobs but only about 4 percent of all the investigator jobs, 23 percent of the inspector jobs, and less than 1 percent of all the patrol officer positions. Of the 2,151 patrol officers

⁸ Ibid.

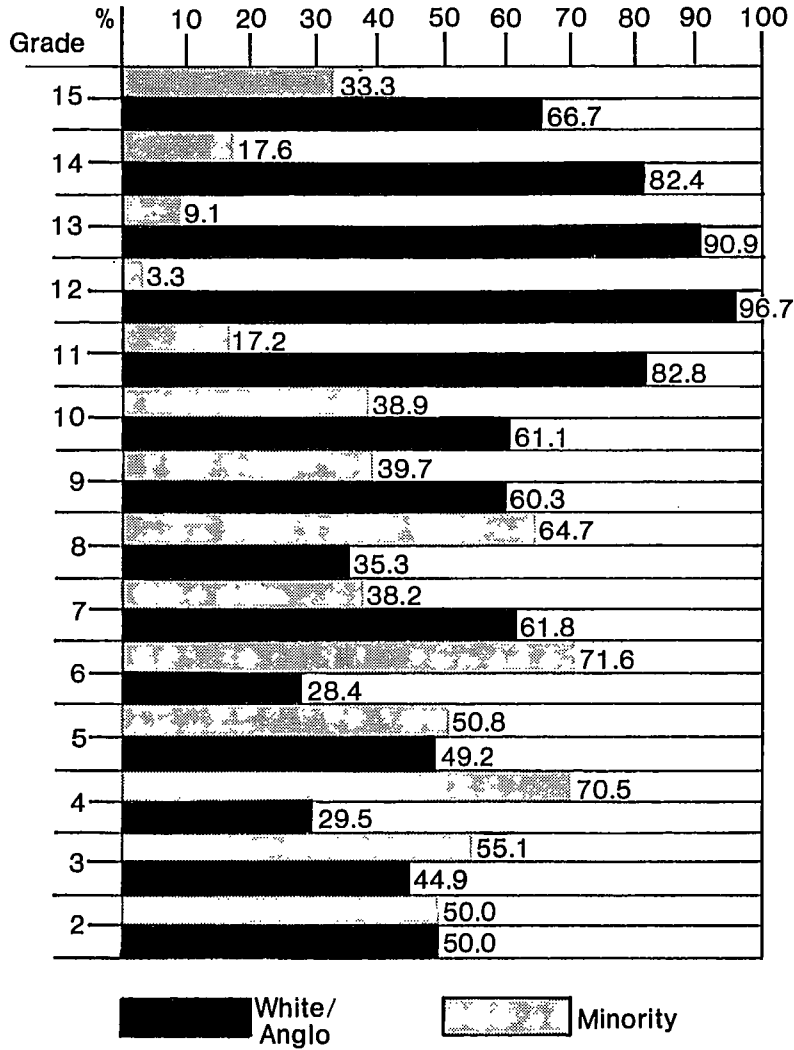
⁹ U.S., Commission on Civil Rights, "The Immigration and Naturalization Service: An Employment Profile," November 1978. This staff report was prepared for the Commission hearing on INS operations in Washington,

D.C., Nov. 14-15, 1978. The report analyzes overall employment at the Central Office and Regional Office levels.

¹⁰ Ibid., p. 46.

FIGURE 2
Total Texas INS

Distribution of Work Force by Grade Level and Race/Ethnicity



Distribution of Work Force by Grade Level and Sex

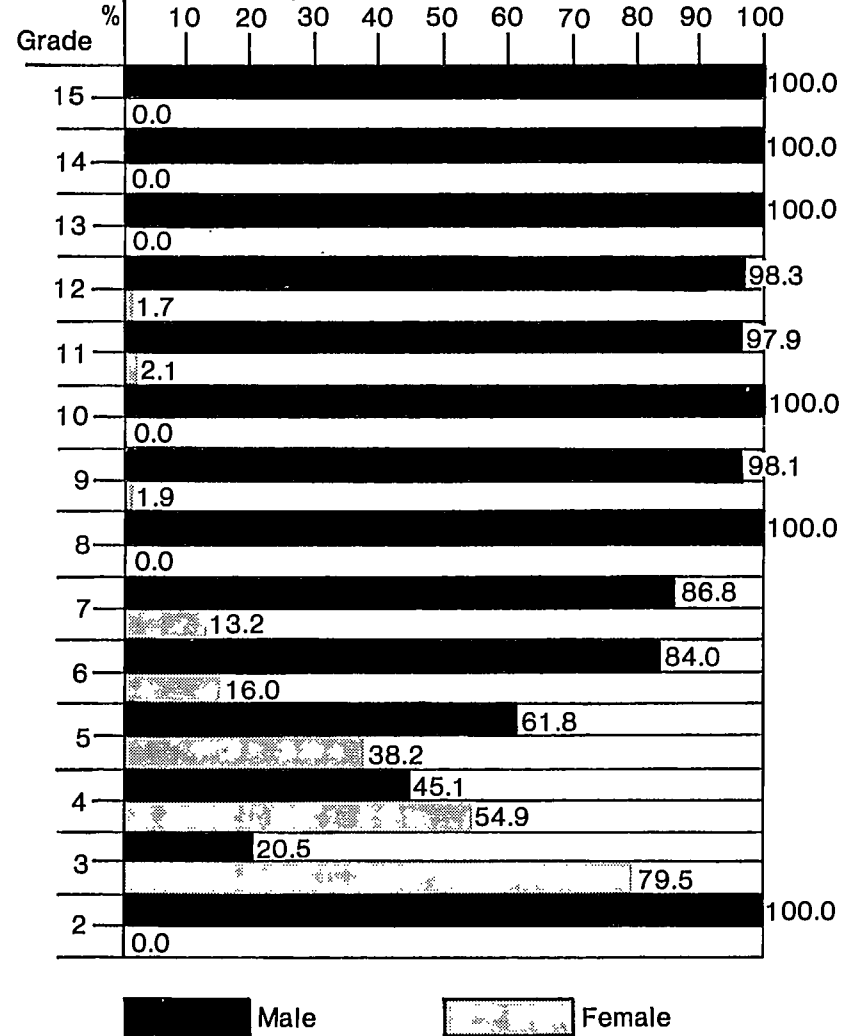


TABLE 2**Total INS Employment by Race Ethnicity and Gender—1976-1978
State of Texas**

Racial/Ethnic Group	Total/ Percent 7/76		Total/ Percent 4/77		Total/ Percent 8/77		Total/ Percent 8/78		Change Total 1976-1978	Percent Change
Black	10	.6%	15	.9%	14	.8%	22	1.3%	12	.7
Hispanic	512	33.4	585	37.1	667	39.3	712	39.5	200	6.1
American Indian	1	.06	1	.06	2	.1	1	.1	0	.04
Asian American	0	0.0	2	.1	2	.1	0	0.0	0	—
Total Minority Group	523		603		685		735		212	6.8%
Total All Employees	1529	100.0%	1575	100.0%	1694	100.0%	1800	100.0%	271	
Percent Minority	34.2%		38.3%		40.4%		40.9%		6.7%	
Female Employees	185		213		285		276		91	
Percent Female	12.1%		13.5%		16.8%		15.3%		3.2%	

SOURCE: U.S. Department of Justice, Immigration and Naturalization Service, Southern Regional Office, Personnel Department, Dallas, Texas.

TABLE 3**Total INS Employment by Race, Ethnicity and Gender—1976-1978****State of Texas****Border Patrol**

Racial/Ethnic Group	Total/ Percent 7/76		Total/ Percent 4/77		Total/ Percent 8/77		Total/ Percent 8/78		Change Total 1976 - 1978	Percent Change
Black	4	.4%	4	.4%	3	.3%	3	.3%	-1	-.1%
Hispanic	255	25.8	276	28.9	307	30.5	366	33.9	111	8.1%
American Indian	0	0	1	.1	1	.1	1	.1	1	.1%
Asian American	0	0	0	0	1	.1	1	.1	1	.1%
Total Minority Group	259		281		312		371		118	8.4%
Total All Employees	988		954		1006		1081		93	
Percent Minority		26.2%		29.5%		31.0%		34.3%	8.1	
Female Employees	33		35		79		60		27	
Percent Female		3.3%		3.7%		7.8%		5.5%	2.2%	

SOURCE: U.S. Department of Justice, Immigration and Naturalization Service, Southern Regional Office, Personnel Department, Dallas, Texas.

TABLE 4

Employment in Selected Occupations by Series, Race, Ethnicity, and Gender
Immigration and Naturalization Service
September 1978
Southern Region

OCCUPATION / SERIES	TOTAL	BLACK		HISPANIC		NATIVE AMERICAN		ASIAN AMERICAN		WHITE		TOTAL		% Minority		% Female	
		M	F	M	F	M	F	M	F	M	F	Min.	Fem.	Minority	Female		
Personnel MGT SP.	201	2	0	0	0	0	0	0	0	1	1	0	1	0.0	50.0		
Personnel SPEC.	212	5	1	0	0	0	0	0	0	1	4	1	4	20.0	80.0		
General Clerical	301	310	11	6	112	20	0	0	0	110	51	149	77	48.0	24.8		
Clerk	305	74	5	6	8	3	0	0	0	26	26	22	35	29.7	47.2		
Stenographer	312	86	0	1	0	31	0	0	0	1	53	32	85	37.2	98.8		
Secretary	318	53	0	0	0	13	0	0	0	0	39	14	53	26.4	100.0		
Clerk Typist	322	100	0	3	3	20	0	0	0	8	66	26	89	26.0	89.0		
Admin. Officer	341	1	0	0	0	0	0	0	1	0	0	1	0	100.0	0.0		
Program Analyst	345	2	0	0	0	0	0	0	0	2	0	0	0	0.0	0.0		
Accountant	525	7	0	0	0	0	0	0	0	1	6	0	6	0.0	85.7		
Voucher Exam.	540	5	0	0	0	0	0	0	0	0	5	0	5	0.0	100.0		
Attorney	905	45	0	0	3	0	0	0	0	40	2	3	2	6.6	4.4		
Contract Rep.	962	45	0	0	7	21	0	0	0	1	16	28	37	62.2	82.2		
Interpreter	1047	101	0	2	4	11	0	0	6	6	34	38	29	57	28.7	56.4	
Investigator	1811	168	3	0	33	0	0	0	0	131	1	36	1	21.4	0.5		
Inspector	1816	493	2	7	132	28	0	0	0	259	65	169	100	34.2	20.2		
Patrol Officer	1896	1001	2	0	262	2	1	0	0	732	2	267	4	26.6	0.3		
Subtotals	2498	24	25	564	149	1	0	7	7	1347	375	777	556	31.1%	22.2%		
Totals			49		713		1		14		1722						
Percent of Total			1.9%		28.5%		0.0%		0.5%		68.9%						

SOURCE: U.S. Department of Justice, Immigration and Naturalization Service, *INS Minorities by Minority Group Designator Within Series*, Computer Printout, Personnel Systems, Washington, D.C., September 1978.

in the INS, only 21 were female as of September 1978.¹¹

Table 4 describes employment in the Southern Region in selected job categories by race, ethnicity, and gender. The total employment in these particular job areas constitutes over 90 percent of the overall INS employment in the region and in Texas. The four main job categories with respect to numbers of employees are the general clerical series (301), investigator series (1811), inspector series (1816), and patrol officer (1896). Together, these four job areas take in about 72 percent of the INS work force in the region.¹² Taking each area separately, minorities comprised about 48 percent of the total work force in the general clerical job series. In the investigator, inspector, and patrol officer categories, minorities constituted approximately 21 percent, 34 percent, and 26 percent of the work force, respectively.¹³

As in the employment profile for the total work force, female employees in the Southern Region were found mainly in the clerical field. In fact, almost half of all the employees working as stenographers, secretaries, and clerk typists were women. Out of 168 investigators in the region, only 1 was female. Similarly, of the 1,001 patrol officers in the Southern Region, only 4 were women. (See table 4.)

Equal Employment Opportunity

In the total picture, the employment statistics look relatively good for minorities. Of the 1,800 persons working for the INS in Texas, almost 41 percent are members of minority groups. However, under closer observation, disparities become evident. In the case of blacks and females, the overall employment statistics indicate a severe underutilization. Only about 15 percent of the total INS work force in Texas was composed of women, and blacks accounted for 1.3 percent.

In terms of salary, the median level for females and minorities was two to five grades below Anglo males. This means that the average minority or female employee earns from \$2,000 to \$5,000 less per year than his or her Anglo male counterpart. In terms of responsibility, minorities and women, for the most part, have little or no influence on policy and decisionmaking levels.¹⁴

¹¹ Ibid., p. 31.

¹² Ibid.

¹³ *Employment Profile: INS*, p. 31.

¹⁴ Transcript, vol. I, p. 36.

¹⁵ Transcript, vol. IV, pp. 274, 186.

Several INS officials from the Southern Regional Office in Dallas attempted to explain this by saying that minorities and women have just “not been in the pipeline long enough.”¹⁵ That is to say, Anglo males have more seniority than either females or minority employees.

A Mexican American Border Patrol officer, who had been turned down for a number of promotions, put the same concept in a different perspective:

because the Mexican American took longer to come into the Border Patrol ranks and we don't have what we call, “If you know somebody up the ladder I can help you”—we shouldn't be penalized because we don't know somebody up the ladder.¹⁶

Although the INS has established a merit promotion plan, it is obvious from the statistics that minorities and women fare rather badly. The “pipeline” may be a factor. However, one witness pointed out that even when Mexican American employees had similar qualifications and equivalent seniority ratings to Anglos, they were often passed up.¹⁷

When a position does open, employees are encouraged to apply, and qualified applicants are placed on a list. The position is filled from the list by the Border Patrol Sector Chief or District Director, depending on the jurisdiction.¹⁸ Those who hire and make the promotion decisions are frequently Anglo males due to the relatively small number of minorities and females at higher employment levels.

Until the early 1970s, the INS used job qualifications that clearly had the effect of limiting minority and female employment opportunities. These included height and weight requirements that tended to affect Hispanics and women adversely. A language test was used to determine the ability of an applicant to learn and speak the Spanish language. However, bilingual applicants did not always do well on this examination.¹⁹

Probably one of the most serious problems confronting minority and female employees, according to some witnesses, is the “hostile attitude” exhibited by Border Patrol supervisors. Investigations by the INS itself indicate that as late as 1976, Mexican American officers were not trusted to work together because they might be too “sympathetic” to undocu-

¹⁶ Transcript, vol. I, pp. 115-16.

¹⁷ Ibid.

¹⁸ Transcript, vol. IV, pp. 283, ff.

¹⁹ Transcript, vol. IV, pp. 299, 300; Transcript, vol. I, p. 43.

mented aliens coming across the border from Mexico.²⁰ One INS report noted:

It has been station policy to not assign the Mexican American Patrol Agents to work together. At an earlier date, with only three Mexican American Patrol Agents at Del Rio, it was not difficult to maintain the segregation. Shortly after [name omitted] assumed the duties of Agent in Charge at Del Rio, a situation came about that caused [name omitted] to refer a policy decision to [the agent in charge] regarding the station's policy of segregation of the Mexican American Patrol Agents. . . it was decided to continue that policy. . . .²¹

On other occasions, Mexican Americans were allegedly criticized for being too sympathetic to Mexican aliens or for not being tough enough on them.²²

The testimony and exhibits considered by the Texas Advisory Committee reflect a number of instances where Mexican American Border Patrol trainees have been held to higher standards than Anglo officers. One witness testified that in a particular instance he was graded only "fair" on a test in Spanish. Since he was bilingual, he inquired why he had received such a low mark and his supervisor responded:

Well, a Mexican American is supposed to know Spanish and doesn't have to try as hard as an Anglo so that he should never be given an excellent grade like an Anglo because an Anglo tries harder.²³

Other Mexican American officers also reported similar attitudes on the part of their supervisors. An affidavit of a journeyman Border Patrol officer taken by the INS in the process of investigating an EEO complaint noted that Mexican American trainees are told things like "your group should have no trouble with your exams since you only have to study law," and "your grades should be higher than the rest."²⁴ An official INS investigation of an employment discrimination complaint in the Del Rio Border Patrol sector concluded:

Sworn statements of fifteen Patrol agents at Del Rio are included as an indication of the general

attitude of non-Mexican officers. Prejudice toward the Mexican is indicated throughout his service as a patrol agent by supervisory and co-workers alike.²⁵

Similar allegations of racial discrimination were made in reference to the Laredo sector. A suit previously filed by a Mexican American trainee, who had been terminated prior to the completion of his first year of employment with the Border Patrol, alleged that he had been discriminated against by his supervisors.²⁶ In 1978 the court ordered that he be restored to his former position in the Border Patrol and paid his loss in salary as a result of unlawful termination.²⁷

Steven Pickell, an attorney for the Webb County Legal Aid Society that had represented the successful agent in this case, testified that the judge's opinion "pointed out that there was clearly a schism within the Border Patrol, at least in the Laredo sector, that was obviously along racial lines."²⁸

Mr. Pickell also told the Texas Advisory Committee that he had interviewed a substantial number of INS employees throughout South Texas in preparation for the case and had found complaints of employment discrimination to be "extremely common."²⁹

In December 1978 a Federal court in El Paso, Texas, found that the INS had discriminated against a black applicant in 1974 by refusing to employ that applicant as a Border Patrol agent.³⁰ This person had taken the required examination and scored a total of 107 points out of a possible 110 on his examination. He was interviewed by the INS and despite the high score, he was found to be "unqualified" for employment as a Border Patrol agent. Significantly, other applicants with lower test scores were hired. The INS was ordered to pay back wages and directed to hire the plaintiff at the grade level he would have held had the employment discrimination not taken place.³¹

In many instances the INS has refused to punish individual officers perpetrating the discriminatory acts. At the Texas Advisory Committee's open meeting, the INS Associate Regional Commissioner in charge of enforcement testified that it is difficult

²⁰ Exhibit nos. 1-4.

²¹ Ibid.

²² Ibid.

²³ Transcript, vol. I, p. 56.

²⁴ Exhibit Nos. 1-4.

²⁵ Ibid.

²⁶ Garcia v. Castillo, No. 76-1-79 (S.D. Tex., Memorandum Opinion, Mar. 21, 1978).

²⁷ Ibid.

²⁸ Transcript, vol. I, pp. 73-74.

²⁹ Transcript, vol. I, p. 78.

³⁰ Batson v. Castillo, No. Ep-77-CA-247 (W.D. Tex., May 3, 1979).

³¹ Ibid.

to discipline an officer for discriminating because the courts have ruled that the officer was acting in the course of his authority as a Border Patrol agent and, therefore, the INS and not the individual is responsible. Citing from the court order arising out of the *Garcia* case, he noted that:

The acts of the individual defendant were in the course and scope of their authority and were done as a part of their duties as Border Patrol agents and, therefore, the acts of the Immigration and Naturalization Service.³²

There was nothing in the court's decision, he added, to require the INS to reprimand the discriminating officer.³³

The Regional Commissioner has the basic responsibility for maintaining an effective equal employment opportunity program in the region. The Commissioner, in turn, delegates the duties of implementing the program to various managers and EEO staff. The Associate Regional Commissioner for Management is responsible for the program, and the Assistant Regional Commissioner for Personnel has the duty of actually implementing it.³⁴

To carry out the day-to-day requirements of the program, a regional EEO specialist has responsibility for developing the region's affirmative action plan, handles complaints, and carries out other collateral duties. The EEO specialist reports directly to the Assistant Regional Commissioner for Personnel.³⁵

Part-time EEO counselors have been designated at the various INS installations and are available to counsel employees who believe they have been discriminated against. These counselors report directly to the EEO specialist in the regional office in Dallas.³⁶

If complaints cannot be settled informally, investigators are assigned to compile facts pertaining to the complaint. These investigators are authorized to administer oaths, conduct interviews, take affidavits, gather data, and research appropriate documents to aid in clarifying the issues involved in the complaint. These investigators report directly to the Central Office EEO officer. All formal discrimination complaints are processed by this office. These investiga-

tors are regular INS investigators with training in equal employment opportunity.³⁷

At the Advisory Committee's open meeting, questions were raised about INS' commitment to the process and the promptness with which EEO complaints are processed. For example, some cases referred to at the open meeting had been in process for more than 3 years. Indeed, an attorney experienced in dealing with the INS complaint procedure described it as "not being operated to redress a wrong such as this but rather to wear down a complainant."³⁸ He referred to an example: "the informal attempt at reconciliation which was conducted by EEO officers consisted of a letter requesting that [the complainant] drop his complaint."³⁹

As previously noted, the Advisory Committee heard testimony concerning a case in which a Federal district court had found discrimination against a Mexican American trainee for the Border Patrol and had ordered his reinstatement with back pay. Even after the decision that there had been employment discrimination, the INS gave notice that it would appeal and waited the full time allotted for filing a brief before moving to dismiss the appeal. Such action delayed by several months the court order restoring Garcia to his job with the INS. After Garcia was reinstated, it was months before the agency was able to get its paperwork straightened out so that he could be paid.⁴⁰ The INS has refused to honor a request from Garcia to be transferred from the Laredo sector even though persons who were found by the court to have discriminated against him continue to serve as his supervisors.

