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CALIFORNIA ADVISORY COMMITTEE TO
THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Open Meeting on:
The Immigration and Naturalization
Service's policies and practices
in the State of California, and
the civil rights effects of the
Carter administration's proposed
immigration legislation.

VOLUME II

The Roman Room
Biltmore Hotel
Los Angeles, California
Friday, June 16, 1978

The Advisory Committee met, pursuant to notice, at 9:04
a.m., Southern Vice-Chair Nadine I. Hata, Chairperson presiding.

Members present: Jane Fonda, Blanche Gomez, Karen Hilborn,
Delbert Spurlock, Michael Stern.

Also present: Richard Baca, General Counsel; Laurie
Campbell; N. Dimas; Deborah Miron; Phillip Montez; Sally James;
Staff, United States Commission on Civil Rights.

Bowers Reporting Company

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P R O C E E D I N G S

(9:04 a.m.)

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3 CHAIRPERSON NADINE I. HATA: On the record. I would
4 like to call the meeting to order, since we have a hot and
5 heavy schedule today, or at least heavy, and we have a few
6 unscheduled witnesses to begin our testimony this morning,
7 unscheduled in the sense that they were scheduled yesterday,
8 but we have shifted them to today. I would like to turn it
9 over, then, to Debbie Miron to start the questioning. Debbie?

10 MS. MIRON: Would Mr. St. Denis and Mr. Lotts please
11 come up to the witness table? I would like each of you to
12 please identify yourselves.

13 MR. ST. DENIS: I am Frank St. Denis, Director of
14 Personnel Services for the Hospital Council of Southern
15 California.

16 MR. LOTTS: I am Richard L. Lotts. I am a private
17 attorney representing management in the area of labor rela-
18 tions.

19 MS. MIRON: Thank you. Mr. Lotts, could you please
20 move the microphone closer to you?

21 MR. LOTTS: Sure.

22 MS. MIRON: Do you have any other position aside from
23 being a private attorney?

24 MR. LOTTS: Well, relevant to this discussion today,
25 I am also on the Los Angeles Area Chamber of Commerce Task

1 Force Committee to put together a voluntary verification pro-
2 gram for screening illegal aliens.

3 MS. MIRON: And what prompted you to create such a
4 program?

5 MR. LOTTS: I guess it was 1975 when one of the
6 Rodino Bills was pending before Congress, the L.A. Chamber of
7 Commerce put together a position statement on the legislation.
8 A couple of years later we reviewed that legislation and we
9 figured that chances of it were not very good. We knew that
10 there were employers who wanted to screen applicants for
11 employment, even in the absence of a law, so we thought we could
12 the employers' community if we put together some kind of a
13 program that would help them. So we put it together.

14 MS. MIRON: Why did you think it was necessary to
15 put together a program?

16 MR. LOTTS: Because the entire area of screening of
17 employees is a very sensitive area, and it was our experience,
18 and it is my experience in private practice, that employers
19 are very sensitive about the screening process, and unless
20 they have some kind of guidelines to follow, they will not
21 screen employees, because of the pitfalls.

22 MS. MIRON: What are those pitfalls?

23 MR. LOTTS: Well, the Title VII, and here in Califor-
24 nia, FEPC, and employment and discrimination laws in general.

25 MS. MIRON: How might those laws create a problem for

1 employers, during the process of screening?

2 MR. LOTT: Well if you are asking employees, obvious-
3 ly you are trying to screen out non-legal people in the
4 country. That is obviously going to be people from outside the
5 country, so obviously there is going to be national origin
6 potential discrimination and other types of discrimination,
7 non-citizen type of discrimination.

8 MS. MIRON: Can you please explain what the voluntary
9 verification program entails?

10 MR. LOTT: Well, it is basically a four-step program
11 and it is very simple. It involves the concept of notice, that
12 is giving to applicants for employment notice that you as an
13 employer will hire only those that have a legal right to work
14 and remain in the United States, and that is the first concept.

15 The second one is asking the applicant for a repre-
16 sentation with respect to his status. You ask him to make an
17 affirmative representation to you as the employer that he does
18 have a right to work in the United States, and the third part
19 of the program would be asking the applicant for proof, confir-
20 mation, of the representation he has made, so after the employ-
21 ment, you ask him for proof of his status.

22 CHAIRPERSON HATA: Mr. Lotts, is this verbal represen-
23 tation or some sort of written representation?

24 MR. LOTT: No, it would be on -- it would be through
25 questions on the application, and the final step would be

1 verifying the proof of status that the applicant or employee
2 has shown to you.

3 MS. MIRON: How is the proof status verified?

4 MR. LOTT: How is it verified? Well, that is the
5 hardest part of the program. We had, at the L.A. Chamber of
6 Commerce, the cooperation of the Immigration and Naturalization
7 Service, and we would recommend that the verification of
8 employment documents, or naturalization documents or citizen-
9 ship documents, be handled by the INS, because the average
10 employer cannot do it.

11 MS. MIRON: Why can't the average employer do it?

12 MR. LOTT: Because the forgeries that are prevalent
13 in the marketplace are too sophisticated for the average
14 employer to ferret out.

15 MS. MIRON: How did you obtain the cooperation of
16 the Immigration and Naturalization Service in this?

17 MR. LOTT: Well, we had knowledge that the National
18 Can Company had established a voluntary program. We talked to
19 them. At the Chamber of Commerce, we have regular contact with
20 Mr. Sureck from INS, and we talked to him, and he said they
21 would cooperate.

22 CHAIRPERSON HATA: Is that weekly contact, monthly
23 contact, when you say regular contact?

24 MR. LOTTS: Oh, we don't have any kind of formal
25 regular meetings, but whenever there is a problem, we have

1 contacted them, they have contacted us.

2 MS. MIRON: How was the business community informed
3 about the program?

4 MR. LOTT: We sent out a mailer to all of the members
5 of the Chamber of Commerce. We published it in the Chamber of
6 Commerce Newspaper of Southern California Business. We also
7 sent notice, written notice, that we were having the seminar
8 to some of the other associations in the Los Angeles area.

9 MS.MIRON: Did you make any attempts to advise your
10 members on how they might avoid the pitfalls you mentioned on
11 the equal employment laws?

12 MR. LOTT: Yes. As part of the material we passed
13 out, we handed out a form, some sample questions that could be
14 used on an employment application. We had present at the
15 symposia that we put on a representative from the FEPC and a
16 representative from the EEOC to answer questions and make clear
17 what their position would be on the screening.

18 MS. MIRON: Thank you. Mr. St. Denis, are you aware
19 of the pitfalls that Mr. Lott has mentioned?

20 MR. ST. DENIS: Very definitely. I would concur with
21 the problems that he cited, particularly on the part of the
22 small employer, who really doesn't have the resources to check
23 out thoroughly the legal status of a person without really
24 treading into the discriminatory questioning.

25 MR. MONTEZ: Excuse me a minute. Mr. Smith is here

1 again from INS, and I think the Chair has accepted that we have
2 him up here in case the panel wants to follow up on any ques-
3 tions relates to what -- Mr. Smith?

4 MS. MIRON: Mr. St. Denis, can you please tell us
5 how you are aware of those problems?

6 MR. ST. DENIS: Well, to begin with, before the sub-
7 ject of the undocumented worker really came to the forefront,
8 we had gone to great lengths with -- I might add that the
9 association I represent represents 240 general acute psychia-
10 tric hospitals in southern California that employ about 175,000
11 hospital workers.

12 We have gone to great length to develop as a resource
13 for all of our hospitals an EEO manual that among other things
14 very carefully spells out the types of questioning that are
15 not appropriate under the Civil Rights Act or the various
16 discriminatory laws.

17 We also drafted for them model applications that
18 eliminated the types of questioning that might divulge national
19 origin, birthplace, et cetera.

20 MS. MIRON: You developed these guidelines even
21 without regard to the alien issue.

22 MR. ST. DENIS: Yes, at that point in time, that did
23 not appear to be the issue that it is currently.

24 MS. MIRON: I see. But what made you think that the
25 employers needed such guidelines?

1 MR. ST. DENIS: Well, this was an area where there
2 are a lot employers who needed guidance, who needed to know the
3 interpretation of the law so that they didn't unknowingly vio-
4 late any of those lines of questioning.

5 MS. MIRON: Did employers express concern to you
6 about fearing violating those laws?

7 MR. ST. DENIS: I think there was a general consensus
8 that they needed assistance, and expected it from us.

9 MS. MIRON: Did you make any attempts to advise your
10 employers on compliance with the Dixon Arnett Bill, the State
11 sanction law prohibiting employment of undocumented aliens?