Although the decision in the *Garcia* case had been handed down several months before the date of the Advisory Committee's open meeting, neither the Regional Commissioner, the Associate Regional Commissioner in charge of equal employment opportunity, nor the Laredo Border Patrol Sector Chief had yet read the court's memorandum opinion. This was in spite of the fact that they were aware that the court had found an INS official responsible for employment discrimination.⁴¹

INS' report outlining the affirmative action plan for fiscal year 1979 reported that present staff allocations within the Service were not sufficient to

³² Transcript, vol. IV, pp. 304, ff.

³³ Ibid.

³⁴ Transcript, vol. IV, pp. 241, ff.

³⁵ Ibid., especially p. 294.

³⁶ Ibid.

³⁷ Transcript, vol. IV, pp. 318-19.

³⁸ Transcript, vol. I, p. 79.

³⁹ Ibid.

⁴⁰ Transcript, vol. I, pp. 60, 61-62.

⁴¹ Transcript, vol. IV, pp. 304, 523, 524.

meet the time limit of 180 days required by law to process an EEO complaint.⁴² Statistics in INS' report for FY 1978 indicated that as of September 1977, approximately 26 percent of the cases within its jurisdiction were over the 180-day limit.⁴³ By June 1978 the INS reported that 23 percent of its cases were still being processed beyond this time limit.⁴⁴

As of the third quarter of FY '78, according to the affirmative action plan report, there had been 102 precomplaints handled through the informal counseling process. Of this total, 36 had evolved into formal complaints requiring the assignment of EEO investigators.⁴⁵ The report noted that there was some lack of support in promoting equal employment opportunity at various levels within the INS. Part of the problem clearly lies in the low funding levels allocated to the agency's overall EEO program.⁴⁶

Training and Development of INS Personnel

A person who is accepted for employment in the Border Patrol or the Investigations Branch of the INS must go through a 1-year probationary or training period. The first 4 months are spent at the Federal Law Enforcement Academy in Glencoe, Georgia.⁴⁷ Although a number of subjects such as physical training and marksmanship are covered during these 4 months, the INS puts the major emphasis on immigration law and training in the Spanish language. At the end of this period, trainees are tested and after graduation they are sent to a duty station for the balance of their first year, where they receive both classroom and on-the-job training in Spanish and immigration law. Usually during this period, trainees are assigned to work with journeymen or other senior officers who are required to fill out conduct and efficiency reports on the trainees. At the end of the 10th month, trainees are again tested for competence in the Spanish language and immigration law. Thereafter, a panel of senior officers, usually three in number, determines wheth-

er to promote the trainees.⁴⁸ In reality, this is a decision to terminate or to employ permanently.

The Advisory Committee was able to get unique insight into the training of Border Patrol officers as it took testimony from persons who had successfully completed training and become journeymen officers, from those who had been terminated prior to the end of their probationary period, and from INS officials who conduct many of the training classes. In addition, Commission staff was allowed access to official INS documents of investigations of EEO complaints, and these were made part of the record.

The testimony of one present Border Patrol officer and one former officer indicated that the Spanish language classes taught to probationary employees are often segregated along ethnic lines with Hispanics taught in one class and Anglos in another.⁴⁹ However, such overt segregation was disputed by the Associate Regional Commissioner for Enforcement:

I think that I can certainly state unequivocally that they are not divided because of being Anglo or Hispanic. Perhaps they need to be taught at different levels and for that reason there might be some dividing.⁵⁰

It was admitted, however, that the INS has instituted no procedure by which a probationary officer could demonstrate proficiency in Spanish and thus forego language instruction.⁵¹ Indeed, there was testimony that so-called "native Spanish speakers" had been criticized during oral testing because they used words or phrases that had not yet been covered in class. One witness said: "A lot of times it was counted against me because we were not supposed to know that word or phrase since we hadn't studied that part. So I was counted off for that."⁵²

The testimony also raised issues concerning the extent that many Border Patrol officers are conversant in Spanish. The Regional Commissioner said: "Well, I'm afraid that I'm going to have to say that they are not very fluent, but they can communicate with the people they need to deal with, I'm sure."⁵³

⁴² U.S., Department of Justice, Immigration and Naturalization Service, *Equal Employment Opportunity Affirmative Action Plan, Fiscal Year 1979* (October 1978), p. 63.

⁴³ *Equal Employment Opportunity Affirmative Action Plan, Fiscal Year 1978* (December 1977), p. 22.

⁴⁴ *Equal Employment Opportunity Affirmative Action Plan, Fiscal Year 1979*, p. 64.

⁴⁵ *Ibid.*, p. 63.

⁴⁶ *Ibid.*, pp. 61-63.

⁴⁷ Transcript, vol. V, pp. 343, ff; up to 1977 the INS operated its own academy at Port Isabel, Tex.

⁴⁸ *Ibid.*

⁴⁹ Transcript, vol. I, p. 44.

⁵⁰ Transcript, vol. IV, p. 346.

⁵¹ Transcript, vol. IV, p. 347.

⁵² Transcript, vol. I, p. 140.

⁵³ Transcript, vol IV, p. 341.

The head of personnel for the Southern Region put it another way:

We ran into a problem, a semantic problem more or less, in some of our vacancy announcements where we required the Spanish language and ran into the fluency versus proficiency. . . .⁵⁴

Of course, we got the dictionary definitions and I think it's safe to assume that all of the officers are proficient.⁵⁵

One Border Patrol officer said that abuse-type situations frequently arise because an officer becomes frustrated at not being able to communicate with the alien.⁵⁶

Conclusions

The employment picture of the INS in Texas is one of severe underutilization of women and blacks on all levels of responsibility. Although comparatively significant numbers of Mexican Americans are found in the Service, they, too, are underrepresented in most supervisory and in major decisionmaking positions. A large part of the problem seems to stem from the reliance that the INS places on seniority—in its own words, “the pipeline.” There are considerably fewer minorities and females than Anglo males in the pipeline because until only a few years ago they were excluded by discriminatory, non-job-related tests and qualifications. While these institutional barriers to equal employment opportunity have been largely removed, they continue to have an effect on the INS.

As a further complicating factor, the Service does not seem to place a very high priority on the

importance of equal employment opportunity. In fact, the Regional Commissioner testified that he did not feel it was even possible, let alone necessary, to reprimand supervisors who were found guilty of such discrimination. Additionally, it appears that internal investigations of EEO complaints frequently take several years to complete. An attorney with courtroom experience against the INS on these issues described them as designed to wear down the complainant rather than to vindicate wrongs.

There were strong indications that Mexican Americans hired by the INS have been held to higher standards than their fellow Anglo officers. The Advisory Committee also heard evidence about racial antipathy within the Service. Testimony presented at the hearing indicated that at least two of the Border Patrol sectors in Texas have had or continue to have such problems.

Given the fact that the INS must deal with a tremendous number of aliens—both legal and illegal—on a day-to-day basis, the issues examined in this chapter take on added importance. They are significant in the sense that they affect attitudes and, in turn, perceptions of what is right and wrong. Frustration, of course, is a daily occurrence. Abuse of discretionary powers, as the next chapter will explore, is always a possibility. The attitudes and perspective that Service personnel have with respect to their mission is vitally important. This is why the concept of equal employment opportunity and sensitivity to the needs of minorities and women are important. In essence, these concepts are an integral part of the Service's mission.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Transcript, vol. I, p. 53.

Abuse and Exploitation of Undocumented Aliens

the situation in South Texas for the undocumented person. . . .resembles the early slavery in the United States.¹

In an early decision, the United States Supreme Court upheld a Federal statute that barred *all* Chinese laborers from entering the country. Such a law was constitutional, the Court observed, because Congress was able to exclude "foreigners of a different race who will not assimilate with us."² Since that conclusion by the highest court in the land, there have been changes in the law and attitudes about how immigrants should be treated. Complaints persist, however, that raise serious charges about abuse and exploitation of undocumented people. Because of the seriousness of the issue, the Texas Advisory Committee spent a considerable portion of its open meeting looking at the circumstances that lead to such charges. In general, the exploration of this topic included allegations of abuse by the Immigration and Naturalization Service and by private individuals such as farmers and ranchers.

The Immigration and Naturalization Service

Armand Saturelli, then Regional Commissioner of the INS in Dallas, was questioned about complaints of physical abuse that the regional office had received. He stated that for the years 1976, 1977, and 1978, the regional office received a total of 22 allegations of physical abuse or mistreatment, of which 9 were sustained.³

¹ Texas Advisory Committee to the U.S. Commission on Civil Rights, open meeting on immigration, San Antonio, Tex., Sept. 13-14, 1978, vol. V, p. 10 (hereafter cited as Transcript).

At the open meeting, Walter V. Edwards, Regional Associate Commissioner for Enforcement, explained the process that INS has established to deal with such complaints. It places the onus on officers to report any misconduct. This information is then forwarded by the office supervisor to the regional office, which in turn conducts a preliminary inquiry to determine whether there is enough evidence to warrant further consideration. If a decision is made to investigate the allegation further, the Regional Associate Commissioner for Enforcement assigns an investigator to the case. Another investigation is conducted and sworn statements taken. The investigator prepares a report that is reviewed by the Assistant Regional Commissioner for Personnel, and a determination is made whether or not it should be sent to the field office. Normally the report is sent to the appropriate deputy district director for review, who makes a recommendation to the district director. The decision whether disciplinary action is warranted is left to the district director. The entire procedure is monitored by the regional office to assure consistency in the way these cases are handled by the different district directors.⁴

At the basis of the entire procedure is the responsibility of the officers to police themselves by reporting the misconduct of their fellow officers. This is crucial because the undocumented person who may be abused has few, if any, effective

² 130 U.S. 581, 606 (1889).

³ Transcript, vol. IV, p. 354.

⁴ Transcript, vol. IV, pp. 350, 351.

avenues to complain about treatment. He or she is frequently poorly educated, almost always of low economic status, and usually deported to his or her native country within hours, or at most days, after being apprehended. Even if the alien should decide to complain, it becomes the word of a noncitizen against that of a Federal officer.

The testimony at the open meeting raised the question of whether this self-policing policy is effective. A Border Patrol officer told the Advisory Committee, for example, that the interrogation of undocumented persons is done in a closed room with just the alien and one or more Border Patrol officers in it. He said, "We do hear sometimes those bangs on the walls and things like that."⁵ When the alien comes out, he said, "They usually are trying to cover where they have either been hit or fell down or whatever happened."⁶ Yet, asked if these instances were reported, the officer replied that he knew that such matters could be written up but doubted that it would do any good. In fact, he continued, "More than likely, in the long run, it will work against you."⁷

Another INS officer who frequently works in highway checkpoint operations testified, "I am not going to say that there is no abuse because I am sure there is, but I have not seen any."⁸

Allegations were made at the open meeting of special favors being granted by INS officers in return for sexual encounters with female undocumented aliens. The director of an immigration social service agency in the Rio Grande Valley, sponsored by the Catholic Church, testified that he had received such complaints from his clients.⁹ One witness alleged sexual abuse by an INS employee. She stated that in 1963 she was apprehended by the INS in Houston. In return for permission to remain in the United States for another month, she alleged that she was forced to submit to sexual relations with an INS officer.¹⁰

A few weeks after the open meeting, the staff of the Southwestern Regional Office of the U.S. Commission on Civil Rights received information that an alien woman allegedly had been raped by an INS officer in Laredo. The case received considerable publicity and the State district attorney gave

the undocumented woman a lie detector test in which she reportedly was found to be telling the truth.¹¹ Shortly thereafter, the woman disappeared and presumably returned to Mexico. Without a complaining witness, no further action was taken by the district attorney. Although the INS investigated the allegation, no special action was taken against the officer.

The testimony at the open meeting also raised the possibility that Border Patrol officers may be chasing undocumented persons into the river, which presents obvious dangers. A former Border Patrol office assigned to Del Rio noted:

I criticized other officers on several instances for trying to make an apprehension right on the river bank. . .and during the years that I was there the water was very high and it was extremely dangerous crossing the river. And I think on several occasions by doing this the aliens. . .would turn around and hit the water, often with a patrol agent hitting the water behind him.¹²

It would have been both easier and safer, he observed, simply to wait until the alien had finished crossing the river and then attempt apprehension.¹³ Such action, however, was considered a kind of "sport."¹⁴

A member of the Texas Advisory Committee noted for the record that he recently had seen similar activity in El Paso. A man was heading toward Ciudad Juarez, and

All of a sudden I saw the lights of the Border Patrol car take off and stop and try to chase this fellow down. And it seemed odd to me that they would be chasing a man back into his country. And this was basically what they were trying to do. . . .¹⁵

Breaking the Alien

A great deal of discussion was generated about the INS term, "breaking an alien." When a person is apprehended as a suspected undocumented alien, the INS officer usually attempts to have that person admit to illegal status. This is done because once a person has entered the United States, the burden is on the INS to prove that the person is undocument-

⁵ Transcript, vol. I, p. 62.

⁶ Ibid.

⁷ Transcript, vol. I, p. 63.

⁸ Ibid., pp. 98, 99.

⁹ Transcript, vol. V, pp. 13, 99, 100.

¹⁰ Transcript, vol. VI, pp. 94, 95.

¹¹ "BP Agent Named in Sex Charge," *Laredo Times*, Sept. 29, 1978, pp. 1, 3.

¹² Transcript, vol. I, p. 132.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid., p. 131.

ed. This is extremely difficult to do and the easiest and fastest course is to attempt to get the person to admit to it. The Associate Regional Commissioner for Enforcement defined the process as "breaking [the alien] to the truth."¹⁶

There was testimony by a Border Patrol officer that the process of "breaking the alien" can become tense, especially where officers may not be entirely fluent in Spanish. He noted:

There is frustration. . . a lot of the Anglos [Border Patrol officers] learn the Spanish language only by the book and the forms that they give you. You memorize the form. So if they forget they don't get anywhere. They get frustrated. . . .¹⁷

He gave an example of a situation such as this, which is evidently part of the folklore of the Border Patrol:

There was an [Anglo Border Patrol officer] pushing an alien, you know, around trying to ask him his name and. . . he was asking in Spanish, "como me llamo yo?" and he kept pushing him around and the Mexican alien wouldn't answer him. . . .¹⁸

Of course, the officer was attempting to get the name of the alien but was asking in Spanish, "What is my name?" not "What is your name?"

It appears clear, in any case, that the procedure of "breaking aliens" is one that easily lends itself to abuse, especially where a language barrier exists between the officer and the alien. Indeed, there was evidence that toughness with aliens might even be encouraged. One former Border Patrol agent testified that he was consistently criticized on conduct and efficiency reports for not being "tough enough" on the aliens.¹⁹ His testimony was confirmed by an official INS investigatory report that was made a part of the open meeting record.

Typical Problems

In the field of civil rights it's quite clear that persons without documents are denied most of the human and civil rights. . . . This mainly is due to the fact that. . . undocumented persons are unaware of their rights under the law.²⁰

The open meeting established that many of the problems faced by undocumented people arise because of their inability to speak and understand the English language. As previously noted, the open meeting raised very serious concerns about the fact that many first-line INS officers are not fluent in Spanish.

Immediately after apprehension, the INS officer will begin to fill out an I-213 form that contains general biographic information as well as specific data on place and method of entry to the United States. Since the information deals with the elements of illegal entry, individuals are asked to make admissions against their interest that are used against them at later deportation hearings or even in criminal prosecution. Yet, this form is printed only in English.

The scenario in most cases is that of the investigator translating the items on the I-213 to the alien and the alien responding in Spanish. The investigator in turn interprets what is said in Spanish and writes the answer in English on the I-213. The information is recorded and the alien asked to initial the form. The contents are not always read back to the alien to check the accuracy;²¹ and since most aliens do not read English, they are totally ignorant of what they have initialed. An attorney who works exclusively in immigration told the Texas Advisory Committee that in 32 years he has never known of an I-213 to be declared inadmissible at an INS hearing or even for there to be a serious question as to its accuracy.²²

In many cases, after the I-213 process, the next step is the hearing. Because of the sheer number of cases that judges must hear, a system commonly called MASH hearings has been established. MASH stands for Multiple Accelerated Summary Hearing, and what it means is that instead of individual hearings, groups of individuals are given a hearing together at one time. In this way a judge can hear 140 or more cases in one day.²³ This volume is further complicated by the fact that only a small number of the immigration judges are able to speak Spanish, and so the hearing must be conducted through an interpreter.²⁴

The MASH hearings were described by an immigration judge who testified that in his court in El Paso, aliens are informed that they have a right to an

¹⁶ Transcript, vol. IV, p. 348.

¹⁷ Transcript, vol. I, p. 53.

¹⁸ Ibid.

¹⁹ Ibid., pp. 128-31.

²⁰ Transcript. vol. V, p. 12.

²¹ Transcript, vol. IV, p. 375.

²² Transcript. vol. III, pp. 164, 165.

²³ Ibid., p. 227.

²⁴ Ibid., pp. 236, 237. Significantly, only three of the Immigration judges in Texas can speak Spanish.

attorney and if they have no money that they may ask the Legal Aid Society or the Catholic Conference for assistance. They are also told that they have a right to look at the evidence and to make a statement and to cross examine the Government's witnesses.²⁵ In fact, attorneys are seldom present and there are rarely statements or cross examinations. The group is asked in common if it is true that they are not citizens of the United States. Then each individual is marched before the judge and asked:

1. Name and address, if any;
2. Date and place of entry;
3. Whether or not they were inspected.²⁶

After each one has been questioned separately, they are then asked as a group whether they admit the charge. The judge explains that they may choose the country of deportation and the possibility of obtaining voluntary departure if they qualify. They are told that there are three prerequisites for voluntary departure:

1. They must have the money to pay their way home.
2. They must be willing to go immediately.
3. They must be of good moral character.²⁷

In addition, the person must also have the possibility of immigrating to this country at a later date. That is to say, he or she must have equities that might result in their becoming legal immigrants. Examples of equities that could facilitate immigration include having a spouse who is a citizen or a legal resident or having parents who are citizens or legal residents. A U.S. citizen can bring in a spouse, single or married children, and his or her parents. A resident alien can bring in a spouse and single children regardless of age. A brother or sister over 21 who is a U.S. citizen can petition for his or her siblings, regardless of age or marital status. If anyone thinks they might be eligible, they are asked to respond.²⁸

The burden is placed on the aliens to request voluntary departure, which does not blemish their record for subsequent entry as does deportation. Judge Jakoboski explained it in this way: "as a whole, the Anglo Saxon system is [that if] you sleep on your rights the system can't help you."²⁹ The

judge noted that this may be a problem because there is the possibility that an alien with a lot of equities will remain silent during the hearing out of shyness or even a desire to go home.³⁰ Additionally, the alien may not fully understand the complexities of immigration law and, therefore, not take advantage of rights to which he or she may be entitled.

According to Judge Jakoboski, if the alien does not apply for voluntary departure, no one looks at the file. So regardless of the equities the alien may have, they will be lost unless he or she speaks up.³¹ Judge Jakoboski did note, however, that if there are any non-Mexicans in the group, their chances of obtaining voluntary departure are better than the Mexican undocumented aliens. The judge told the Advisory Committee, "I go out of my way to give them [non-Mexicans] a voluntary departure so that he will bear the cost of sending himself back."³²

Another area of concern expressed at the open meeting involved confiscation or outright destruction of documents that INS agents believe to be invalid.³³ Indeed, Lee Teran of the Laredo Legal Aid Society testified that she had received so many complaints that she had recently filed a class action lawsuit against the INS over this problem.³⁴ Antonio Gomez, an attorney with the United Farm Workers, described several instances in which wrongful confiscation of documents had taken place and he had to threaten litigation to get the INS to agree to return them. In one case, a client who was a United States citizen, born in Weslaco, Texas, was kept out of the country and had to swim the river to reach Mr. Gomez and work out a solution.³⁵ In another case, a citizen who lived in Mercedes, Texas (Lower Rio Grande Valley), was attempting to cross the border between Juarez and El Paso. He had a driver's license, a birth certificate, as well as a special Texas birth card from the Texas State Bureau of Vital Statistics. All documents allegedly were confiscated,³⁶ and the individual had to hitchhike to Monterrey to seek help from a relative. This relative had to take time off from his job to take him to the border at Reynosa, where Mr. Gomez' client was able to cross without difficulty.³⁷ Another fairly common complaint voiced at the open meeting was that the

²⁵ Transcript, vol. III, p. 230.