12 MR. ST. DENIS: Well, yes. They are very definitely
13 aware of that now. There has been, I think numerous memorandums
14 from our association and the American Hospital Association in
15 regards to the situation of the undocumented worker. I think
16 the problem is, the hospitals in general, particularly the
17 smaller hospitals, simply don't have the resources to check out
18 or to verify whether or not a person is in this country legally
19 for many of the reasons this gentleman has just cited.

20 MS. MIRON: Are you aware of whether employers are
21 screening applicants for undocumented aliens?

22 MR. ST. DENIS: I think they are screening them just
23 about the way he just mentioned. There is a question on the
24 application or in the oral interview, that says, do you have a
25 legal right to work in this country? But beyond that, there is

1 not much more you can ask until after an offer of employment
2 has been made, and then even that poses problems, not only due
3 to the forgeries, but if you ask for a baptismal certificate
4 or if you ask for a birth record, then you get into the area
5 of age and/or religion questions, so it is a difficult area,
6 and we are so close to the border with Mexico that there are
7 lots of American Spanish surname citizens of Mexican ancestry
8 who are -- that would be definitely a discriminatory line of
9 questioning were we to pursue that.

10 MS. MIRON: Did the injunction against the enforce-
11 ment of the Dixon Arnett Bill change the employers' decision
12 whether to screen applicants?

13 MR. ST. DENIS: No. In fact we advised them to
14 continue as though it were still in effect.

15 MS. MIRON: You advised them to continue.

16 MR. ST. DENIS: Yes.

17 MS. MIRON: Why is that?

18 MR. ST. DENIS: Well, because I suspect, and I think
19 our legal counsel concurred, that that was probably going to be
20 rectified.

21 MS. MIRON: Mr. St. Denis, how effective are employ-
22 ers' efforts to screen undocumented aliens, to screen workers,
23 applicants, or undocumented aliens?

24 MR. ST. DENIS: I think that it is very difficult to
25 answer. I am not aware of any large numbers of undocumented

1 workers who have been discovered via the employers checking
2 their background or line of questioning. As a matter of fact,
3 in preparation for this today, I did consult with the Board of
4 the Personnel Association here in southern California as to
5 whether or not they were experiencing any particular problems
6 of large numbers of undocumented workers in their particular
7 organizations, and almost, you know, formally, the answer was
8 not to their knowledge.

9 They asked the question, are you legally able to work
10 in the United States. The answer is yes, and generally that
11 has to suffice, and they don't pursue that much beyond that.

12 MS. MIRON: Mr. Smith, has the Immigration and
13 Naturalization Service made any preparation for enforcing the
14 federal employment sanctions law?

15 MR. SMITH: You mean in the event of its passage,
16 enactment?

17 MS. MIRON: Yes.

18 MR. SMITH: Not right now. I would presume that we
19 will continue somewhat our now methods of enforcement. Of
20 course, we are working with large numbers of employers and
21 manufacturers in the Los Angeles area, in a cooperative effort
22 in attempting to verify the status of people in the country
23 who are in their employ, and in many cases it works very
24 successfully. Many employers prefer not to hire a person who
25 does not have the legal right to live in and work in the

1 United States.

2 MS. MIRON: Mr. Lotts, do you expect that employers
3 will in any large numbers attempt to use voluntary programs?

4 MR. LOTTS: I think employers who become aware that
5 there are voluntary programs available will in large numbers.

6 MS. MIRON: Are there any ways in which you think that
7 employers might modify your program?

8 MR. LOTTS: Yes. I think many employers won't adopt
9 the whole program. Many employers may simply stop at the first
10 step and make some kind of a notification to applicants that we
11 intend to hire or follow the policy of hiring only those who
12 have a legal right to work here, and that is as far as it will
13 go.

14 MS. MIRON: Why would that be?

15 MR. LOTTS: I think because they are very wary about
16 trying to enforce any kind of screening process beyond that.

17 MS. MIRON: Why would they be wary of that?

18 MR. LOTTS: Because of the potential for violating
19 other laws that we talked about here already.

20 MS. MIRON: Those laws would be the --

21 MR. LOTTS: Anti-discrimination laws, state and feder-
22 al.

23 MS. MIRON: Thank you. Mr. Smith, how has the
24 Immigration and Naturalization Service conveyed to employers
25 their willingness to help them in these efforts?