²⁶ *Ibid.*, p. 231.

²⁷ *Ibid.*, p. 232.

²⁸ *Ibid.*, p. 233.

²⁹ *Ibid.*, p. 235.

³⁰ *Ibid.*, p. 234.

³¹ *Ibid.*, p. 234.

³² *Ibid.*, p. 264.

³³ *Ibid.*, pp. 73-75.

³⁴ *Ibid.*, p. 178.

³⁵ *Ibid.*, pp. 74-75.

³⁶ *Ibid.*, pp. 76-77.

³⁷ *Ibid.*, p. 77.

INS gives out poor advice to aliens who are in the process of adjusting their status.³⁸

Attitudes of the INS on Law Enforcement

To them [the INS] there are only two statuses: legal and illegal—and even though this is an illegal person they admitted that they couldn't deport her and I couldn't understand why I should fire her. We kept going over and over and over that, and they kept insisting that I fire her and I insisted that I wasn't going to. It seemed ridiculous to me that despite their own admission that she would probably become legal within a day, a week, or a month. . . .³⁹

The Texas Advisory Committee heard testimony on two cases that have been filed against the INS alleging official misconduct. The first case, *Ramos v. Anderson*,⁴⁰ deals with a raid at the Edinburg Manufacturing Company, also known as the Haggard slacks plant, located in Edinburg, Texas. On May 11, 1977, INS officials approached the plant manager, George Lundquist, about participating in the "Denver Project." They explained to him that this was voluntary operation whereby employers could be saved a great deal of time and money by allowing INS personnel to come into their businesses to search for undocumented aliens.⁴¹ The plant manager agreed to cooperate to avoid difficulties with the INS and disruption to his operation. Employees were advised that the INS would be at the plant on May 17, 1977, and asked to bring their papers. On the day that INS came to check documents, the plant manager concluded that the whole process was very disruptive, primarily because "there were fantastic anxiety levels. . . just nervousness."⁴² Of the 60 people who were checked, INS discovered a woman who had a *Silva* letter⁴³ in her possession. Even though possession of a *Silva* letter is proof of nondeportability, at least temporarily, INS officials took her from her work and asked the plant manager that she be terminated. They told the manager that although she could not be deported at present, she

was in this country illegally and, therefore, should be fired. According to the manager, he called his home office in Dallas to seek counsel because, as he stated at the open meeting:

I felt I had been kind of intimidated in the first place, that I had my choice. I could either cooperate or have this really severe problem early in the morning or later at night when we close down.⁴⁴

The Dallas office advised against cooperating further and the INS officials were so informed. Mr. Lundquist was then told, "We're going to have to do it the hard way."⁴⁵ Several days later, 21 armed INS officials arrived at the plant with a search warrant that read in part, "There is now being concealed *certain property* namely illegal aliens in violation of Title 8, Section 1325, U.S.C."⁴⁶ The attorney who has filed a lawsuit on behalf of the company stated:

the fact that it [the search warrant] indicates that the *things* that they're looking for are illegal aliens or that they consider illegal aliens *things*. I think it's indicative of the attitude that INS has towards. . . these individuals. [Emphasis added]⁴⁷

Mr. Lundquist was told that he could cooperate or be arrested. Most of the 938 employees⁴⁸ were questioned and, according to Mr. Lundquist, the entire proceeding was disruptive and substantially hurt production because the employees were very apprehensive during the whole time.⁴⁹ Of these employees, 21 were removed from their work place, detained under armed guard, and interrogated further. Two sisters in the group were American citizens and they called their mother to bring their documents. The mother, who had no transportation, ran all the way across town to bring her daughters the proof they needed for INS.⁵⁰ Only 14 employees were eventually taken to the Border Patrol station. According to testimony from attorneys, none of those taken to the station were allowed to see their

³⁸ *Ibid.*, p. 184; vol. V, p. 36; vol. III, pp. 86-87.

³⁹ Transcript, vol. III, p. 25.

⁴⁰ Civil Action No. B-78-27 (S.D. Tex., filed Jan. 23, 1978).

⁴¹ Transcript, vol. III, p. 7.

⁴² *Ibid.*, p. 9.

⁴³ "Silva letters," may be obtained by Western Hemisphere nationals who have been in the United States since Mar. 11, 1977, and have a "priority date" for issuance of immigrant visas between Jan. 1, 1968, and Dec. 31, 1976. Such a letter is issued to an individual and verifies that the holder has

nondeportable status, pending the decision in *Silva v. Levi*, no. 76-4268, (N.D. Ill., filed Oct. 10, 1978).

⁴⁴ Transcript, vol. III, p. 10.

⁴⁵ *Ibid.*, p. 14.

⁴⁶ *Ibid.*, p. 64.

⁴⁷ *Ibid.*, pp. 64-65.

⁴⁸ *Ibid.*, pp. 16, 29.

⁴⁹ *Ibid.*, p. 23.

⁵⁰ *Ibid.*, pp. 11, 12.

attorney until after the interrogation and the completion of the I-213 forms.⁵¹

One of the young women who was taken to the Border Patrol sector office, according to her attorney, became hysterical and could not answer questions. She was stripped of her clothing by a female officer. The young woman, according to witnesses at the open meeting, was wearing a small halter and tight slacks, yet when the Border Patrol was asked why she had been stripped, they responded, according to her attorney, "to search for concealed weapons."⁵² A second older woman was also stripped and searched.⁵³

Laurier McDonald, one of the attorneys testifying, noted that not a single employee detained was deported, yet INS wanted certain employees fired. Mr. McDonald told the Texas Advisory Committee:

I think it's a dereliction of duty at times not to be knowledgeable on such things when the people's rights to live in this country are so valuable, are being trampled upon.⁵⁴

Another attorney, also testifying at the open meeting, in discussing this issue said:

I am a citizen of the United States, and because I am an attorney that's working with people that have been affected by these actions, it seems that for one reason or another, it is permissible in the eyes of the Immigration and Naturalization Service to disregard either existing regulations, to violate the Constitution, or to *choose to not be informed* about either court order or legislation that has been passed when it's convenient. [Emphasis added]⁵⁵

In another case, *Contreras v. Gonzalez*,⁵⁶ the issue of cross designation arises. What this means at the international bridge is that the Federal officials assigned to the bridge (Immigration, Customs, and Department of Agriculture employees) take turns inspecting people crossing the bridge, so that every inspector at the bridge is not necessarily an immigration officer.⁵⁷ By the same token, an immigration officer doing inspections can also search for drugs or illegal plants and vegetables.

The incident that is the basis of the lawsuit, *Contreras v. Gonzalez*, occurred in Nuevo Progreso

on May 16, 1978. According to the attorney of record, Mrs. Contreras went to Nuevo Progreso from Weslaco, Texas, with her family. While in Nuevo Progreso, a young Mexican woman asked her for a job, and the young woman was in Mrs. Contreras' vehicle when they crossed the international bridge. Documents were checked and they were pulled over for a secondary interrogation. Contrary to procedures, this interrogation was conducted by a Customs agent instead of an immigration inspector. Mrs. Contreras at the time was 8-1/2 months pregnant, and under questioning she became extremely nervous, especially when she allegedly was threatened with deportation and confiscation of her alien registration card.⁵⁸

A daughter who was in the room allegedly warned the Customs official that her mother had high blood pressure and that she should not be excited. Subsequently, Mrs. Contreras had a type of seizure and fainted. According to the attorney of record, the daughter asked for medical assistance but was denied, and she allegedly was told by the officer, "Everybody says that in order to get out of here."⁵⁹ She was only given a towel soaked in alcohol to rub on Mrs. Contreras, who died within a few minutes. The baby could not be saved.⁶⁰

The lawsuit alleges as cause of action:

1. The neglect of the INS official who was in charge at the time and should have been conducting the investigation rather than the Customs agent;
2. His neglect in neither directing or curtailing the Customs officer's interrogation of Mrs. Contreras;
3. That Mrs. Contreras was harassed and intimidated to the point of aggravating her condition and precipitating her death.⁶¹

Parole for Informants and Other Agreements

An INS district director has the discretion to grant so-called "paroles" to otherwise undocumented persons that allow them to enter the United States and work here as long as certain conditions are met. Although this is a necessary option that is frequently used in hardship cases, the testimony at

⁵¹ Ibid., pp. 30, 31.

⁵² Ibid., pp. 31 and 62-63.

⁵³ Ibid., p. 63.

⁵⁴ Ibid., pp. 38, 39.

⁵⁵ Ibid., pp. 60, 61.

⁵⁶ Civil Action No. B-78-150 (S.D. Texas, filed June 5, 1978).

⁵⁷ Transcript, vol. IV, pp. 423, 424.

⁵⁸ Transcript, vol. III pp. 68-71.

⁵⁹ Ibid., p. 70.

⁶⁰ Ibid., pp. 70, 71.

⁶¹ Ibid., p. 71.

the open meeting indicated that it is not unusual for paroles to be granted to aliens to act as informants.⁶² Stated another way, the alien on parole is allowed to remain and work in the United States as long as he or she produces apprehensions.⁶³ The effectiveness of using this parole procedure was questioned by one current Border Patrol officer:

I have seen on a ranch where they might have two or three informants that are supposed to let us know about alien traffic, yet the same farmer turns right around and hires 30 or 40 and then when he finishes working them, he calls us to go pick them up and take them back to Mexico.⁶⁴

There was also testimony that certain ranchers allegedly have been allowed to employ undocumented persons in return for agreeing that INS might have access to their property to implant electronic sensor equipment used to detect the passage of undocumented aliens.⁶⁵

The Texas Advisory Committee also heard testimony that the INS has two sources of funds available to purchase information.⁶⁶ The first deals with the apprehension of undocumented persons. The Southern Regional Commissioner testified that there was approximately \$50,000 available on a nationwide basis for this purpose. The second fund, he said, had "no limit" and was used only to buy information on alien smuggling cases.⁶⁷ The Regional Commissioner estimated that "about \$6,000 or so over the course of the year" would be spent from each fund for the Southern Region.⁶⁸

Permanent Highway Checkpoints

We are not extremely proud of our permanent checkpoint facilities.⁶⁹

The Border Patrol operates a number of so-called "permanent highway checkpoints" that are located up to 120⁷⁰ miles from the border. These checkpoints are usually operated by two Border Patrol officers and function as a check on vehicles traveling to the interior of the United States from the border areas.⁷¹

While the immigration status of the persons passing the checkpoint is their prime interest, the officers also look for narcotics smugglers.

A Border Patrol officer familiar with the checkpoint near Sarita, Texas, testified at the open meeting that the facility is a converted house trailer with the back bedroom serving as a detention cell. The balance of the vehicle is used as an office for the Border Patrol.⁷²

The office area is served by two window air conditioning units, but the cell has only a fan.⁷³ The maximum capacity was said to be approximately 10 people, but frequently as many as 16 to 17 are held in it.⁷⁴ Border Patrol practice is to detain the person until he or she can be picked up by an INS transport bus, which usually comes by once a day. According to testimony, aliens may remain there as long as 12 to 13 hours and in some cases for more than a day.⁷⁵

No provision is made for feeding prisoners, but Border Patrol officers frequently buy them sandwiches from a nearby store.⁷⁶ While the checkpoint does have electricity, there is no plumbing or running water and the only toilet facilities are a single "skiddo can" located in the back of the trailer.⁷⁷ The testimony indicated that usually there are no female Border Patrol officers assigned to the checkpoints.⁷⁸ This presents problems to the male officers who are hesitant to make a weapons or narcotics search of females who are apprehended.⁷⁹ One Border Patrol officer who appeared at the open meeting said:

So it leaves us in a very bad situation because when we apprehended a female, whether it be undocumented or . . . a female smuggling narcotics, we have no way of searching the female for weapons.⁸⁰

In addition, because there is only one cell, the Border Patrol hesitates to detain women who are apprehended, especially those who are unescorted. Rather than holding the female and male prisoners in the same small cell:

⁶² Transcript, vol. I, pp. 99-100.

⁶³ Transcript, vol. IV, p. 386.

⁶⁴ Transcript, vol. I, p. 99.

⁶⁵ Transcript, vol. IV, pp. 386-87.

⁶⁶ *Ibid.*, pp. 334-38.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 334.

⁶⁹ *Ibid.*, p. 320.

⁷⁰ Transcript, vol. I, p. 93.

⁷¹ *Ibid.*, pp. 85, ff.

⁷² *Ibid.*, p. 85.

⁷³ *Ibid.*, p. 80.

⁷⁴ *Ibid.*, pp. 88-89.

⁷⁵ *Ibid.*, p. 95.

⁷⁶ *Ibid.*, p. 139.

⁷⁷ *Ibid.*, p. 89.

⁷⁸ *Ibid.*, p. 93.

⁷⁹ *Ibid.*, pp. 91-93.

⁸⁰ *Ibid.*, p. 93.

What we do, the majority of the time, is give them [the females] what we call a I-94, which is part of the I-213. If they have the money we will stop a southbound Trailways bus and put them on the bus and let them go back to Mexico on their own.⁸¹

This is despite the fact that highway checkpoints are located up to 120 miles from the border.⁸²

The problem presented by apprehended females is serious and appears to stem from the extremely small number of women who are employed by the INS. As one male Border Patrol officer noted, "We had a matron but then for some reason the Service ran out of funds and she was never called back. So it leaves us in a very bad situation."⁸³ While the matron system left much to be desired, he said, because she was only a local resident who was called in to help on a part-time basis,⁸⁴ it was better than no provision whatsoever.

When the Regional Commissioner was asked what steps were being taken to solve this problem, he attempted to discount it by stating that most aliens apprehended at the highway checkpoints are male.⁸⁵ In any event, he said:

We hope to employ some female detention officers shortly. In the meantime, the sector chiefs have been told to utilize the services of female employees in the offices there when there is a need for use of female detention officers. Until such time as we get the funds for authorized positions, we will just have to utilize the employees in the offices there.⁸⁶

If these female "employees in the office" are to be utilized on an interim basis as detention officers, they should receive a salary the equivalent of males performing the same job. By the Regional Commissioner's own admission, there appears to be a readily available pool of seemingly qualified females. Given this situation, affirmative action to remedy the almost complete absence of women from INS enforcement and detention positions should present few problems.

⁸¹ Ibid., p. 92.

⁸² Ibid., p. 93.

⁸³ Ibid.

⁸⁴ Ibid., p. 118.

⁸⁵ Transcript, vol. IV, p. 322.

⁸⁶ Ibid., p. 323.

Exploitation of Undocumented People

I think the alien smuggler today is no better than the old slave trader of a century ago. They have no regard for the persons. . . .⁸⁷

Many witnesses at the Texas Advisory Committee open meeting gave examples of mistreatment of undocumented persons by the INS and described instances of abuse and exploitation by private individuals. Probably the most distressing included the virtual selling of aliens in black market-type operations: Hugh Williams, Chief Border Patrol Agent in Del Rio, testified that he knew of these operations and that there is currently a case pending in his area. While he declined to discuss the specific facts because the case was in litigation, he described generally how the procedures work. People are hired to locate undocumented workers in Mexico and are paid for each alien they recruit; it is a big business, he said.

We had another case recently where we calculated the man had made. . . \$2,208,000 in 2 years smuggling people from El Salvador to Houston. . . .He charged \$1,500 a head.⁸⁸

Once a group is formed, a driver is sent to pick them up and they are taken to a central location where they are literally sold as indentured servants to employers as far away as Illinois, North Carolina, Georgia, Missouri, and Mississippi.⁸⁹ According to Agent Williams, the dealer collects a fee for each alien from the employer. The employer, he added, will work the alien until he has a return on his investment.⁹⁰

Smugglers were also accused by witnesses at the open meeting of exploiting undocumented aliens in other ways. Officer Glenn Parrot testified that in the first 6 months of 1978, a total of 281 smugglers were apprehended.⁹¹ The prices for smuggling aliens range from \$450 to \$1,500.⁹² Officer Parrot noted several cases of aliens being swindled out of their life savings. He described the traveling conditions that these people are made to endure:

I have seen. . . men, women, and children and as many as 34 placed in the back of a U-Haul truck without any proper ventilation and travel

⁸⁷ Ibid., p. 543.

⁸⁸ Ibid., pp. 552-53.

⁸⁹ Ibid., pp. 551, 552.

⁹⁰ Ibid., p. 552.

⁹¹ Ibid., pp. 542, 543.

⁹² Ibid., p. 543.

miles and miles in that condition in January when it is cold. And those children were about to die. There is no ventilation, no heat, and no food, no toilet facilities.⁹³

These individuals also bear another burden if their smuggler is apprehended. Because of the need to secure evidence against the smuggler, many are detained as material witnesses in county jails.⁹⁴ At this point they are detained as Federal court witnesses and are no longer under INS jurisdiction. Most smugglers post bond and are released, while the undocumented aliens remain in county jails. These people are often housed under extremely bad conditions. A description of one such facility in Webb County was presented to the Texas Advisory Committee by Lee Teran, an attorney with the Laredo Legal Aid Society. She observed that she had participated in a suit involving this jail and knew from her own experience that "the conditions were horrendous." Most of the aliens were kept in three large cells with no place to sleep, no mattresses, toilets, or functioning showers; Ms. Teran did indicate that these conditions had improved somewhat.⁹⁵

According to testimony undocumented persons also suffer at the hands of employers who hire them knowing full well they are in this country illegally and who use that fact to take advantage of them. An INS agent told the Advisory Committee about trying to collect wages for aliens after they were apprehended:

They pay them in cash. . . . There have been some instances where a farmer would make a check, let's say for \$300, makes the alien sign [endorse] it. He pays him \$25 and sets him on his way. . . . So actually, he [the farmer] made a profit of \$275 for his income tax.⁹⁶

In another instance, an alien had worked from 10 a.m. to 2 p.m. and was paid \$1.⁹⁷ A witness at the open meeting alleged that some larger ranches have company stores where all items are sold at twice what they cost elsewhere and virtually everything that the workers buy is taken from their wages.⁹⁸

⁹³ Ibid., p. 544.

⁹⁴ Ibid., p. 517.

⁹⁵ Transcript, vol. III, pp. 200-01.

⁹⁶ Transcript, vol. I, p. 102.

Frank Cortez, a well-known local radio personality, testified that he knew of cases where undocumented aliens had suffered at the hands of ranchers. He explained that aliens will endure a lot because they are grateful to the employer for giving them a job.⁹⁹ One example of this, Mr. Cortez noted, involved a young man who was involved in an accident on a ranch and lost both arms and an ear. Mr. Cortez told the Advisory Committee:

This is what I call abuse. But, of course, he [the alien] stated that he had a good employer and he was grateful to the employer because he had a job and it was his misfortune that he lost both of his arms and he was lucky to be alive.¹⁰⁰

Conclusions

Undocumented persons are in the extremely precarious position of being unable to assert themselves in protection of their rights without subjecting themselves to possible deportation or prosecution. In the context of their relationship with authorities such as the INS, this means that when abused, they usually stand silent. The testimony given to the Texas Advisory Committee established that there are procedures used by the INS, such as interrogating aliens in closed rooms, which clearly lend themselves to abuse. The INS relies largely on its officers to report abusive actions by their fellow officers. The evidence presented at the open meeting demonstrated that this policy of self-policing has serious drawbacks and may achieve little, if any, deterrence. In fact, credible testimony indicated that some supervisory officials might encourage abusive acts by criticizing officers for not being tough enough on aliens.

Just as the aliens are in a precarious position with regard to the authorities, they are also at a disadvantage with their employers. The evidence at the open meeting pointed to instances where undocumented people are shortchanged in their wages, overcharged at company stores, and made to work long hours under adverse conditions.

⁹⁷ Ibid., p. 102.

⁹⁸ Ibid., p. 103.

⁹⁹ Transcript, vol. VI, p. 138.

¹⁰⁰ Ibid., pp. 137, 138.

Education: A Creature of Statute

. . . imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.¹

At the open meeting held by the Texas Advisory Committee, one of the issues of greatest concern was the fact that children who are in this country without documents are not allowed to attend Texas public schools without paying tuition. In 1975 the Texas Legislature amended the statute regulating admission of students into the State public schools. Effective September 1, 1975, the words "who are citizens of the United States or legally admitted aliens"² were added to the Texas Education Code, limiting free public education only to these children. This change had a tremendous effect on the undocumented families within the geographical boundaries of the State. Although the law would appear to allow for the payment of tuition, some districts have taken the position that they are simply too crowded and refuse to consider tuition students. Indeed, even where tuition is accepted, the amount is so great that it is simply prohibitive. Tuition frequently is in excess of \$1,000 per student per year. To all intents

and purposes, the schools have been closed to undocumented children.

Differing Interpretations

The ramifications of this law have been many and the controversy that it has sparked is very much alive today. There is confusion about the meaning of the law and there are varying interpretations by different school districts.

Testimony at the open meeting indicated that the law is interpreted differently in various parts of the State. Charles F. Hart, director of pupil services for the El Paso Independent School District (ISD), explained how his district enforced the statute. In El Paso, even if the children themselves are U.S. citizens, they may not attend school unless their *parents* are U.S. citizens or legally admitted aliens living within the school district. Mr. Hart noted, "The status of the parent determines the status of the child."³ This policy of the school district was clearly set out in a memorandum dated January 17, 1978, from Mr. Hart to all principals, which reads in part:

schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such parent, guardian or person having lawful control resides within the school district.

³ Texas Advisory Committee to the U.S. Commission on Civil Rights, open meeting on immigration, San Antonio, Tex., Sept. 13-14, 1978, vol. I, p. 182 (hereafter cited as Transcript).

¹ Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 175 (1972).

² V.A.T.S., Education Code §21.031 (Supp. 1977). The pertinent parts of this statute read:

§21.031. Admission

(a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free

The children of illegal aliens may not be registered in the El Paso Public Schools. If a principal feels that the parents are illegally in the United States he should not register the children until the field worker makes a residence check or until they have been cleared by Pupil Services.

Principals should remember that the status of the child is determined by the status of the parent. If the parents are U.S. citizens or legally admitted aliens residing in our school district, the children may attend school. If the parents are not U.S. citizens or legal aliens, their children may not attend school *even though the children themselves may be U.S. citizens.* [emphasis added]⁴

The Advisory Committee was particularly interested in this testimony because the statute reads, "Every *child* in this State who is a citizen of the U.S. or a legally admitted alien. . . shall be permitted to attend the public free schools." [emphasis added]⁵ Nothing is said about the citizenship of the parents.

Oscar Hakala, administrative officer for the San Antonio Independent School District, told the Texas Advisory Committee that his district interprets the statute to require that the status of the child and not that of the parent be used to determine eligibility for the admission to school without tuition.⁶ Raul Besteiro, superintendent of the Brownsville Independent School District, agreed with the procedure in San Antonio, noting that in his district all citizen children are admitted regardless of the immigration status of their parents. The only requirement is that the parent or guardian reside in the district.⁷

The Advisory Committee also heard from Tom Anderson, assistant to the deputy commissioner for personnel and programming for the Texas Education Agency. One of the responsibilities of the agency is disbursing funds under the State's minimum foundation program and assuring that the State's education laws are enforced. Dr. Anderson noted in his testimony that he was appearing on behalf of the commissioner of education. The Advisory Committee asked him several questions about the conflict in interpretation of the law, which had developed in the earlier testimony. Dr. Anderson responded that El Paso was incorrectly interpreting

the law and that in his opinion a child who is a U.S. citizen and resides within the district should be admitted into the public schools.⁸ The Texas Education Agency, however, has not taken steps to ensure uniformity in statewide compliance.

This statute has been the subject of litigation, and on the last day of the open meeting, a Federal court in Tyler, Texas, acted to enjoin its application in the Tyler Independent School District.⁹ At present this court order does not have statewide effect, but it is nevertheless significant because there was an examination of fiscal considerations behind the law, which the State failed to do before its passage. In Tyler the district had arrived at the amount of tuition for undocumented children by dividing the total number of students into the entire operating budget of the district, a cost of \$1,200 per child per year.¹⁰

The plaintiffs, represented by attorneys from the Mexican American Legal Defense and Educational Fund (MALDEF), argued that this was not a true reflection of the actual cost of educating these students, because many expenses are fixed and would not necessarily increase with the addition of extra students.¹¹

An expert at the trial, Robert Firestine, who testified on the costs of operating a school district, explained that most of the cost is relatively fixed and would not vary greatly by reducing the number of pupils. The two major expenditures, administrative and maintenance costs, constitute 25 percent of the operating budget and are considered "fixed." The debt retirement would also remain the same. Even in instruction, a decline of enrollment cannot be traced to the termination of a single teacher. Dr. Firestine went on to say that no savings could be seen:

unless you were to eliminate approximately an entire class size, that is, 20 to 30 students at one given time and in a specific grade. If enrollment declines, as they generally do proceed, occur across a number of grades or occur over a period of time, then you've got modest declines throughout, say, an entire school plant or an entire school building. . . .¹²

Additionally, the plaintiffs contended that, contrary to the position taken by the Tyler school district, it is not more expensive to teach undocu-

⁴ Exhibit No. 1-9(a).

⁵ V.A.T.S., Education Code §21.031(b).

⁶ Transcript, vol. I, p. 233.

⁷ Transcript, vol. III, p. 119.

⁸ Transcript, vol. II, pp. 258-59.

⁹ Doe v. Plyler, No. TY-77-261-CA (E.D. Tex., filed September 1977). Tyler is located north and east of Dallas.

¹⁰ Transcript, vol. I, p. 170.

¹¹ See Exhibit No. 1-5H at 98 *et seq.* This is a transcript of testimony by Dr. Robert Firestine, an expert witness for the plaintiffs in Doe v. Plyler.

¹² See Exhibit No. 1-5H at 98.

mented children. Jose Cardenas, one of the experts for the plaintiffs and a former school superintendent, testified that the characteristics and educational needs of undocumented children are very similar to those of their Mexican American schoolmates.¹³ In fact, he continued:

assuming the school district had an adequate program in bilingual education and multicultural education, there would be no additional problems in dealing with the alien child. On the contrary I think there would be less problems in dealing with the alien child.¹⁴

Another issue advanced by the plaintiffs in the Tyler case and explored at the open meeting was the direct and indirect payment of taxes by undocumented persons. MALDEF attorney Linda Hanten framed this consideration in her testimony:

In Texas, the three primary sources of State school funds are the Available School Fund, the Omnibus Clearance Fund and the Foundation School Fund. In excess of 80 percent of the sources of these funds are taxes which are directly or indirectly paid by consumers. The undocumented alien contributes in like manner to all others with respect to these taxes.¹⁵

She also referred to the testimony of Dr. Cardenas in the Tyler case in which he estimated that 75 percent of all the money going to education in Texas is paid directly or indirectly by the consumer. Examples of this include sales, motor fuel, and utility taxes.

The order entered by the Federal court in Tyler enjoining the charging of tuition of undocumented children reflects the plaintiffs' evidence in this regard:

this Court has serious doubts whether the State has even a rational basis for its law. The State has advanced no reason to support its choice of singling out undocumented children to bear the brunt of the schools' financial problems. Defendants' Brief states that undocumented children are selected to pay tuition since they are not "entitled" to free education. [Defendants' Brief at 16] But this is a conclusion, not a rational basis. All the plaintiff parents in this suit have lived in Tyler for three to thirteen years. They

all rent or own homes, thereby subjecting themselves to property taxes, either indirectly or directly. Many of the plaintiff parents are employed and have shown evidence of having paid federal income and social security taxes. Several own cars, and it is undisputed that these cars are subject to personal property tax. All undoubtedly pay sales taxes. On the basis of the allegedly insufficient contributions to tax revenues by the illegal immigrants, defendants are very far from having shown that these aliens are not "entitled" to public education on the same terms as other taxpayers, particularly other low-income taxpayers. If it is the fact of illegal conduct that renders these children not "entitled" to free public education, it still needs to be explained why tuition should be required of children who commit or whose parents commit this particular illegal act as opposed to other illegal acts.¹⁶

The 1977 Change in Law and the Right to a Public Education

The 1977 session of the Texas Legislature passed another modification of the statute defining who is entitled to a free public education. The effect of this law was aimed primarily at citizen children who reside with a relative or friend for the purposes of attending school in the United States but whose parents live in Mexico. Its author was very straightforward about his purposes, "along the border where the way the law is now. . . anybody can qualify to go to school, and this bill merely makes it harder for them. . . ."¹⁷

The resulting amendment, once again aimed at undocumented children, set down stricter regulations to establish residency for the purposes of attending school:

In order for a person under the age of 18 years to establish a residence for purpose of attending the public free schools separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is *NOT FOR THE PRIMARY* purpose of attending the public free schools.

The board of trustees shall be responsible for determining whether an applicant for admission is a resident of the school district for purposes

¹³ See Exhibit No. 1-5I at 116-19.

¹⁴ Exhibit No. 1-5I at 118.

¹⁵ Exhibit No. 1-5A at 3.

¹⁶ Exhibit No. 1-5J; Doe v. Plyler, Findings of Fact at 11-12. (This decision is binding only on the Tyler ISD and not all State public school districts.)

¹⁷ Testimony at Hearing on Education Committee, Texas Senate, May 25, 1977. A transcript of these remarks was included in the record as Exhibit No. 1-6A. See also Transcript, vol. I, pp. 165-67.

of attending the public schools. [emphasis added]¹⁸

There is also confusion among the school districts as to what this statute requires them to do. The testimony at the hearing indicated that some districts require formal legal guardianship; others, such as the San Antonio school district, will accept an affidavit merely stating the fact that the person with whom the child is living has lawful control,¹⁹ while still others, such as the Brownsville ISD are satisfied if the persons who have custody of the child merely present themselves at the school district office.²⁰ The major issue, however, is that if the school district determines that the student's primary purpose for living in the school district with someone other than his or her parents is to attend school, then there is no free public education. In this situation some districts will accept tuition and some will not.

While these differences may appear to be trivial, they acquire added significance, according to witnesses at the open meeting, in view of the impact that the denial of attending school has on each individual child and the fact that literally thousands of children are affected statewide. In virtually all instances, these are American citizen children. Thus, the law is even today creating a separate class of citizens who are totally unprepared to deal with the demands of society.

Mr. Hakala, the administrative officer of the San Antonio schools, expressed his personal feelings at having to enforce the statutes:

it is a painful experience for us to turn away children who apparently are going to be residents in our community from now on and due to the nature of the law, we cannot educate.²¹

All I can say is that it is a real hardship on these children and I see a real dim future for them because if they don't get an education they will probably end up as welfare cases or whatever, charities of the public. And there ought to be some way found to educate them, in my personal opinion.²²

Litigation

A suit has been filed against the commissioner of education and three Lower Rio Grande Valley

school districts attacking the constitutionality of this statute.²³ According to the counsel for the plaintiff, David Hashmall of Texas Rural Legal Aid, this case is unique because all of his clients are United States citizen children whose parents reside either in Mexico or elsewhere in the United States. For one reason or another, the children are unable to live with their parents and stay with friends or relatives. In spite of the fact that they are citizens of the United States, the law prevents providing them free public education, and they are, therefore, growing up without the benefit of formal schooling.

Additional Concerns About the Statute

The Texas Education Agency has the responsibility of checking local school districts for compliance with State law and their eligibility for funds. This is done primarily through the audit of pupil records. If in examining the records, the documentation establishing legal status of students is questioned, the district must provide further proof of its justification for enrolling the child. If this justification is not accepted, the district is classed as an "audit exception" and a certain amount of State funds deducted from the next payment of funds to the district.²⁴

Because of this pressure to comply with the law, districts are careful only to enroll eligible students. In the El Paso ISD, for example, the procedure that is followed at registration is to have the principals determine whether a student has legal status to attend school free of tuition. If there is any doubt, they send the child to the office of the director of pupil services. Once registration is over, spot checks are made on the composite record cards that are kept on each child. If there appears to be some questionable information on the card, a field worker is sent to check the information.²⁵ The director of pupil services in El Paso testified at the open meeting that during the course of the school year, from 700 to 1,000 children are found ineligible and expelled from school.²⁶ These children are detected through various means, including calls from neighbors informing on them and:

another common way of finding out is that the child will get sick. And a sick child does not want to go to his aunt's or uncle's. He wants to go to his mom and dad. And our nurses take the

¹⁸ V.A.T.S., Education Code §21.031(d) (Supp. No. 5 1977).

¹⁹ Transcript, vol. I, pp. 231-32.

²⁰ Ibid.; vol. III, p. 118.

²¹ Transcript, vol. I, p. 213.

²² Ibid., p. 214.

²³ Arredondo v. Brockette, No. B-77-296, (S.D. Tex., filed Dec. 16, 1977).

²⁴ Transcript, vol. II, p. 245.

²⁵ Transcript, vol. I, pp. 182-85.

²⁶ Ibid., p. 188.

children home so if a child gets sick and says, "I need to go home, I am very sick," she [the nurse] will start driving him to the address that is on the composite card and then he will say, "I don't live here. I live on el otro lado." That is, the other side of the border. Right away we know that they got by us. And then we have to call them and tell them that they can no longer go to school if they live in Mexico.²⁷

Mr. Hart noted that in El Paso unscrupulous real estate agents will lease small houses to five or six different people and tell them:²⁸

You rent this house from me and you can go to school free.

And we have literally found tool sheds which say 3480 Fifth Street on it.

And the people—I feel sorry for them—are the illegal aliens that believe that because they rented it and they have been paying for it for maybe a year prior to coming to school and then we go back and check it out and it is not a house. It is a tool shed and it doesn't have any furniture in it. And it is just a guise; that is all it is.²⁹

To deal with this, the El Paso school district keeps "street lists" of every legitimate address," which were described as "very detailed" and costing "time that you wouldn't believe" to compile.³⁰

Until May 1978 the El Paso school district had another method of checking for undocumented pupils. The director of pupil services and 10 to 15 field workers would periodically station themselves at the international bridge in El Paso and check for children coming across the border with school books in their hands.³¹ This practice was stopped, Mr. Hart reported, because the U.S. Department of Customs had informed them that it was illegal for the school district to have field workers at the bridge checking the people coming across.³²

Once it is determined that a child is undocumented for the purpose of attending school, there is confusion whether this fact should be reported to

the U.S. Immigration and Naturalization Service. The superintendent of the El Paso school district was quoted in a newspaper article as saying about undocumented children, "When we catch them we just report them to the immigration officials."³³ Asked about this policy at the open meeting, Mr. Hart replied that he very seldom reports pupils to INS and he advises principals to follow their conscience, "If you want to report them, go ahead."³⁴

Texas Education Agency

The Texas Education Agency is responsible for carrying out the mandates, prohibitions, and regulations of the legislature.³⁵ The director of this agency is the State commissioner of education who has the responsibility of hearing appeals on actions taken by local school boards pursuant to Texas education laws.³⁶ In this capacity, the commissioner issued a ruling involving the Houston ISD and section 21.031 of the State education laws. The commissioner ruled that "illegal alien children were not eligible to attend the public schools free of charge but that the district could charge tuition to those students and if the students and parents did not wish to pay, the school could refuse to admit them."³⁷ This holding has been affirmed by both the State board of education and the Texas Supreme Court. A second decision was issued on October 24, 1977, in a case involving the Austin ISD. The commissioner found that children who, at the time they requested enrollment in a district, presented a *Silva* letter issued by INS, were entitled to free admission to the public schools.³⁸

A one-page memorandum dated October 30, 1975, was sent by the deputy commissioner for administrative services to local school administrators explaining how to "determine the legality of aliens." Besides this document there was no evidence that any other explanation of the law was provided to the districts. Tom Anderson, representing the Texas Education Agency, testified at the open meeting that

²⁷ Ibid.

²⁸ Ibid., p. 218.

²⁹ Ibid.

³⁰ Ibid., pp. 217, 218.

³¹ Ibid., pp. 188-90. This practice had evidently been going on since the 1930s.

³² Ibid.

³³ "When Discovered—EPISD Reports Alien Students to INS," *El Paso Herald Post*, Oct. 6, 1977, (Exhibit No. 1-9c).

³⁴ Transcript, vol. I, p. 191.

³⁵ V.A.T.S., Education Code, §11.63 (1969).

³⁶ V.A.T.S., Education Code, §11.52 (1969).

³⁷ *Hernandez v. Houston ISD*, 558 S.W. 2d 121 (Civ. App. 1997), ref. n.r.e.; see also Commissioner of Education Decision of Sept. 11, 1976, and Exhibit No. 1-10(a) at 4.

³⁸ "Silva letters," may be obtained by Western Hemisphere nationals who have been in the United States since Mar. 11, 1977, and have a "priority date" for issuance of immigrant visas between Jan. 1, 1968, and Dec. 21, 1976. Such a letter is issued to an individual and verifies that the holder has nondeportable status, pending the decision in *Silva v. Levi*, No. 76-4268, (N.D. Ill., filed Oct. 10, 1978).

"there is nothing in writing that would interpret the law."³⁹ Dr. Anderson went on to say, "it is a good idea to create standards to address predominant issues to assist the districts to implement the law."⁴⁰ The Texas Education Agency utilizes several means to inform districts of the new laws, including, according to Dr. Anderson, letters of information, sending copies of new laws, and conducting workshops on the laws.⁴¹

On the issue of whether a guardianship is required or whether an affidavit is sufficient, TEA's position is that TEA would accept the school district's judgment on that.⁴² The practical effect is that there is no uniformity on what is required to establish residency in the various school districts in the State. The Texas Education Agency acts in the capacity of consultants to the State legislature. However, it does not volunteer information and must wait to be asked for assistance.⁴³

Not only has there been little done to ensure equal enforcement of the law, but TEA did not do any studies before the passage of either of the two amendments to section 21.031 of the education code to determine if there would result a financial saving to the school districts. Now was any examination undertaken on the social or humanitarian impact that such changes would have on the affected children and their families.⁴⁴ Indeed, the only studies that were done all dealt with legal resident alien children and not the undocumented.⁴⁵ TEA was aware of a study the State attorney general's office attempted on the undocumented pupil, but the response rate was so poor that the results were invalid and served no useful purposes.⁴⁶ TEA was never consulted by the attorney general's office on this particular study, however, although it was done pursuant to a lawsuit⁴⁷ in which TEA is a defendant.⁴⁸ TEA had

³⁹ Transcript, vol. II, p. 267.

⁴⁰ Ibid.

⁴¹ Ibid., p. 251.

⁴² Ibid., p. 257.

⁴³ Ibid., p. 259.

⁴⁴ Ibid., pp. 259-60.

⁴⁵ *Survey of Alien/Immigrant Students Born in Mexico Enrolled in Texas Schools as of January 1976* (Texas Education Agency, Mar. 19, 1976).

Survey of Alien/Immigrant Students Born in Mexico Enrolled in Texas Schools as of January 1977 (Texas Education Agency, Mar. 18, 1977).

"Mexican Immigrant-Alien Student Study, 1975-76," Jim B. Hensley; and "A Case Study of the Impact of Students from Mexico Upon a Typical Texas Border School District," research study by Don Phillip Killough.

planned to utilize the findings if the survey proved successful, but at present has no plan to undertake a study of this issue.

The State board of education on July 9, 1977, expressed concern over the problems of school districts in dealing with legal resident children from Mexico, and requested Federal officials to provide assistance in resolving this problem.⁴⁹ In response to the board's action and pressure from local school superintendents, Senator Lloyd Bentsen introduced an amendment that would provide \$1,000 per legal resident pupil born in Mexico who is enrolled in certain school districts with large enrollments of these children. This money would be used for construction and would be a one-time grant as opposed to an ongoing program.⁵⁰ According to TEA data, this would include approximately 35 school districts in the border areas.⁵¹ Mr. Besteiro testified that passage of this bill would mean that Brownsville ISD would receive about \$5 million for the construction of buildings.⁵² This money is sorely needed, according to Mr. Besteiro, because the Brownsville district is currently building a portable classroom every 15 days to keep up with the growth in the district.⁵³ He told the Advisory Committee, "I do not have the money to continue to enrich the programs that I have because I've got to take every penny I've got to keep building buildings."⁵⁴

Solutions such as the one proposed by Senator Bentsen will also do nothing about the current situation where tens of thousands of school-age children living in Texas are not being educated because they are undocumented. It was estimated, on the final day of the open meeting, for example, that in just the Houston ISD alone, there are some 8,000 such children.⁵⁵

(Copies available in the Southwestern Regional Office, U.S. Commission on Civil Rights).