1 MR. SMITH: The way that we in which we now operate,
2 it is basically when we receive reports of aliens in the country
3 illegally who are being employed. After we receive such a
4 complaint or report, we talk to the manufacturer, explain to
5 him that we have received a complaint. We solicit his cooper-
6 ation to allow us to go in and survey his employees.

7 By and large we do get the cooperation of the employ-
8 er. Oftentimes the employer is not aware that he might have
9 the number of employees working for him who do not have the
10 right to be in the United States. This is caused primarily
11 by the fact that it is relatively easy and relatively inexpen-
12 sive to obtain counterfeit immigration documents. Oftentimes
13 after we have surveyed the employee group, we will end up by
14 arresting maybe 30 to 50 percent of his employees.

15 This creates a problem for the manufacturer, because
16 they are usually operating under contracts. They have dead-
17 lines, and all of a sudden we have literally curtailed his
18 production by maybe 40, 50, or 60 percent. After we have
19 apprehended these aliens, then we notify the employer by letter
20 of the names that were furnished to us, of those --

21 CHAIRPERSON HATA: Mr. Smith, excuse me. Do you
22 notify all employers after such a survey?

23 MR. SMITH: That is correct. We notify all employ-
24 ers after we have left the premises, and within a week to
25 ten days, furnishing the names of all those that we apprehended.

1 and at the same time we offered our cooperation, Mr. Sureck
2 has just handed me the letter that we use, in the event that
3 you wish to view it, we solicit his cooperation in not employ-
4 ing the undocumented worker, and we also offer our assistance
5 in any type of screening.

6 CHAIRPERSON HATA: Do you act in this fashion only
7 after you have received a complaint? This whole process that
8 you are describing begins only after you have received a com-
9 plaint, or do you initiate it for some other reason?

10 MR. SMITH: No. At the present time, we have in the
11 neighborhood of seven to eight thousand complaints relating to
12 in excess of 100,000 aliens who are ostensibly in the country
13 illegally in this area, so we have so many complaints that we
14 just don't go down the street arbitrarily contacting one em-
15 ployer or another, and when we go in the place, we tell the
16 employer that we have received a complaint.

17 The majority of these complaints, naturally, are
18 anonymous, because oftentimes they come from a person who has
19 been terminated, a disgruntled employee, but we do advise the
20 employer what we have.

21 MS. MIRON: Mr. Smith, why do you send these letters
22 to the employers?

23 MR. SMITH: First of all, to advise them of the aliens
24 that we took into our custody, and then also to try to create
25 a spirit of some type of cooperative effort, and to offer our

1 assistance in the event that the employer does not want to
2 hire aliens who are not in the United States legally.

3 MS. MIRON: Are those the only reasons?

4 MR. SMITH: Yes. It is just in essence a cooperative
5 effort. We are willing to extend ourselves to any degree
6 possible, if he wishes to avail himself of our help to try to
7 eliminate the problem if he feels there is a problem.

8 MS. MIRON: Thank you.

9 MR. SMITH: I might add one thing, that we can tend
10 to be somewhat disruptive, and oftentimes the employer doesn't
11 realize that he has quite the number of undocumented workers
12 in his employ, and this is a method by which he can avoid our
13 return at a future date.

14 MS. MIRON: Thank you. Mr. Lotts, does the Chamber
15 of Commerce have any future plans on the program?

16 MR. LOTTS: We plan to send a follow-up survey to the
17 employers that we know who attended the program to see if any
18 of them have actually adopted any part of the verification
19 program and put it into effect, and I think if they have, what
20 their experience with it has been.

21 MS. MIRON: As part of that program, will you study
22 the potential discriminatory impact of that screening?

23 MR. LOTTS: No. No.

24 MS. MIRON: Why is that?

25 MR. LOTTS: Because I wouldn't think it would be

1 appropriate for us to be asking questions about applicant flow
2 or other types of questions in a sensitive area, and I doubt if
3 we would get much cooperation from employers answering those
4 types of questions.

5 MS. MIRON: Do you think that those kind of questions
6 would have a deterrent effect on the employer's willingness to
7 participate in the program?

8 MR. LOTTS: I don't know about that, but I know it
9 would have a deterrent effect on them responding to any kind of a
10 survey we send out.