⁴⁶ Transcript, vol. II, p. 260.

⁴⁷ *U.S. v. Texas Education Agency*, 532 F.2d 380 (5th Cir. 1976).

⁴⁸ Transcript, vol. II, p. 265.

⁴⁹ Exhibit No. 1-10(a) at 8.

⁵⁰ Ibid., and see also Transcript, vol. III, p. 128.

⁵¹ Exhibit 1-10(a) at 8-9.

⁵² Transcript, vol. III, p. 128.

⁵³ Ibid., p. 111.

⁵⁴ Ibid., pp. 110-11.

⁵⁵ "Judge Rules Out Tuition for Alien Children," *Houston Chronicle*, Sept. 14, 1978, p. 1-A.

Who Are the Undocumented Aliens in Texas?

- What are the characteristics of undocumented aliens?
- Where do they come from?
- Why do they come?
- What effect do they have on jobs, social services, schools?

These and other questions were posed by Texas Advisory Committee members as they examined the nature and characteristics of the undocumented population in Texas. To seek answers to these and other very complex questions, the Southwestern Regional Office of the U.S. Commission on Civil Rights contracted for a number of studies¹ to examine the social, economic, and demographic characteristics of undocumented persons and their impact on the general population in the Lower Rio Grande Valley, El Paso, and in San Antonio. Two major reports were developed from these studies that describe the characteristics of undocumented persons and their impact on jobs, wages, social services, and schools in those areas.² The discussion that follows will summarize some of the major findings in those reports.

Because the total number of undocumented persons in each of the communities studied is unknown, the Advisory Committee has been cautious about making broad generalizations about that population

solely on the basis of these two studies. However, many previous research studies that have dealt with this population have come up with similar findings. The findings presented in these reports are, for the most part, based on information gathered during 1978. No attempt was made to link these data with previous studies done in Texas. Finally, because the total population of undocumented persons in Texas is unknown, the sample included in these studies is not truly random. Every effort, however, was made to get a truly representative sample of the target population.

Most studies on undocumented aliens in Texas and elsewhere have come up with similar findings that indicate the following:

- 1. The undocumented person is usually a young male, between the ages of 20 and 30, and unmarried.
- 2. Of those undocumented persons interviewed, most are severely undereducated, many had

¹ The research groups employed by the Southwestern Regional Office were Avante Systems, Inc., and Cultural Research Association. Both firms are located in San Antonio, Texas. In addition, Dr. Roy Flores and Dr. Gilbert Cardenas of Pan American University in Edinburg, Texas, were contracted with to do a comprehensive analysis of 3,400 I-213 forms. Other individuals involved in the research effort included Dr. Charles Cotrell, coordinator for Cultural Research Associates; Dr. Gary Polinard, Dr. Robert Wrinkle, Dr. Gary Mounce, Dr. Sheila Tesar, Dr. Charles Tesar, and Mr. Cruz Chavira, director, Avante Systems, Inc.

² Roy Flores and Gilbert Cardenas, "A Study of the Demographic and Employment Characteristics of Undocumented Aliens in San Antonio, El Paso and McAllen, Texas." This report was submitted to the Southwestern

Regional Office of the U.S. Commission on Civil Rights pursuant to contract number CR7AC020, August 1978.

Avante Systems, Inc., and Cultural Research Associates, "A Survey of the Undocumented Population in Two Border Areas," September 1978. This report was submitted to the Southwestern Regional Office of the U.S. Commission on Civil Rights pursuant to contract numbers CR7AC018 and CR7AC019, September 1978.

In addition to the above, a third report was prepared for the Southwestern Regional Office under contract number CR7AC018. This report was submitted by Cultural Research Associates and is titled: "An Appendix to a Survey of the Undocumented Population in Two Texas Border Areas—The Edinburg-McAllen Survey," November 1978.

not attained a sixth grade education, and a substantial portion were illiterate.

- 3. Economic betterment or survival is the reason most frequently given by undocumented persons for coming to this country; there has been no exception to this finding in any of the literature.

- 4. Undocumented persons are usually employed in low-status, low-skilled, and low-paid jobs.

- 5. Undocumented workers contribute more in the way of taxes than they receive in social services.

- 6. Undocumented persons send a significant portion of their income back to their native country to help support their families or relatives.³

In the study prepared jointly by Avante Systems, Inc., and Cultural Research Associates for the Texas Advisory Committee, the above findings were, for the most part, confirmed. The study, "A Survey of the Undocumented Population in Two Border Areas," focused geographically on areas where large numbers of undocumented persons live—the region directly bordering Texas and Mexico. Two different groups of undocumented persons were examined, those in detention awaiting their return to Mexico and those unapprehended. Using these two populations, it was possible to contrast the characteristics and attitudes of undocumented persons who were being detained by the INS and those who were unapprehended.

Two areas of the border region were selected for intensive study—El Paso and the Edinburg-McAllen area located in the Lower Rio Grande Valley. In each of these areas, 300 undocumented persons were interviewed. Each sample was further broken down into three target groups of 100 persons each. The first target group—detained persons awaiting departure—as interviewed in INS Border Patrol detention and processing centers at Los Fresnos and El Paso. The second target group consisted of undocumented persons contacted through a variety of public and private agencies in each of the areas surveyed. The final group was found through a survey of residential areas known to have concentrations of undocumented persons. Persons in public places were also approached and interviewed in private. In addition, business firms known to favor and hire undocumented workers were surveyed.⁴

Some of the key findings arising out of these 600 interviews with undocumented persons are as follows:

- A demographic profile of the cumulative sample (n=600) suggests that respondents range in age from 20 to 30 years old. Most were single males. Less than half were married and less than 40 percent had children. Most of the respondents had been in the United States less than 5 years.⁵

- Virtually all of the respondents were from Mexico. Only about 2 percent came from other countries in Central America. Sixty-five percent of the El Paso respondents (n=300) were born and grew up in the State of Chihuahua; 5 percent were born and raised in Zacatecas. One-third of the Edinburg-McAllen sample (n=300) were raised in Mexican border states.⁶

- Almost half of the El Paso sample arrived in the United States before 1972; 17 percent arrived in 1978. The median number of years respondents have lived in the United States was 4.8. This contrasts with the Edinburg-McAllen sample wherein 9 out of 10 (88.0 percent) have resided in the United States 5 years or less. Nearly half (48.3 percent) have lived in the United States less than 1 year.⁷

- Of the El Paso respondents 55 percent planned to stay in the United States permanently, while the rest indicated a desire to return home. Of those individuals planning to stay, the majority (91.0 percent) indicated they would try to obtain legal residence in the United States. In contrast, only about 38 percent of the Edinburg-McAllen sample planned to remain in this country. The rest planned to stay less than 1 year.⁸

With respect to the economic impact of undocumented persons, the interviews revealed the following:

- Of the El Paso respondents, 73 percent stated that their primary reason for entering the United States was to seek work. Approximately 57 percent (56.7 percent) of the Edinburg-McAllen sample indicated this as their primary reason for coming.⁹

- In El Paso, construction was the major source of employment for undocumented persons. Overall, about 19 percent of the respondents were employed in construction, approximately 17 percent were working in agricultural jobs, and slightly over 12

³ Ibid., p. 31.

⁴ Ibid.

⁵ Ibid., p. 32.

⁶ Ibid.

³ See "A Survey of the Undocumented Population in Two Texas Border Areas," p. 6, for a detailed list of studies.

⁴ Ibid., pp. 18-19.

⁵ Ibid., p. 30.

percent were employed in service-related jobs. In the Edinburg-McAllen sample, most respondents (18.3 percent) were employed in agriculture, 17 percent were working in domestic service-type jobs, and only about 10 percent were in construction-type jobs.¹⁰

- Many respondents in both survey areas worked for small business concerns employing from one to five persons. Fewer than 1 percent worked for enterprises employing more than 100 persons.¹¹

- Less than one-fifth of the respondents believed that they would be replaced by American citizens if they were to leave their jobs. Those responding affirmatively thought if American citizens were to be employed, they would receive better wages than undocumented persons. However, they said that treatment would otherwise be relatively equal.¹²

- The mean hourly earnings for respondents was \$2.75, but the mode (the answer appearing most frequently) was \$2 per hour. Earnings averaged \$21 a day.¹³

Overall, the survey shows that most of the undocumented persons interviewed held jobs that required little education and little or no knowledge of English. Moreover, these jobs paid low salaries and provided few or no fringe benefits.¹⁴ For the most part, these workers valued their jobs more for security reasons than for advancement potential.¹⁵ These findings would seem to indicate that the displacement effect on American workers by undocumented workers is minimal.

Another question intimately related to economic impact is the spending pattern of undocumented persons in this country. The interviews indicated the following:

- About 22 percent of the El Paso respondents said they send money back to Mexico. Approximately 20 percent of the Edinburg-McAllen sample did likewise. On the other hand, 78 percent of the El Paso and 71 percent of the Edinburg-McAllen respondents indicated that they spend all of their money in this country.¹⁶

A question frequently raised is whether the undocumented population in the United States constitutes a severe drain on public services. According to the Avante-Cultural Research Associates study, this does not appear to be the case, at least in the two

areas surveyed. In fact, many respondents indicated that they have had social security taxes taken out of their pay, and many have had income tax deducted from their salaries. On the basis of 600 interviews, the following findings were derived:

- Almost 30 percent of those responding indicated they contributed to social security and slightly over 27 percent in both samples had income taxes deducted from their paychecks. Not one respondent reported that he or she received any social security benefits.¹⁷

- With respect to employment, nearly 40 percent indicated they had been unemployed in the United States. However, few used governmental agencies to seek help and less than 10 percent filed for unemployment assistance. There was no indication that any of the respondents received unemployment insurance.¹⁸

- In El Paso, only 8 percent of the respondents asked for help through the Texas Employment Commission, while only 1 percent of the Edinburg-McAllen sample did so. Only 4 individuals out of a total sample of 600 indicated that they had sought assistance under the Aid to Families with Dependent Children program. Fewer than 10 respondents asked for social security assistance or food stamps. Only 11 El Paso and 27 Edinburg-McAllen respondents reported that they had sought help from migrant health services.¹⁹

The picture that emerged from this survey is that undocumented persons, while contributing to the local economy in the form of taxes and through the purchase of goods and services, actually use little and rarely seek out public assistance.

Another aspect of this study was to find out whether undocumented persons are treated fairly and equitably according to both the spirit and letter of immigration law. Before this question could be answered, the researchers first attempted to determine the frequency with which undocumented persons in the sample had been apprehended. According to the survey, the following pattern emerges:

- In the El Paso sample, which was comprised of one-third apprehended and two-thirds unapprehended persons, slightly over half (51.4 percent) had been apprehended since 1973 and about 48 percent

¹⁰ *Ibid.*, p. 33.

¹¹ *Ibid.*, p. 34.

¹² *Ibid.*, p. 35.

¹³ *Ibid.*

¹⁴ *Ibid.*, p. 36.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 39.

¹⁷ *Ibid.*, p. 41.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

had not. Approximately 31 percent of the respondents indicated that they had been apprehended only once, while 17 percent said twice. Nearly 11 percent indicated they had been caught at least three times and over 8 percent reported that they had been apprehended nine or more times.²⁰

- The Edinburg-McAllen sample, for the most part, was reluctant to respond to this question. In fact, almost half had no opinion or refused to answer this question. In the El Paso sample, only 18 respondents refused to answer this question. Still, of those who had indicated they had been caught previously in the Edinburg-McAllen sample, 41 percent reported that they had been apprehended more than once.²¹

- The respondents' status, by definition, is outside the law, but otherwise the response indicates that they were, for the most part, lawabiding. Over 90 percent (91.6 percent) had not been arrested since 1973 for reasons other than their undocumented status. Only about 6 percent of the El Paso and 3 percent of the Edinburg-McAllen sample indicated they had been arrested for activities unrelated to their status.²²

- With respect to treatment by the INS, slightly over 62 percent (62.5 percent) of the El Paso sample and about 48 percent of the Edinburg-McAllen group said that they had not received bad treatment. Conversely, nearly 10 percent of both groups indicated that they had received bad treatment from officials. About 28 percent of the El Paso respondents and 42 percent of the Edinburg-McAllen sample either did not know, were unsure, or simply did not respond to the question.²³

- Although only about 10 percent of both the El Paso and the Edinburg-McAllen groups indicated that they had received bad treatment from officials, 26 percent of all respondents had heard about undocumented persons being abused by officials. In the El Paso sample, 35 percent of the respondents had reason to believe that undocumented persons were being abused, while 18 percent of the Edinburg-McAllen sample indicated this.²⁴

A second study prepared by Roy Flores and Gilbert Cardenas of Pan American University in

Edinburg, Texas, identified the demographic and labor force characteristics of undocumented persons through an analysis of I-213 forms. Each of the four samples represented only a small fraction of the total number of I-213s filled out for the three months of March, April, and May of 1978. The samples included two INS offices—El Paso and San Antonio. The other two samples were from Border Patrol offices in McAllen and El Paso. Altogether, 3,400 I-213s forms were collated, analyzed, and summarized.²⁵

On the basis of their analyses, Dr. Flores and Dr. Cardenas made the following findings:

- The vast majority of undocumented persons in each of the four samples indicated they were citizens of Mexico. Only 16 out of a total of 3,400 individuals were not Mexican citizens, and of these, 10 were citizens of another Latin American country.²⁶

- Undocumented persons in the McAllen Border Patrol sample came mainly from the border state of Tamaulipas (73.3 percent). Most of the undocumented persons in the two El Paso samples came from the border state of Chihuahua (90.8 percent in the El Paso Border Patrol sample and 78.6 percent in the INS sample). No other Mexican state contributed as much as 10 percent of the undocumented population in any of the three border samples.²⁷

- Undocumented persons in the San Antonio INS sample came mainly from five Mexican states: Guanajuato (21.5 percent), Tamaulipas (8.7 percent), Coahuila (19.8 percent), San Luis Potosi (9.0 percent), and Nuevo Leon (9.2 percent).²⁸

- The majority of individuals in each sample were male. Very few females (6.1 percent) were found in the McAllen sample. Only a slightly higher proportion (10.6 percent) of the San Antonio sample was female. El Paso had a significantly higher proportion of females than either McAllen or San Antonio. The El Paso INS sample had nearly 32 percent female and of the Border Patrol sample, slightly over 23 percent were female.²⁹

- Most undocumented persons indicated that they entered the United States without being inspected (EWI). Almost all individuals in the McAllen and El Paso Border Patrol samples were listed as

office were as follows: McAllen Border Patrol—800; El Paso Border Patrol—1,200; El Paso INS—424; and San Antonio INS—976.

²⁰ Ibid.

²¹ Ibid., p. 6.

²² Ibid.

²³ Ibid., p. 8.

²⁴ Ibid., p. 8.

²⁰ Ibid., p. 43.

²¹ Ibid.

²² Ibid., p. 44.

²³ Ibid., p. 46.

²⁴ Ibid., p. 48.

²⁵ Flores and Cardenas, "A Study of the Demographic and Employment Characteristics of Undocumented Aliens," p. 5. The sample sizes for each

EWIs. The figures were 98.5 percent and 99.8 percent, respectively. The figure for the San Antonio INS sample was slightly lower at 90 percent.³⁰

- With respect to age distribution, the undocumented person was relatively young. The average age in the samples ranged from 25.2 years in the McAllen Border Patrol sample to a high of 26.5 years in the San Antonio INS sample.³¹

- Approximately half of the undocumented persons in the San Antonio and El Paso INS samples indicated that they were single. The Border Patrol samples, on the other hand, showed that about 70 percent of the undocumented persons were single.³²

- Of those married, the majority of the undocumented persons in each of the four samples reported that all of their children were foreign citizens. However, about 45 percent of the undocumented persons with children in the El Paso INS and approximately 21 percent of those in the San Antonio INS sample claimed at least one of his or her children as an American citizen.³³

In analyzing the employment characteristics of the undocumented worker population, the authors of this report noted that because the data derived from the I-213s was extremely limited and at times inaccurate, it could not be used to determine either the employment effect or the economic impact of undocumented workers on the local labor market in the sample areas. Despite this limitation, the authors were able to describe and compare a limited number of employment characteristics relating to undocumented workers found in each of the four samples:

- In the McAllen Border Patrol sample most undocumented persons who found employment did so in agriculture; 21 percent of the undocumented persons in this sample had been employed as agricultural workers. Only 14 percent had been employed in the service sector, the next highest job category.³⁴

- Of the 8 percent in the El Paso Border Patrol sample who had been employed, the majority had worked in construction-type jobs. The next highest job category was the service sector.³⁵

- Almost 10 percent of the undocumented workers in the El Paso INS sample had been employed in

the construction industry. Nearly 7 percent indicated they had been employed in the service sector, another 6 percent had worked in the agricultural sector, and approximately 5 percent had been working in manufacturing.³⁶

- In the San Antonio INS sample, about 38 percent of the undocumented workers indicated they worked in the construction industry. In addition, more than 11 percent indicated that they had been employed in wholesale/retail trade jobs, and approximately 4 percent reported that they had worked in manufacturing jobs.³⁷

- Of those undocumented persons in the McAllen sample who reported themselves employed, 72 percent had worked as farm laborers and about 21 percent had been employed as general laborers. The rest were either unemployed at the time of their apprehension or the authorities failed to list the type of job held by the person.³⁸

- In the El Paso sample, the majority of the undocumented workers indicated they had worked as general laborers. Another 16 percent had worked as farm laborers in the INS sample. However, less than 1 percent of the El Paso Border Patrol sample had worked as farm laborers. On the other hand, nearly 29 percent (28.9 percent) of those in the El Paso Border Patrol sample reported that they had been employed as craftsmen; whereas only about 5 percent of the INS sample indicated that they worked as craftsmen.³⁹

- Approximately 30 percent of the San Antonio INS sample were listed as unemployed. Almost 80 percent of those who reported themselves as employed had been classified as general laborers. No other job category included as many as 9 percent of the working undocumented persons in the sample.⁴⁰

- For those cases where a wage was reported, the McAllen data show that about 73 percent (72.8 percent) of the undocumented workers had earned less than \$2.50 per hour. For the El Paso Border Patrol sample, the average was \$2.29 per hour. The El Paso INS sample was slightly higher at \$2.90 per hour. The San Antonio sample showed an average wage of only \$2.60 per hour. Despite the data's limitations, it is safe to say that undocumented

³⁰ *Ibid.*, pp. 8-9. Although 90 percent of the individuals in the San Antonio INS sample were listed as EWIs, approximately 9 percent of the sample had originally entered the United States under a visitor status classification.

³¹ *Ibid.*, p. 11.

³² *Ibid.*, p. 12.

³³ *Ibid.*, pp. 13-14.

³⁴ *Ibid.*, p. 28.

³⁵ *Ibid.*, p. 29.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*, p. 30.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p. 31.

workers usually earned less than the minimum wage. In fact, few were found to be earning what might be termed an adequate wage.⁴¹

The Flores-Cardenas study concluded that undocumented workers in Texas usually find employment as general laborers. In the McAllen area, most tend to be employed as farmworkers. Few, if any, are

employed in professional-type jobs. Moreover, they earn substantially lower wages than the average American worker in the area. Many undocumented workers reported receiving less than the minimum wage. For the most part, the undocumented worker is a source of cheap manual labor for many business firms in the border region.

⁴¹ Ibid., p. 32.

Findings and Recommendations

Findings

1. The Texas Advisory Committee finds that minority and female employees of the Immigration and Naturalization Service are concentrated in the lower paying, nondecisionmaking positions of the work force assigned to Texas.

2. The Texas Advisory Committee finds that this underrepresentation of minorities and females in positions of authority can be attributed in part to the continued reliance on seniority as a basis for promotions, or in the words of former Regional Commissioner Armand Saturelli, "the pipeline." This "pipeline" results in diminished opportunities for Mexican Americans, blacks, and women to attain supervisory positions since they have not been in the "pipeline" long enough.

3. The Texas Advisory Committee finds that the regional INS officials demonstrated insensitivity to the importance of equal employment opportunity by not having read a Federal court opinion finding an INS employee assigned to this region guilty of unlawful discrimination. The position taken by INS regional staff that if a court finds an employee guilty of discrimination while acting in the course of his or her employment, the employee cannot be disciplined is clearly untenable and establishes a dangerous precedent.

4. The Texas Advisory Committee finds that real fluency in the Spanish language, not just competency, is central and necessary for many of the enforcement and service functions of the INS. This is especially true in the border regions of Texas.

5. The Texas Advisory Committee finds convincing evidence that some undocumented persons have

been subjected to physical and psychological abuse at the hands of INS officers. While the design of the open meeting was not intended to be broad enough to establish patterns of discrimination, several problem areas tended to recur in the testimony. These include the process of "breaking aliens" to admit their status, the filling out of the I-213 form, the so-called area control procedures, and the conditions at the permanent highway checkpoints.

6. The Texas Advisory Committee finds that the permanent highway checkpoints maintained by the INS in Texas are clearly inadequate as even short-term detention facilities. There is no provision for holding females separate from male detainees; there are usually no female officers or matrons available to search the female detainees; there is insufficient ventilation; the detainment cell is often overcrowded; there is no plumbing and there are frequently no organized procedures to feed the detainees.

7. The Texas Advisory Committee finds that Texas adopted laws during the 1975 and 1977 sessions of its legislatures designed to prohibit undocumented children from attending the free public schools in this State. With what can only be considered reckless disregard for human rights, these statutes were passed into law without benefit of studies to determine what, if any, problems were created by the presence of these children in our schools. Nor was there an attempt to determine what, if any, long-term effect such laws might have on the State.

8. The Texas Advisory Committee finds evidence that certain school districts in this State have adopted nonuniform and contradictory interpretations of these laws. This has resulted in American

citizen children, who are bona fide residents of the district, being denied access to the schools. Part of the responsibility for the differing interpretations must be borne by the Texas Education Agency (TEA), whose representative admitted that the agency had failed to issue directives on the correct interpretation of the law. This is in spite of the fact that TEA is the overseer of the State educational system and its director, the commissioner of education, has the responsibility to issue guidelines and opinions that are binding on all school officials in the State.

9. The Texas Advisory Committee finds that these statutes and their contradictory interpretations have a clearly disproportionate effect on Hispanic children.

Recommendations

1. The Texas Advisory Committee recommends that the Regional Commissioner of INS be held responsible for correcting the currently unacceptable pattern of minority and female employment in the INS. In this regard, a failure to make significant progress each year toward the goal of equal employment should be considered as serious as a failure to accomplish any of the other functions of the Service as mandated by Federal law.

2. The Texas Advisory Committee recommends that the Commissioner of Immigration and Naturalization immediately act to direct that any employees of the Service found discriminating in terms of employment or on any grounds prohibited by law be disciplined. In this regard, the Advisory Committee notes that the INS has taken the position that supervisory employees who are found to discriminate against minorities and women are *not* proper subjects of disciplinary action if the courts find that the acts of discrimination were done while acting in their official capacity as employees of the INS. Such a stance evidences a callous disregard for the concept of equal employment opportunity and should immediately be reevaluated. The Advisory Committee recommends that any employee, especially supervisors found discriminating in violation of Federal law, is the proper subject of disciplinary proceedings and should be dealt with accordingly.

3. The Texas Advisory Committee recommends that fluency in the Spanish language be established as a qualification for any enforcement or service

function of the INS along or near the southern border of the United States.

4. The Texas Advisory Committee recommends that a special commission be formed by the President consisting of representatives of leading minority organizations, immigration lawyers and practitioners, INS officials, and other interested parties. This commission should be given the specific authority and resources to inquire into and when necessary recommend changes in INS practices as well as immigration law.

In particular, the charge of the commission must include a mandate to determine how to minimize the procedures that become the occasion for physical and psychological abuse.

5. The Texas Advisory Committee recommends that the INS take all steps to improve the detention facilities for undocumented persons. These facilities should reflect the fact that most detainees are not criminals but merely persons who are attempting to improve the lives of themselves and their families.

6. The Texas Advisory Committee believes that all children in Texas, regardless of race, color, or status, are entitled to a free public education. To achieve this end, the Advisory Committee recommends that the sections of the education code that frustrate this human right be repealed by the State legislature.

7. The Texas Advisory Committee recommends that, pending this repeal, the Texas Education Agency recognize its responsibility to the people of Texas and issue guidelines on the correct interpretation of the statutes in question. It is unconscionable that American citizen children who are bona fide residents of a district are being denied the right to attend its schools.

8. The Texas Advisory Committee believes that the ultimate solution to this problem is the restructuring of the school finance system in Texas to achieve a more equitable distribution of the wealth of the State. The Governor should call a special session of the legislature to resolve this issue of crucial concern to Texas. At that special session, the legislature must finally meet its responsibility to the people of Texas. In this regard, real consideration and not mere lip service must be given to the importance of education. To do anything else is to be shortsighted. It will only result in a legacy of illiteracy as well as continued racial and class strife.

Overview of the Immigration and Naturalization Service

The task of administering the laws relating to the immigration and naturalization of aliens in this country has been placed on the shoulders of one person—the Attorney General of the United States. As a practicality the Attorney General delegates the primary responsibilities and authority for the administration and enforcement of the immigration laws to the Commissioner of the Immigration and Naturalization Service (INS). The INS, in turn, is a division of the U.S. Department of Justice.¹ These responsibilities are shared in a limited way with the Secretary of State, who is responsible for the issuance of visas; the U.S. Public Health Service, which conducts health examinations on aliens before their entry in the United States; and the Department of Labor.

The basic mission of the INS, to administer and enforce the immigration and naturalization laws as established by the U.S. Congress, involves:

- determination of the admissibility of aliens to the United States, either for a temporary stay or permanent residence;
- detection, apprehension, and disposition (including deportation) of aliens and naturalized citizens who violate the law;
- processing of applications and determination of eligibility for naturalization;
- general control of aliens in the United States, including maintaining current information concerning their place of residence; and
- authorization and granting of privileges to aliens as provided by law.²

¹ 8 U.S.C. §1103 (1952).

² U.S., Department of Justice, Immigration and Naturalization Service, Equal Employment Opportunity Plan, Southern Region. Armand J. Saltorelli, Regional Commissioner, p. 2. Also see generally 8 C.F.R. §100 *et seq.* (1978).

³ 8 C.F.R. §100.4 (1978).

Organizational and Administrative Structure of the INS

Figure A1 describes the overall organizational and administrative structure of the INS. Basically, this structure consists of five levels:

1. Central Office
2. Regional Office
3. District Office
4. Suboffices
5. Border Patrol Sectors³

Headquarters of the INS, the Central Office, is located in Washington, D.C., and its functions relate entirely to policy and supervision. Heading this office and the INS is the Commissioner, appointed by the President, who exercises the duties and responsibilities assigned to him by the Attorney General.⁴

Under the general direction of the Attorney General, the Commissioner is “authorized and directed to administer the INS and the immigration laws, and to exercise or perform any of the powers, privileges or duties of the Attorney General under the immigration laws, including the power to promulgate immigration regulations.”⁵

The second level of the INS is the four regional offices—the Eastern Regional Office in Burlington, Vermont; the Northern Regional Office in St. Paul, Minnesota; the Western Regional Office in San Pedro, California; and the Southern Regional Office in Dallas, Texas.⁶ Like the Central Office, the regional office is mainly concerned with administration and implementation of immigration laws. Figure A2 describes the present regional alignment of the INS.

⁴ 8 U.S.C. §1103(b) (1952).

⁵ 8 U.S.C. §1103; see also Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure, Revised Edition*, vol. I, *Immigration* (New York: Matthew Bender, Publishers, 1976), p. I-39 (hereafter cited as *Immigration Law and Procedure*).

⁶ 8 C.F.R. §100.4(a) (1978).

FIGURE A1
Overall Organizational Structure
of the Immigration and Naturalization Service

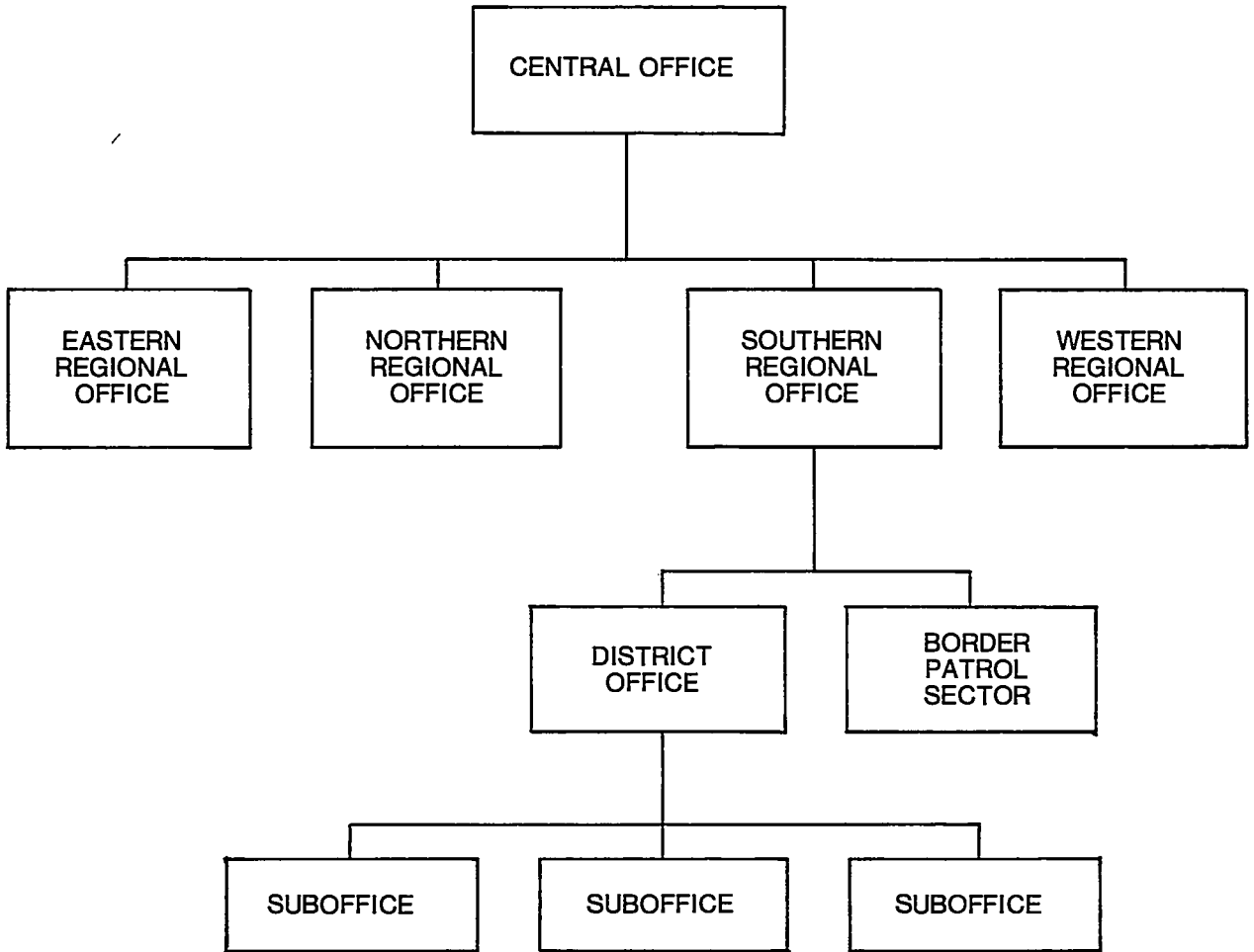
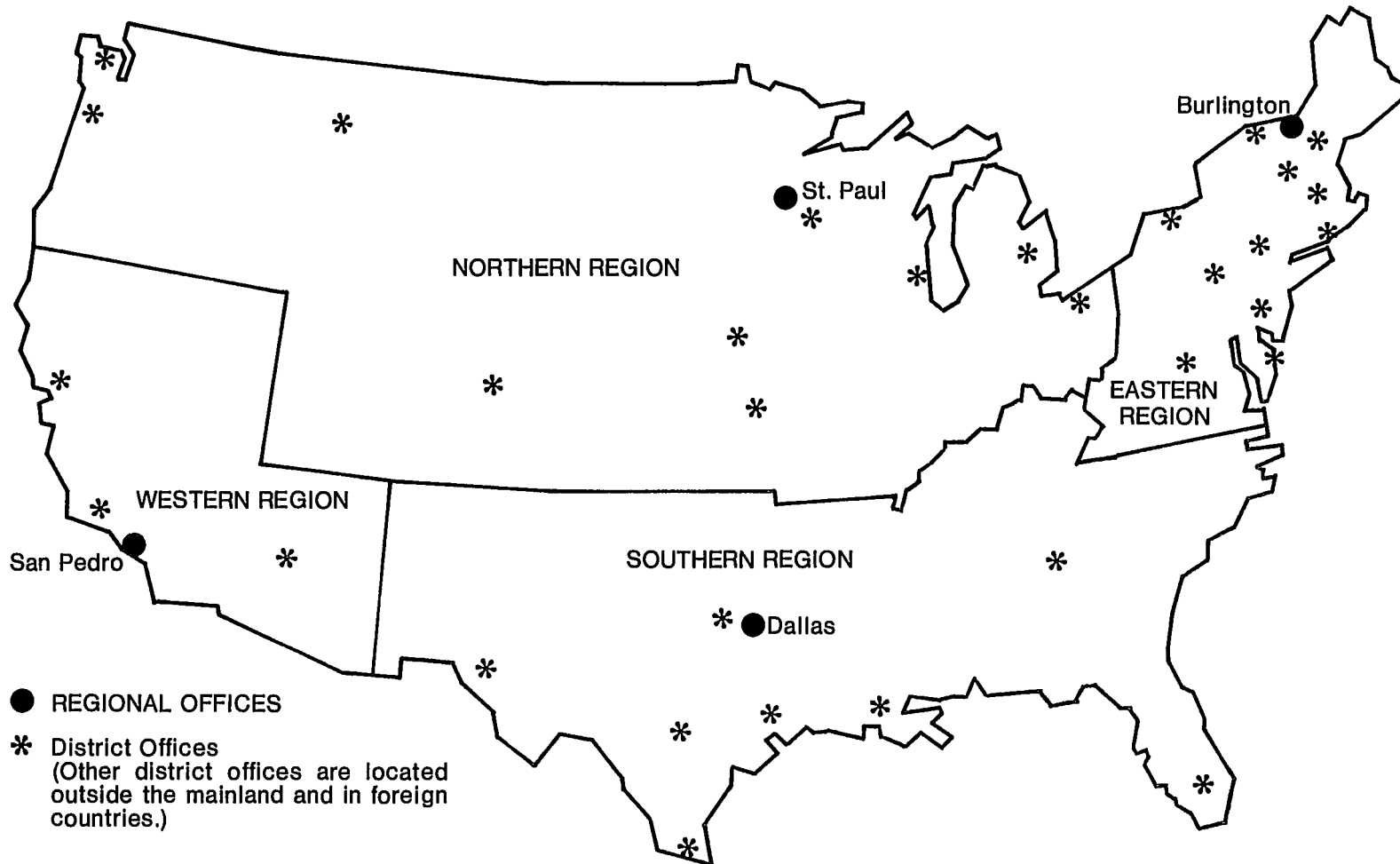


FIGURE A2

Immigration and Naturalization Service Regional and District Offices



Source: U.S. Department of Immigration and Naturalization (1979).

At the head of each regional office is a regional commissioner who is assisted by a deputy. Broadly speaking, the regional office is responsible for all field activities and casework within its jurisdiction.⁷ From a geographical and organizational standpoint, each region is divided into districts, and each district, in turn, is further broken down into suboffices and border patrol sectors.⁸

The district office is the basic operating unit of the INS. At its head is a district director, who has a wide range of authority.⁹ In each district office there is also a deputy district director and assistant branch directors for the major areas of activity.¹⁰ At present, there are 38 district offices in operation. (Figure A2 shows their location.) In Texas, there are five district offices. These are located in Dallas, El Paso, Harlingen, Houston, and San Antonio. Figure A3 shows the location of each of these offices. It should be noted that the El Paso District Office also has jurisdiction over New Mexico, and the Dallas District Office takes in northern Texas and Oklahoma.¹¹

The district director supervises all activities pertaining to INS operations within his or her jurisdiction, with one major exception. The Border Patrol has its own administrative structure and is directly responsible to the regional office. The district director has no operational or administrative responsibility for the Border Patrol.¹² There are five Border Patrol sectors in Texas. These are designated as the Del Rio, El Paso, Laredo, Marfa, and McAllen sectors. Figure A4 shows the location of each of these sectors.

Under each district director there are also a number of suboffices located at various ports of entry. For example, the San Antonio District has three suboffices located in Laredo, Eagle Pass, and Del Rio. Each office is supervised by an officer in charge. Personnel in these offices are directly responsible to the district director.¹³

With respect to the Border Patrol, the district director has no jurisdiction over its operations, with one exception. When Border Patrol personnel arrest an undocumented alien, they are required to contact the district director to arrange for deportation. The district director must concur. The Border Patrol

cannot initiate formal deportation procedures without going through this person.¹⁴

Within the district office there are five support or operational sections: Adjudications and Examinations; Investigations; Citizenship; Deportation, Detention, and Parole; and Records, Communications, and Information.¹⁵ Figure A5 describes the overall organizational structure for this office.

The **Adjudications and Examinations Section** is responsible for providing proper documentation for aliens, issuing travel documents for immigrants, adjusting alien status, reclassifying nonimmigrant status, and overseeing refugee resettlement.¹⁶

The **Investigations Section** performs three major functions. First, it conducts background investigations on prospective citizens, documented aliens, and undocumented aliens. Second, it investigates, apprehends, and incarcerates documented aliens. Third, it initiates and prepares the necessary paperwork for deportation proceedings.¹⁷

The **Citizenship Section** is mainly a service-oriented unit that assists legal aliens and immigrants applying for citizenship. It also adjudicates status for legal or documented aliens and conducts naturalization examinations.¹⁸

The **Deportation, Detention, and Parole Section** is involved with the deportation of documented aliens who violate the terms of their admission and with undocumented aliens. This unit executes the orders of the immigration judges, provides for transportation of aliens under voluntary departure provisions, and detains undocumented aliens awaiting deportation.¹⁹

The **Records, Communications, and Information Section** is responsible for the overall administration and management of district office and suboffice operations. It also stores and processes all information pertaining to applications, alien status, and deportation proceedings.²⁰

Also incorporated within the administrative structure of the district office are immigration judges and trial attorneys. (See figure A5.) Both the judges and the attorneys are under the jurisdiction of the district director only in an administrative sense. Overall supervision is provided by the regional office and more specifically by the regional counsel.²¹

⁷ See generally 8 C.F.R. §100.2(i) (1978).

⁸ 8 C.F.R. §100.4 (1978).

⁹ 8 C.F.R. §103.1(h) (1978)

¹⁰ *Id.*

¹¹ 8 C.F.R. §100.4(b) 1978. Since codification of these Federal regulations, the suboffice in Harlingen, Tex., has been designated a district office.

¹² 8 C.F.R. §103.2(r) (1978); also, interview with Richard M. Casillas, District Director, San Antonio District, INS, Aug. 16, 1978 (hereafter cited as Casillas interview).

¹³ Casillas interview; see also 8 C.F.R. §100.4(c) (1978).

¹⁴ Casillas interview; see also 8 C.F.R. §103.2(r) (1978).

¹⁵ Casillas interview; see also 8 C.F.R. §100.2 (1978).