11 MS. MIRON: Mr. St. Denis, do you offer training to
12 the people who actually do the hiring?

13 MR. ST. DENIS: Oh, yes. We are -- part of the
14 activity of our association is in the education and training
15 area, and primarily for first line supervisors. In a hospital,
16 for example, many people are promoted into a first line super-
17 visory position, but they don't have that kind of background or
18 training. They are nurses. They are technicians, et cetera,
19 and it is our role to coach them, if you will, in supervisory
20 techniques which include how to interview applicants.

21 MS. MIRON: Thank you. I think at this time I should
22 turn the questioning over to the Advisory Committee members.

23 CHAIRPERSON HATA: One second. I would like to pur-
24 sue that supervisory training. What kinds of individuals par-
25 ticipate in the training process? Do you have any bilingual

1 persons?

2 MR. ST. DENIS: Oh, yes. Very definitely.

3 CHAIRPERSON HATA: What percentage, and what kind of
4 figures are we talking about?

5 MR. ST. DENIS: I don't have a percentage. The
6 individual hospitals each have this for their own work force,
7 but I don't have it in a total aggregate figure of any kind.

8 CHAIRPERSON HATA: Perhaps our staff would pursue
9 that with you at a later time. Ms. Gomez?

10 MS. GOMEZ: Yes. Madame Chairman, I have a question
11 for Mr. Smith. These calls that you get, the anonymous calls
12 for surveys, about what percentage do you suspect are from
13 employers?

14 MR. SMITH: We get very few calls from employers
15 themselves.

16 MS. GOMEZ: Well, since you say they are anonymous,
17 how can you tell?

18 MR. SMITH: Well, I am making a presumption here.
19 Normally an employer would not call us up and report on him-
20 self. Occasionally we will get a call from someone's competi-
21 tor, but rarely. They just don't feel like reporting somebody
22 else.

23 Most of the calls we get, you can tell by the tone
24 of the call, it is from an individual that is disgruntled,
25 and he alleges that he either can't get a job or is not being

1 paid well, or something because he is being displaced.

2 MS. GOMEZ: Right. What about the time? Have you
3 made any study or can you tell about what time of the month you
4 get most of your calls? Would you say they are around the 1st
5 and 15th or on the time of payday, before or after payday or
6 something like that? Is there any --

7 MR. SMITH: No, they come in just -- there is a reg-
8 ular flow. We might have a little bit heavier volume on a
9 Monday because we have been closed Saturday and Sunday.

10 MS. GOMEZ: Thank you.

11 CHAIRPERSON HATA: Mr. Lotts, I have got two questions
12 for you. When you spoke of INS cooperation with the Chamber
13 to verify a documentation, would you describe briefly for the
14 record what kind of cooperation you are getting from the INS?

15 MR. LOTTS: Well, the cooperation I referred to was
16 cooperation with them, making themselves available to the
17 Chamber to participate in our program.

18 CHAIRPERSON HATA: What does that entail? Have they
19 ever participated in your program, and what does that partici-
20 pation mean?

21 MR. LOTTS: Well, the program I am referring to is
22 the symposium we put on, and we had Mr. Sureck as a speaker at
23 that symposium.

24 CHAIRPERSON HATA: And that is the only example of
25 INS cooperation --

1 MR. LOTTS: No, they attended some of our task force
2 meetings and gave us some input into the study as we were doing
3 it.

4 CHAIRPERSON HATA: But you have not called in the
5 INS, for example, to come out and help you verify documents.
6 You talked about how difficult --

7 MR. LOTTS: No.

8 CHAIRPERSON HATA: -- it was to verify documentation
9 and that -- my notes indicated that you indicated INS coopera-
10 tion to verify documentation, and I wanted to know what the
11 nature of that verification and that cooperation was.

12 MR. LOTTS: The Chamber has not done that. Individual
13 employers have contacted, I believe, have contacted the INS
14 and have elicited cooperation from them in verifying employees.
15 The Chamber hasn't called the INS to go out to anybody's
16 plant that I know of.

17 CHAIRPERSON HATA: So your call on the INS for coop-
18 eration has been for INS input into the seminars and workshops,
19 but nothing further than that?

20 MR. LOTTS: Nothing further than that on the Chamber
21 level, that is true.

22 CHAIRPERSON HATA: Do you also have any information
23 about how the screening process is applied to applicants? Are
24 these questions given or asked of everyone who applies?

25 MR. LOTTS: It was our recommendation at the L.A.

1 Chamber of Commerce that whatever steps an employer took to
2 screen be done across the board with all employees who apply,
3 or all applicants who apply for work, so that a question, for
4 example, the questions that we suggest were questions that would
5 go on the employment application, which would be given to
6 everybody who applies across the board, and similarly, when
7 checking verification after employment, that verification be
8 asked of all employees, not just those who indicate, for exam-
9 ple, an alien status, but even employers check on verification
10 of citizenship also.

11 CHAIRPERSON HATA: Thank you. Gentlemen, thank you
12 very much. Mr. Dimas, I assume you are putting our next panel
13 together for us.

14 MR. DIMAS: Yes, I am, Madam Chairman, and I was
15 just conversing with our next panelists to make sure that they
16 are all ready, and at this time I would like to call Mr. Mark
17 Rosenbaum from the American Civil Liberties Union, Mr. Peter
18 Schey and Mr. Henry Fenton. Mr. Smith, would you care to
19 join us in this panel also?

20 Gentlemen, if I may ask you to please identify your-
21 selves for the panel?

22 MR. SCHEY: My name is Peter Schey. I am the
23 directing attorney of the Legal Services Aliens' Rights Program.
24 That is a program funded by the Federal Government for the
25 purposes of doing litigation in the area of aliens' rights.

1 MR. ROSENBAUM: I am Mark Rosebaum. I am one of
2 the staff counsel of the American Civil Liberties Union here
3 in Los Angeles.

4 MR. DIMAS: And we all know Mr. Smith.

5 MR. FENTON: My name is Henry Fenton. I am a lawyer
6 for various unions, including the International Ladies Garment
7 Workers Union, and I filed a lawsuit against the INS which I
8 think I will be asked some questions about.

9 MR. DIMAS: If I may explain to the Committee panel,
10 Mr. Peter Schey had been invited to participate before and was
11 not expected to attend, so the information passed out to the
12 Committee members did not him as a panelist. We are happy that
13 he could make it after all. Mr Fenton, I believe that you
14 are involved right now as you mentioned in certain litigation
15 over factory surveys by the INS?

16 MR. FENTON: Yes, that is correct.

17 MR. DIMAS: Could you briefly describe that for us,
18 please?

19 MR. FENTON: Surely. The action is a class action on
20 behalf of all latin workers in the Central District of Califor-
21 nia, and it is an action for declaratory relief and for injunc-
22 tive relief, which is designed essentially to stop these sur-
23 veys, and to essentially halt the practice of surveying
24 employees indiscriminately within this area, and surveying is
25 a euphemism for interrogating them.

1 MR. DIMAS: Mr. Schey, could you give us a descrip-
2 tion of what survey, or the euphemism or whatever term you
3 might use, a raid --

4 MR. SCHEY: Yes.

5 MR. DIMAS: -- is like?

6 MR. SCHEY: In general terms, this would involve the
7 Immigration and Naturalization Service special agents who are
8 in charge of investigations and interrogations entering into
9 workplaces throughout the United States, we believe pursuant to
10 a secret plan adopted by the national office of the Immigration
11 Service which refocusses the law enforcement emphasis of the
12 Immigration Service on workplaces.

13 This includes both the field, for agricultural workers,
14 and factories for urban workers. It seems as if there are two
15 or three ways in which the Immigration Service effects its
16 entry into the factories. One possible way is that they obtain
17 warrants under a federal rule of criminal procedure which really
18 pertains to the seizing of property, and really has nothing at
19 all to do with the seizing of persons, and in fact this is one
20 of the elements of the lawsuit that Mr. Fenton is the attorney
21 on.

22 Now, a second manner in which they would enter a
23 factory, and I would agree just in general terms, I would agree
24 with the position taken by Mr. Fenton in his -- in the lawsuit,
25 that it seems highly questionable whether the Immigration

1 Service has the authority to utilize a federal rule of criminal
2 procedure, which is a rule created by the Supreme Court, when
3 there is absolutely no -- Congress has not given them any
4 authority to go out and get these types of warrants, and espe-
5 cially when the types of warrants that they obtain are speci-
6 fically aimed at seizing property, and of course they are not
7 attempting to seize property. They are attempting to seize
8 human beings, and it is interesting that what they do is, there
9 are prepared forms for these warrants, and they all talk about
10 the property that you intend to seize, and what property did
11 you sieze, and they cross out the word "property" and they
12 type in the word "Mexican worker" in place of the word "property,"
13 on these warrants.