¹⁶ Casillas interview.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

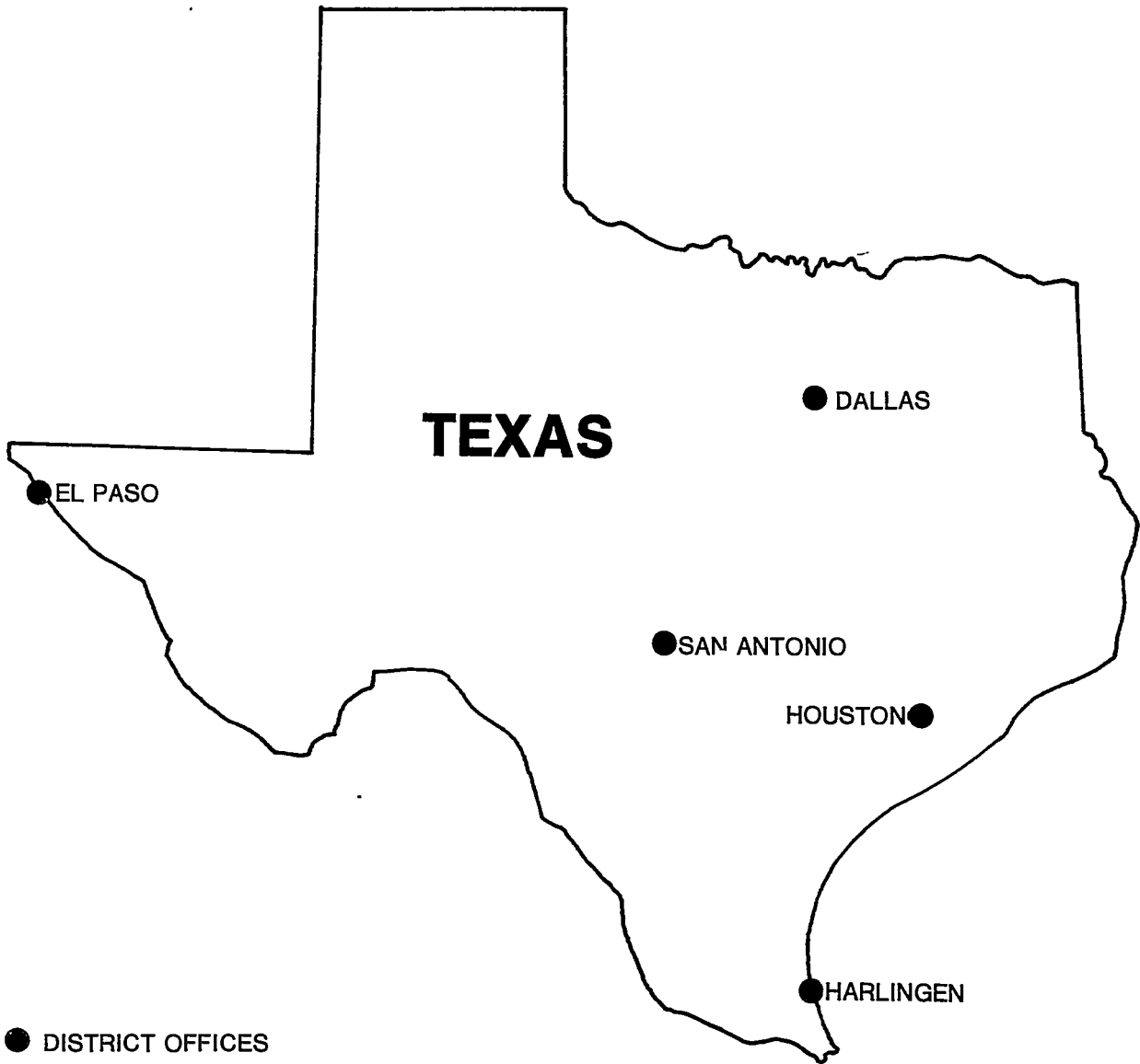
¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

FIGURE A3

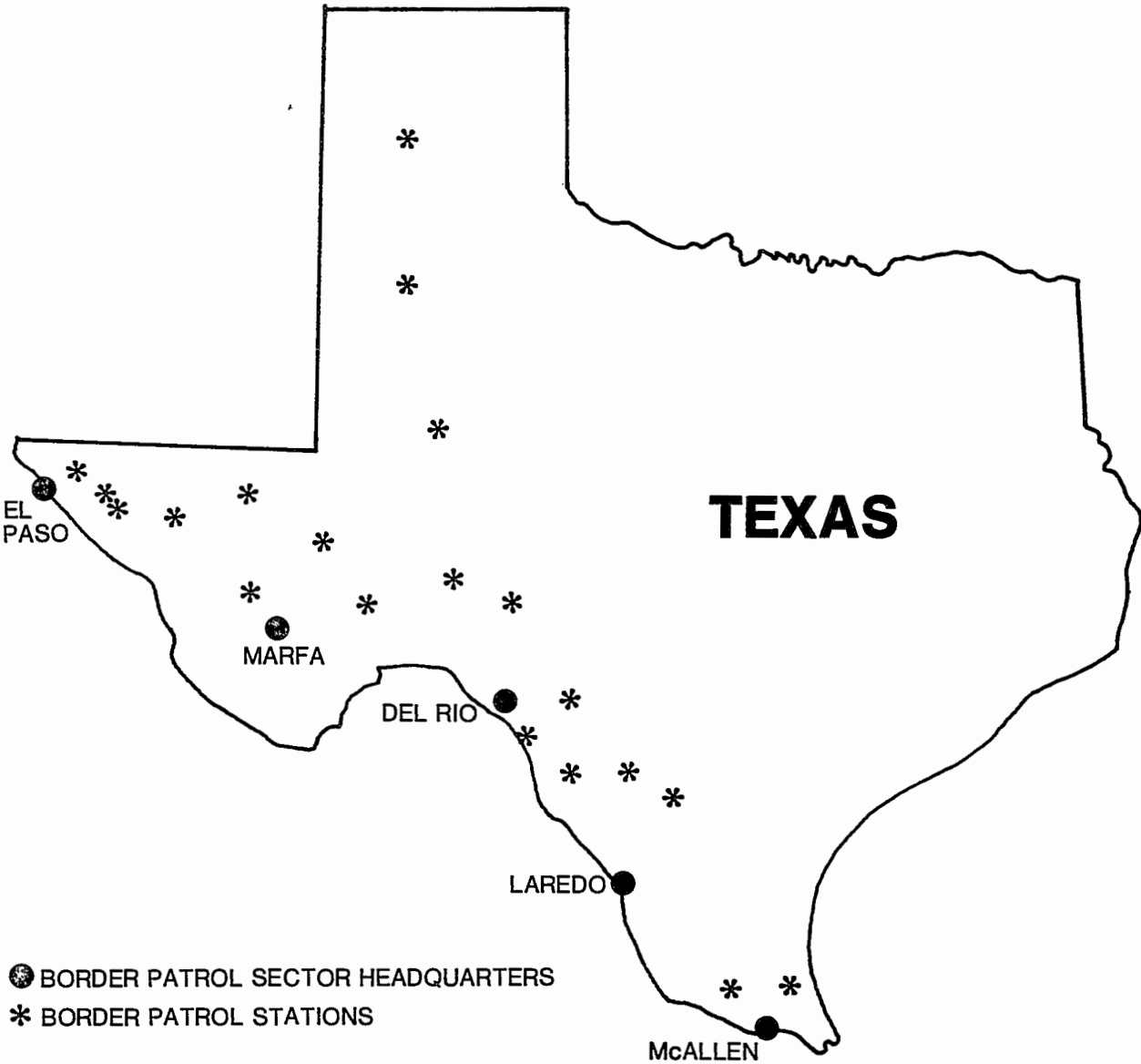
Jurisdictional Boundaries INS District Offices



Source: U.S. Department of Immigration and Naturalization (1979).

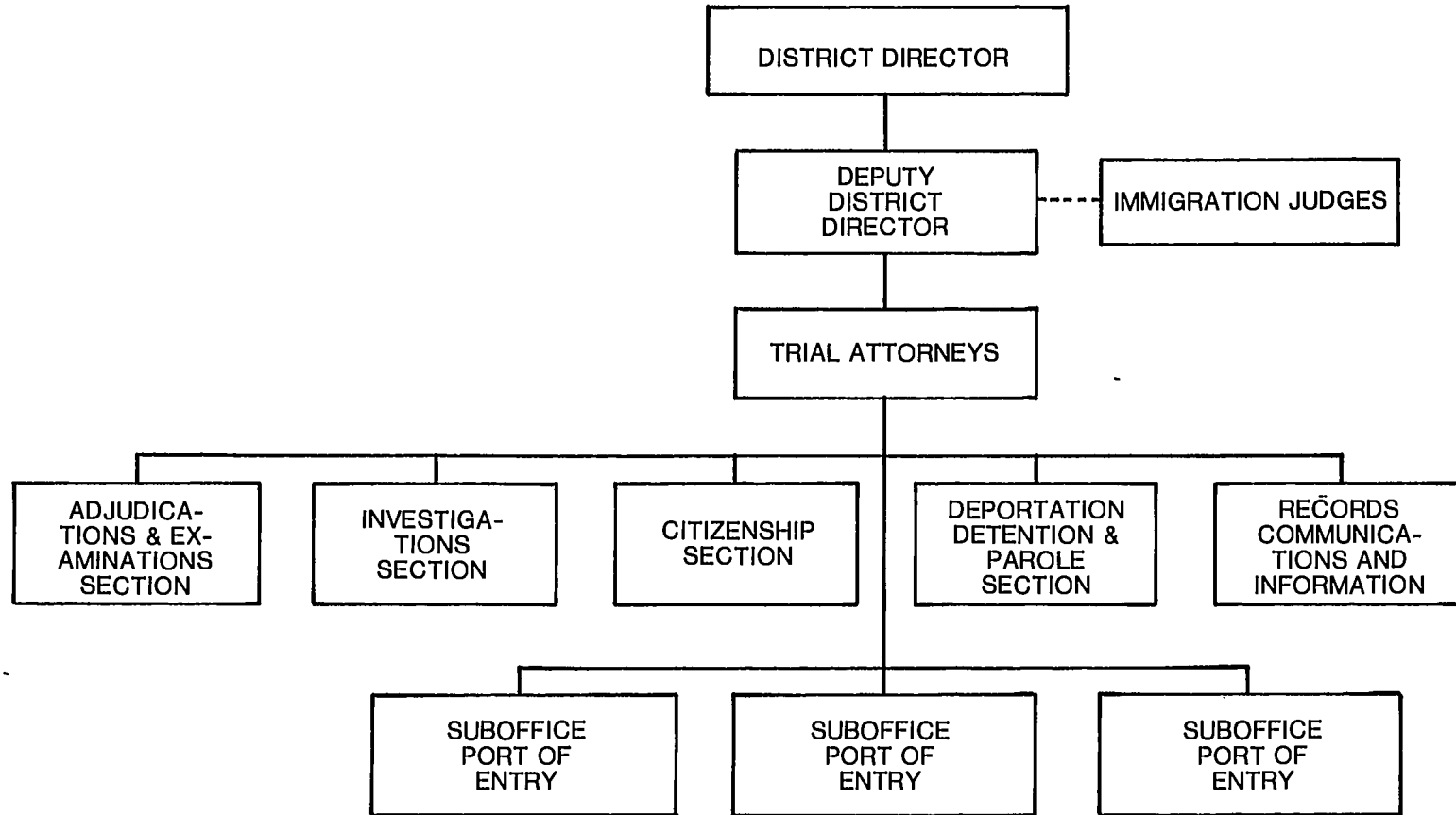
U S E
T A

FIGURE A4
Border Patrol Sectors and Stations in Texas



Source: U.S. Department of Immigration and Naturalization (1979).

FIGURE A5
Administrative Organization
District Office
Immigration and Naturalization Service



Source: U.S. Department of Immigration and Naturalization, San Antonio District Office, San Antonio, TX.

The initial responsibility for administering and enforcing the immigration laws occurs at the borders and the various ports of entry into the United States. Immigration officers are empowered to patrol the borders to prevent illegal entries, and they are given authority to enter private lands, but not dwellings, within 25 miles from any external boundary of the United States. Within the INS, the Border Patrol has this primary responsibility.²² The INS has designated certain areas along the borders as Border Patrol sectors, each of which includes linewatch and backup stations to provide indepth surveillance and enforcement.

The various sectors and the location of their backup stations are listed below. Figure A4 shows their approximate location. Figure A6 shows the location of class A and class B ports of entry along the Texas border.

INS Enforcement, Detention, and Deportation Procedures

The INS can conduct transportation checks to locate undocumented aliens at airports, bus stations, and train depots. Immigration officers are also authorized to board and search without warrant any public conveyance or private vehicle in which they believe undocumented aliens are being brought to the United States.²³ This authority is effective within 100 air miles from any external boundary of the United States.²⁴

In carrying out its enforcement function, the Border Patrol is authorized to use a wide range of patrol techniques, including the use of permanent checkpoints and roving patrols. An immigration officer has authority to search without warrant any undocumented alien believed to be entering or attempting to enter the country in violation of law. Once apprehended, that person must be "taken without unnecessary delay" for examination before an immigration officer authorized to determine his or her admissibility.²⁵ If the examining officer is satisfied that the arrested alien was entering or had entered the United States without valid documentation, this officer must then refer the case to a special inquiry officer for a hearing.²⁶

Immigration officers also have authority to investigate whether violations have occurred. These investigations are initiated in a number of ways. The

major purpose of any investigation is to determine whether legal aliens or undocumented aliens have violated any of the laws. There is, however, a distinction between apprehending an undocumented alien at a border point and the apprehension of an undocumented alien away from the border zone who has resided in a particular locale for some length of time. Nevertheless, the basic procedures and policies regarding apprehension, detention, and deportation are essentially the same.

To carry out their responsibilities, immigration officers have been given wide powers. For example, an officer can, without warrant, interrogate any person thought to be an undocumented alien.²⁷ Moreover, there is no requirement that the officer have probable cause for such an inquiry other than reasonable cause or suspicion. This officer is allowed to make arrests without warrant in two situations:

When an alien in his presence or view is entering or attempting to enter the United States illegally; and,

When an alien is believed to be in the United States in violation of law and the officer has reason to believe that the alien is likely to escape.²⁸

Persons detained by the INS for suspected violation of the immigration laws for which they can be deported are entitled to a hearing on the issue of their status.²⁹ The most frequent exercise of discretion by the INS is to allow the alien to depart from the United States voluntarily without a deportation proceeding or order. Voluntary departure enables the undocumented alien to leave under his or her own initiative, and by doing this, avoid the stigma of being deported. It also facilitates the possibility of return to the United States.

The opportunity for voluntary departure may arise at three stages of the deportation process:

- Before any informal proceedings are begun;
- During the course of deportation proceedings, but before a final expulsion order is entered; and
- After the final deportation order is entered.³⁰

However, voluntary departure is not granted when there is reason to believe that the alien has been involved in some kind of criminal action, subversive activities, narcotics violations, prostitution, violations of registration and reporting requirements, and

²² See generally 8 C.F.R. §287.2 (1978) and 8 U.S.C. §1357(a)(2) (1952).

²³ 8 U.S.C. §1357(a)(1952).

²⁴ 8 C.F.R. §287.1 (1978).

²⁵ 8 U.S.C. §1357 (1952).

²⁶ 8 C.F.R. 287.3 (1978).

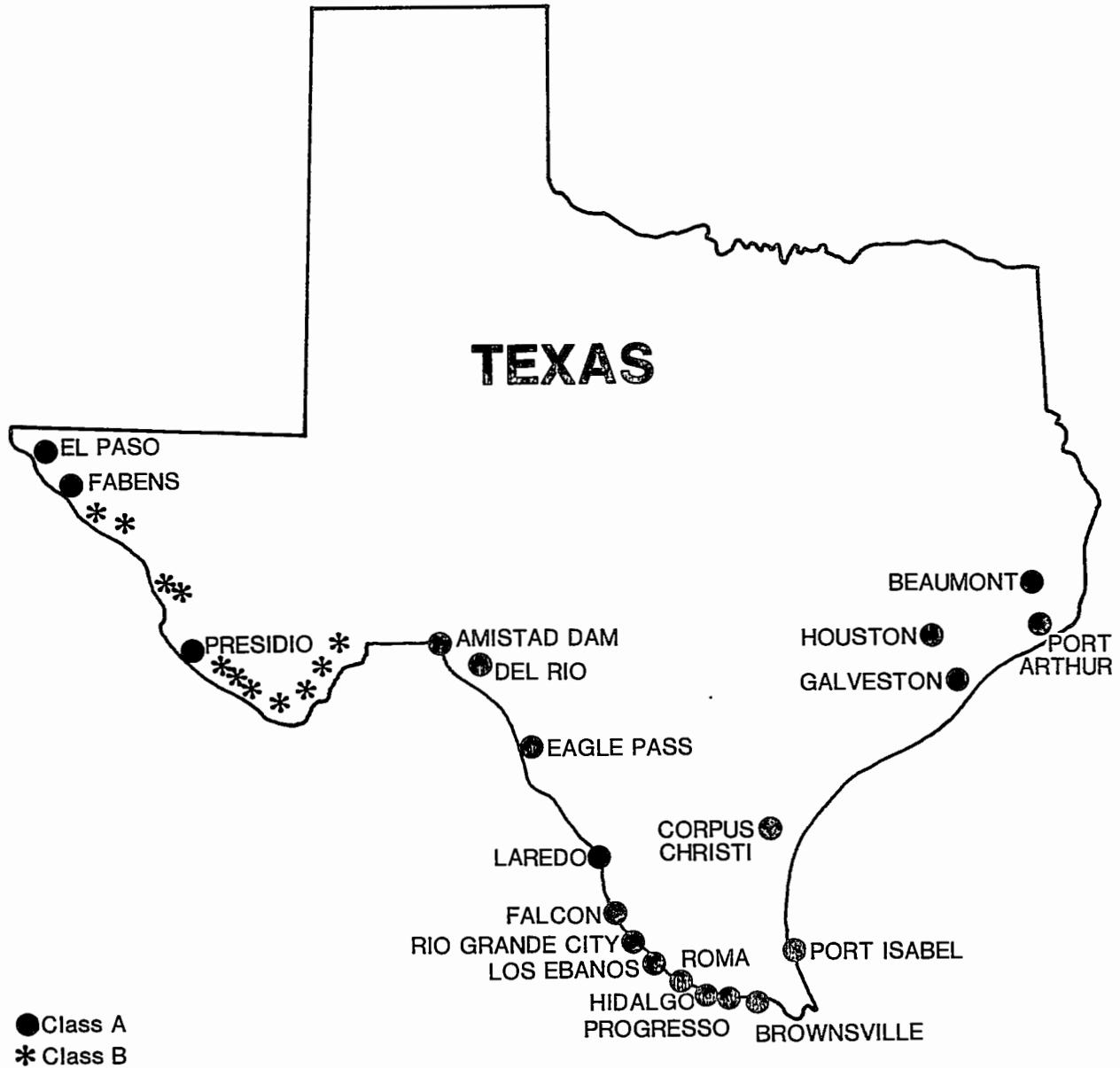
²⁷ 8 U.S.C. §1357(a); *U.S. v. Coreia*, 207 F.2d 595 (3rd Cir. 1953); *Ramirez v. U.S.*, 263 F.2d 385 (5th Cir. 1959);

²⁸ 8 U.S.C. §1357(a)(2) (1952).

²⁹ 8 U.S.C. §1252(b) (1952).

³⁰ *Immigration Law and Procedure*, vol. 2, pp. 7-13, §7.26; see also 8 U.S.C. §1252 (1952).

FIGURE A6
Location of Class A and B ports of Entry in Texas



Source: U.S. Department of Immigration and Naturalization (1979).

activities that may affect national security.³¹

After voluntary departure is authorized, the district director is required to notify the person and request that he or she inform the INS of his or her arrangements for departure. Usually, the applicant is given a certain number of days to depart, although the district director can extend the departure date. No fee or formal application is prescribed for those seeking departure under these conditions. Also, while voluntary departure means that the person is required to pay his or her own way, the statute authorizes the Attorney General to pay for the moving expenses of those who are indigent or otherwise cannot afford the expenses involved.³²

Conclusions

The underlying or basic premise of immigration law is that no person can lawfully come into this country unless the law sanctions that entry. Thus, the purpose of the immigration and nationality law is relatively simple. Basically, this law is designed to control the entry into, presence, and departure from this country of all persons who are not citizens of the United States. To support this purpose, an extremely elaborate statutory framework has been constructed over the years that provides for certain restrictions as to who may or may not enter this country. This same framework also provides for certain enforcement and judicial guidelines concerning the apprehension, detention, and deportation of aliens.

³¹ *Immigration Law and Procedure*, vol. 2, pp. 7-14, §7.2(b).

³² *Ibid.*, pp. 7-21, §7.2d; also Casillas interview.

Appendix 2

Response of the Immigration and Naturalization Service

[Facsimile]

United States Department of Justice
Immigration and Naturalization Service
First International Building, Room 2300
1201 Elm Street
Dallas, Texas 75270

July 3, 1979

Mr. Richard Avena
Regional Director
U.S. Commission on Civil Rights
Southwestern Regional Office
418 South Main
San Antonio, TX 78204

Dear Mr. Avena:

Thank you for the opportunity to respond to the report, drafted by the Texas Advisory Committee, entitled *The Undocumented in Texas*. I have circulated the report among my management officials for their review; the following represents their cumulative response.

It appears to us that the Committee has predicated its report on the premise that enforcement of Immigration Law, in itself, is in some way a questionable practice. This, we believe, has led the Committee to highlight certain isolated instances which reflect poorly on the Immigration and Naturalization Service, while ignoring the beneficial services provided by the agency. While we recognize that improvement can be made in this agency, as in all others, and while we admit that there is always the possibility for abuse by Immigration officials, as there is in any profession, we find the report drawing on isolated occurrences, real or simply alleged, to reach its general conclusions and slant its view to the detriment of the Service.

Several areas of the report bear out our conclusion. The report notes, for example, the existence of the El Paso Intelligence Center (EPIC) and adds that the center "is virtually unknown to the public (p. 16)." Citing the number of enforcement agencies with access to the center, the report fails to mention that the information therein contained is subject to the strict provisions of Freedom of Information and Privacy Acts. The omission can easily lead the reader of the report to regard the center as a secretive, intrusive instrument of disregard to citizen privacy. In similar manner, the report questions the methods of apprehension used by Border Patrol Agents near the river (pp. 56-57), citing the dangers involved and ascribing such methods to "sport" on the agents' behalf. While using the testimony of a single former agent at Del Rio to raise the issue, nowhere does the report make note of the number of lives saved by the agents on patrol, either at the river or in arid desert regions.

Further, the report criticizes the confiscation and destruction of valid documents presented by rightful holders. While we cannot categorically deny that an isolated incident has occurred, we emphasize that arbitrary confiscation of valid documents is strictly prohibited by the Immigration and Naturalization Service and that every effort is made to ensure compliance with the prohibition. It is noted that the report makes no comment on the documented fact that Immigration officers annually apprehend thousands of aliens who present fraudulent documents in attempts to claim United States citizenship or status to which they are not entitled.

The criticism of the informant system is a matter of great concern to us. The use of informants is vital to our anti-smuggling activities and is recognized as an invaluable tool in all law enforcement agencies throughout the world. The Supreme Court and the Congress of the United States have both recognized that necessity. In our opinion, the Committee shows shortsightedness when it fails to recognize the protection that can be given to potential victims, most of them undocumented aliens, as a result of an informant's tip to the Service. In the same vein, the Committee, by reference to a single tragic and unfortunate circumstantial incident (pp. 66-67), implies that the phrase "breaking an alien" refers to mental or physical abuse of an interrogated individual, when in fact the term is an in-house way of simply describing the interrogative art, used throughout law enforcement generally, of interviewing persons who may have committed crimes or other offenses against the United States. The Committee neglects to mention that an internal investigation by the Immigration and Naturalization Service and a separate investigation by the Federal Bureau of Investigation, as directed by the U.S. Attorney, absolved the inspectors of any wrongdoing in the incident.

In terms of the report's view of the Immigration and Naturalization Service's EEO program as it applies to the composition of the work force, we are of the opinion that the report does not reflect the aggressive initiative and positive strides taken by the Regional Office in past years. While static figures may be enlightening to some extent, evaluations of hiring practices need to consider the number of opportunities the agency has had to hire over a period of time and the degree to which minorities and women were hired during that period. During the period July 1976 to August 1978, for example, our total work force for the state of Texas increased by 271, or 8.5 percent, from 1529 to 1800. Of the 271 figure, 212, or 78.2 percent, of the increase were minority hires; ninety-one, or 33.6 percent, were females. To take a more aggressive affirmative action posture would become exclusionary to non-minority males. In regard to grade levels, it should be noted that for the same period, the number of total positions above GS-9 in Texas decreased by 42, or 8.9 percent, from 375 to 333. Yet, during the same period, the

number of minorities in grades GS-10 through 16 rose by 11, or 8 percent, from 45 to 56. The number of females in that grade range rose more than 100 percent for the same time frame, from 5 to 11.

Regarding the EEO Complaint Process, it should be noted that the program does not provide for the processing of formal complaints at the regional level but rather at Central Office. We find it significant, nevertheless, that figures show a drastic reduction of delinquent complaints between September 30, 1976 and September 30, 1978. On the first date, 45 of our 72 complaints (62.5 percent) were delinquent, being over 180 days old; two years later, only 5 delinquent complaints of 52 were on hand, a percentage of 9.6. In addition, the Southern Regional Office has expanded the number of EEO Counselors in the past three years from 3 to 26. At the same time, we have spent over \$25,000 in an attempt to resolve complaints at the lowest informal level. EEO training for managers and supervisors has been conducted on-site at every district and sector in the region in order to outline management responsibilities and create understanding of the Equal Employment Opportunity Program. The training presently consists of a four hour session for all employees on all aspects of personnel and EEO. It is our opinion that the entire training program has been successful in creating a better understanding between management and employees.

The recruitment efforts of the region have been extensive and innovative. The 30 regional and field coordinators for the Black Affairs Program, the Hispanic Employment Program, and the Federal Women's Program have received extensive training to initiate recruitment programs for those communities they represent. The measure of their success is best illustrated in the Border Patrol register, where recruitment efforts through the media, educational institutions, and community organizations, have resulted in an increase of applicants from 8,000 to 24,500 in 1978. The progress made by the Southern Region in the area of EEO has been considerable and, we believe, compares favorably with other employing organizations, federal and private. In this matter, and in those instances commented upon earlier in this communication, we feel that the Texas Advisory Committee has been remiss in their neglect of our accomplishments. This is not to say, as I have mentioned before, that we do not strive to improve services at the Immigration and Naturalization Service. However, we regard the tone of the Committee's report as accusatory without firm basis. While we respect the intentions of the Committee to safeguard the rights of minority citizens and non-citizens alike, we believe that less than an honest, unbiased approach to existing problems can be counterproductive to doctrines of fairness.

Sincerely,

William E. Zimmer
Acting Regional Commissioner

[Facsimile]

United States Department of Justice
Immigration and Naturalization Service
Federal Building
727 E. Durango Blvd., Suite A301
San Antonio, Texas 78206

July 6, 1979

Mr. J. Richard Avena
Regional Director
U.S. Commission on Civil Rights
Southwestern Regional Office
Heritage Plaza
418 So. Main
San Antonio, Tx. 78204

Dear Mr. Avena:

I have been on annual leave and unable to promptly make the requested comments on the draft copy of the report of the Texas Advisory Committee to the United States Commission on Civil Rights, based on the hearings held in San Antonio last year. Comments I will make, and they will not be the usually benign remarks you may have been exposed to from other fellow bureaucrats. My remarks will not be couched in dulcet phrases and diplomatic verbiage. I will be direct and in the end, you will entertain no doubts as to my personal feelings or where I stand.

I have read the report and my initial impulse was that I should not be dignified with my observations. However, the realization that it may be widely distributed (perhaps even among law makers) impels me to make the following commentary primarily to protest a wrong being thereby perpetrated upon the United States Immigration and Naturalization Service and the many good people who are daily performing good deeds under difficult conditions. I agonize because of what I have to say. It pains me because I have quite a few dear friends in the Texas Advisory Committee, and one whose friendship I have treasured for over forty years. With others, I have mutually endured the struggle for civil rights particularly on behalf of American citizens of Mexican or Hispanic extraction since the late 40's and early 50's. I know of their devotion and personal sacrifices. I know it was not fashionable and outright dangerous to be a crusader for civil rights back then, and I know they acted out of conviction, at personal sacrifice and cost. I bear no rancor towards my friends in the Advisory Committee if it is any consolation to them for what I have to say. I still hold them in esteem. They blundered.

The report is unalterably and irreparably biased, as I shall point out. The "hearing" itself was the most serious violation of civil rights I have ever seen. It is serious because it was conducted under the mantle of officiality and under the perverted color of civil rights. A kick on my posterior because I am a Catholic by a Catholic hating police officer would be mild by comparison. You see, the "hearing" was a farce because it was so one-sided and carefully orchestrated to develop the evil and grossly ignore the good. There was no serious attempt to be fair or objective. There was no serious attempt at impartiality. Such is evident from the questions asked and the persons asked to testify and in the omission of developing facts sufficiently, and thusly leaving an aura of abuses and irregularity. As a fact finding

mechanism, the "hearing" conducted by all those inquisitors was an absolute failure. A report based in whole or in part on *that* "hearing" is therefore unworthy. Even before the hearing commenced, the Sunday edition of a local newspaper attributed certain remarks and conclusions to people associated with the hearing before a solitary witness ever testified concerning those matters. Someone had already passed judgment on some of the very things mentioned in the draft of the report and on evidentiary matters yet to be developed. Such preconceived judgment bears heavily on the credibility of the report, but that is the committee's problem.

I sat and suffered through portions of the so-called "hearing". That "hearing" was at the very most a puerile attempt at grandiosity by some of the participating inquisitors. Mr. Salterelli was told or accused by his inquisitor that INS officers sometime confiscate and tear documents presented by aliens. A big issue was made of such confiscations but the circumstances and purposes was never developed nor touched upon by the obviously biased interrogator. I volunteered to clarify that in law enforcement such is a legitimate function for evidentiary purposes. Time was a constraint then, and I was compelled to touch upon other areas. A fair interrogator interested in the truth should have developed that issue rather than being content only to smear. That is McCarthyism at its finest hour!

Would the Advisory Committee have the Service return fraudulent documents or documents believed to be used by imposters when the U.S. Congress in 8 U.S.C. 1225 mandates immigration inspectors to detain aliens not believed to be clearly admissible for further hearing by an Immigration Judge? Or would it prefer that the papers be returned and the alien be detained in custody while he awaits his hearing? By the logic of the report, narcotic officers have no more right to confiscate heroin for evidentiary purposes than the INS has to keep entry documents, fraudulent or used in violation of law for evidentiary reasons. I submit that only anti-law enforcement minds would agree that a law enforcement agency has no right to retain evidence in the absence of an illegal search and seizure or other illegality. With such biased attitude the facts developed by the inquisitor are tainted and unworthy of belief. By the way, the term "snitch" on page 16 of the report clearly demonstrates that informants are detested and is again indicative of anti-law enforcement attitudes. What is so sinister about the use of informants in the absence of entrapment or other illegality? The highest tribunal in our land has sustained convictions based on informant participation. And since when has the Constitution of the United States designed the committee to pass upon that which has been sanctioned by the Congress and Supreme Court?

Judging by its performance and assuming I had to answer for criminal conduct and those people were on the jury panel, I would strike every one of them from my jury list except the former district attorney from Starr County; I would want a fair trial. Do not the people realize the courts universally protect informers by not requiring law enforcement officers to reveal their identity and that the use of informers is an accepted practice with statutory authorization? What is so repugnant about INS giving parole status to an alien and to infer that it is evil? Should they not address that issue to the Congress of the United States who gave the authority to the INS in 8 USC 1182(d)(5) rather than blindly making law abiding Service employees the whipping boys for carrying out the will of Congress? With all due respect to my friends in the Advisory Committee, they do not know what they are talking about. Again, the anti-law enforcement obsession is shamefully evident.

What is so secret and reprehensible about the use of an intelligence gathering operation to combat crime, such as EPIC? As a trial attorney, in open court and on the record, there were times when I moved for continuance of case to conduct EPIC searches in the presence of different private practitioner and thereby made such a practice subject to judicial review by the courts of law. Is that secrecy? Again those who despise law enforcement activities would deny the law abiding citizenry of this country the use of intelligence in our country's struggle against crime and criminals such as narcotic and alien smugglers. Does it not occur to any of those intelligent human beings that narcotic addiction is one of the cruelist legacies we can bequeath upon our youth? They should visit a county jail and watch for ten minutes any addict "trying to shake the monkey cold turkey" before they condemn society's need for informants. I assure them if they have human emotions and compassion, they will never forget the misery that they will witness. Have they not heard that alien smugglers have abandoned aliens to suffocate to their last breath of life in closed vans under the hot Texas sun? I do not expect from them any praise upon our anti-smuggling operations, but I do abhor their condemnation of our practices which are sanctioned by law. I respect their right to be anti-law enforcement and their desire to kick "la migra" as you would a rabid dog, but I cannot acquiesce in their abdication of a serious public duty to be fair and accurate.

I did not appreciate when my inquisitor made a big deal of the fact that while I was a trial attorney I interpreted for one of the Immigration Judges. He was grandstanding. The sneer and the implication was there for all to see and hear that something evil was being elicited. He made no effort to show whether or not I act impartially. Many lawyers and former adversaries were present and none was asked whether or not I was fair and impartial in my interpretations. But the assault on my dignity was made by a character assassin who relished his sordid deed. Many other Service officers were similarly questioned. Read the transcript. You had a court reporter and I am not asking anyone to believe me. Service witnesses were questioned only to show the Service in a bad light. Such a hearing cannot possibly adduce factual and objective information.

The problem of educating children illegally in the United States by the various school districts of the State of Texas is usually considered an immigration matter. We have no pedagogic functions or duties. The matter should be properly addressed to the Texas Legislature and to the electorate of that sovereign state. I resent that private and legal aid attorneys were abundantly present as witnesses, as well as other critics of the Service and not our trial attorneys—the fight fixed. There was gloating as the inquisitors declared open season on Service officers. They were gawking like Londoners of old watching some poor woman being dunked into the Thames for practising witchcraft. And the inquisitors? They were grandstanding and I do hope they all got their jollies out of it. I personally detested it all when I saw what was going on. As a group, the inquisitors are unfit to be fair and impartial. I could go on *ad infinitum*. I see now that we should have had counsel, not as adversary to the committee but to develop the truth and explain that which on the surface has a semblance of evil. I see only too late that the term "Commission on Civil Rights" can be misleading, but I guess the committee has to justify its existence. Just be sure and produce a corpse.

What people can do by the manipulation of statistical data never ceases amaze me. The way the few isolated embarrassing cases were milked over and over to create the illusion of an abundance of excesses and abuses is a ploy which I consider disgusting and disturbing. I would not tolerate a practice to produce a cadaver at

all costs by whatever means because such is loathsome and repulsive to my personal sense of moral values and public duty. It is its prerogative to treat ever so lightly the progress our agency has made. The time, effort and cost of promoting our EEO program, your panel has every right to ignore; but if civil rights performance is to be judged by how an agency treats minorities in employment as the report says, why not look at EEO programs in their totality? Don't we, civil rights nuts condemn selective prosecutions? They only looked at the bad! Or are they so omnipotent that they can indulge in that which they condemn when done by others? They scarcely looked at our present Commissioner's efforts in all operations to improve things, but I think his efforts in all directions are highly praiseworthy. His efforts to speed up adjudications and to promote outreach programs and to see work thereby generated unfold before your eyes invites praise. To see the improvement and increased production with virtually no increase in budgeting and staffing is an important factor also. Don't they think the ratio of the staggering number of people with whom we deal as compared to the number of incidents we have is a germane factor by which to gauge our performance? I think it is. And how do we compare, say, to the Texas Rangers of today (it would not make us look bad if you compared us to those of the turn of the century), or the Texas Department of Public Safety or to the San Antonio Police Department? Have they ever seen the irrationality of angry people at crowded ports of entry and the way our people's endurance is pushed? I think the circumstances under which our people work is a very significant factor in judging them because they are human and have human emotions and human limitations. They are human and their observations to the contrary notwithstanding, thank God, they are also (with rare exceptions) humane. Sure the Commissioner and the Service has also improved law enforcement even with greater obstacles and budgetary cuts. I guess that just makes him a Chicano turned sour in the eyes of INS critics and open border advocates.

What about me? Call me a *tio Tomas* if you wish. My country and family comes first and my proud heritage has to take a back seat. To say everything or more for the Chicanos because of my ethnological linkage is discriminatory and unfair to others. Sure we were under represented almost to the point of being totally excluded, but things are looking better and attitudes are changing. Skepticism and suspicion will continue to be fed if you expect those of us in the Service to ignore our duty ever so slightly or to the point of having an open border. I am not a patriot and fully realize that much too often scoundrels take refuge in patriotism, but I am loyal to my country and respect its laws and institutions. I will not prostitute my public duty. I think we are doing a good job with the legal tools the Congress has given us. Should not most of the Committee's criticisms be addressed to change in the law?

Richard, my dear friend, excuse my verbosity. I felt that a virulent poison requires a strong antidote, but I have no ill feelings toward you nor your staff. I recognize that you are trying to do a good job out of a difficult task. You, your staff, and the advisory committee are invited to come unannounced during working hours any day to our District operations. Some of the inquisitors will be sadly disappointed—we have no torture chambers. We never had them. But I will show you the johns in our alien processing center. I'm so proud of them! There they sit in shimmering shining stainless steel and receptive of all aliens—Mexican, Greek, Iranian or whatever, and totally indiscriminating. Ironically, the very opposite of the Statue of Liberty but not bragging. Would you believe some of my Chicano critics applauded our recently publicized activities regarding Iranians and that a person

from the clergy lamented the fact that so many Jews and people from Indo-China are permitted to enter? The double standard shows its dirty face from the strangest places! The fact that the committee did not afford us an opportunity to explain our deeds or our side only violated precedent that goes back to the most primitive trial in recorded history. "What hast thou done?" called for an explanation. (See Gen. 4:10) We were not called upon to explain. I have great hopes for the Advisory Committee to the Commission on Civil Rights. From now so they can only move forward and be truly progressive.

Maybe they will abandon the double standard. Maybe they will be interested to smear but will give an opportunity to show justification, extenuating circumstances—murderers, assassins, arsonist, rapist, specially white collar criminals—all have that right. Why not the same right to servile civil servants—because we are political eunuchs? *Et tu Brutus!* Richard Casillas

[Facsimile]

Texas Education Agency
201 East Eleventh Street
Austin, Texas 78701

August 6, 1979

Mr. J. Richard Avena, Regional Director
United States Commission on Civil Rights
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

Your letter of July 20, 1979 requested that I review the draft of Chapter 3, Education: A Creature of Statute, of the report, *Sin Papeles: The Undocumented in Texas* and advise you regarding the accuracy and interpretation of the material. Several sections of the report reflect information of questionable accuracy and these are identified below.

On page 83, paragraph 2, sentence 5, the summary of Dr. Anderson's remarks at the Commission hearing is an inaccurate representation. The subject of the testimony concerned the eligibility for admission of the child who may be a citizen or legally admitted alien whose parents are not legally admitted aliens. Dr. Anderson's testimony affirmed that the state law addressed the status of the child and not the status of the parent. Therefore the accurate statement was that a child who met age requirements and was a U.S. citizen or legally admitted alien who resided in a school district with his parent or guardian, regardless of whether the parent or guardian was an undocumented alien, was eligible to attend the free public schools.

In the same paragraph, sentence 6, Dr. Anderson's testimony was to the effect that, on the particular matter, the status of the parent or guardian had not been specifically addressed in a written or other communication to all school districts. The Agency has conducted workshop sessions regarding the admission of alien children for school personnel, such as the annual state school administrators conferences held in January of 1977 and 1978.

On page 93, paragraph 3, sentence 3 states that there is no uniformity on what is required to establish residency in the various school districts in the state. Section 21.031, *Texas Education Code*, as written prescribes the basic conditions of residency required for attendance in the free public schools. The language of the law establishes a standard of uniformity to which all districts must comply. Although certain implementation practices may vary somewhat among districts, the basic standard for residency is set out by law and is followed by all school districts. Therefore, I question the accuracy of the statement that there is no uniformity on what is required to establish residency.

On page 94, paragraph 1, sentence 4, the Texas Education Agency is not a defendant in *Doe v. Plyler*. The State of Texas, of which the Texas Education Agency is an agent, was an intervenor. Also on page 94, paragraph 1, sentence 5, it should be noted that the planned use of the survey was to provide additional data to the United States Senate for its deliberations regarding the legislation introduced by Senator Bentsen referenced in the next paragraph. For sentence 6, it should be

noted that the Texas Education Agency conducted statewide surveys regarding the matter in January of 1976 and 1977. The Agency conducted an in-depth study of the impact of immigrants from Mexico on a typical school district in the 1976-77 school year and assisted the Region I Education Service Center to conduct a study of the 61 school districts in the 13 counties that border Mexico in the 1975-76 school year. In the context of these data, no further studies are planned at this time. Thank you for the opportunity to review the report. I have only responded to those areas where the information is an inaccurate representation of the facts. These comments are provided for the purpose of ensuring that the report represents the situation as it exists.

Very truly yours,

M. L. Brockett
Commissioner of Education

*U.S. GOVERNMENT PRINTING OFFICE: 1980-0-629-649/2976

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