14 Nevertheless, that is one manner in which they effect
15 an entry into the factor. A second way in which they effect
16 entry is that some businesses have contracts with the Federal
17 Government. These contracts state that, for example, in the --
18 in some cases, an employer may have a loan from the Federal
19 Government for a large amount of money, and one of the aspects
20 of that kind of contract would state that the employer agrees
21 to only hire U.S. citizens and other persons lawfully within
22 the United States.

23 Then utilizing the terms of that contract as a
24 justification for their entry, the Immigration Service would
25 enter into the workplace, supposedly in order to enforce the

1 terms of the contract. I think one of the biggest problems
2 there is that nobody cares, the Immigration Service doesn't care,
3 the other federal agency that contracts with the employer
4 doesn't care, and the employer doesn't care that the workers
5 are never told about that condition of their employment.

6 They are never told that they are subject without
7 prior notice to being interrogated by a federal law enforcement
8 agency. That is something I think that this Commission may
9 want to think about or address themselves to.

10 A third manner in which they would enter the factory
11 would be without a warrant and without permission of the owner.
12 In this situation they would assert or believe, namely the
13 Immigration Service, that they have sufficient probable cause
14 or sufficient reason to believe there are undocumented aliens
15 working within the factory to allow them to enter the factory
16 without a warrant. That has never been seriously challenged
17 in the courts, and so its legality is still open to question.

18 And finally, and in my judgment the most frequent
19 manner utilized by the Immigration Service to enter the
20 factories, is with the permission and at the request of the
21 owner. I have been specializing in the area of immigration
22 law for approximately five years now, and I have consistently
23 worked through legal aid programs, and in that capacity I have
24 had the opportunity to see literally thousands upon thousands
25 of cases and to see how people are arrested, and it is my

1 judgment that in the vast majority of cases in which a person
2 is arrested at a workplace, it is directly related to a drive
3 on the part of workers to either improve their working condi-
4 tions, to force the employer to come into compliance with health
5 and safety rules, or to unionize, and consistently when we
6 examine raids on factories or in the fields, we find that the
7 raids occur, and it just has to be more than coincidence, at
8 times when there is such an effort being undertaken to either
9 improve wages or work conditions, and so it would seem to me
10 that while the Immigration Service sprouts out many platitudes
11 about the problems of illegal aliens working factories, that in
12 fact they are probably the principal tool in exacerbating the
13 exploitation of undocumented people working in factories, be-
14 cause whenever those persons try to surface, in terms of
15 utilizing other federal agencies to protect their rights,
16 consistently that is when INS steps in.

17 MR. DIMAS: If I may take time out for a little de-
18 tail, Mr. Rosenbaum, you are accompanied by one of your coll-
19 eagues, Mr. Rodriguez, would you identify yourself for the
20 Committee, please?

21 MR. RODRIGUEZ: My name is Antonio Rodriguez, and
22 I am here representing the L.A. Center for Law and Justice and
23 the Immigration and Labor Action Center of Los Angeles.

24 MR. DIMAS: Mr. Rodriguez, would you care to make
25 a brief statement?

1 MR. RODRIGUEZ: Yes. I think following on Mr. Schey's
2 comments, that we believe it is important to underscore that
3 the contract under the direction of the Department of Commerce,
4 which some employers hold, which allows INS to go in and which
5 in effect, by which in effect an employer stipulates he will
6 not employ anyone other than people legally in the United
7 States, is in effect an enforcement of the Rodino-Kennedy
8 employer sanction laws prior to its passage by Congress.

9 It is in effect giving authority to employers to hire
10 people but only after he acts as an enforcer of a nonexistent
11 law, and demands documentation, makes identify checks of em-
12 ployees. We believe that up to now, Congress has rejected
13 this law, yet INS through the Department of Commerce is in
14 effect enforcing this law.

15 We have seen additional practices in the State of
16 California which in effect leads us to the conclusion again,
17 that they are enforcing employer sanctions laws that do not
18 exist. For example, during the year of 1977, and part of the
19 year 1976, the Immigration and Naturalization Service engaged
20 in the practice of sending a letter to employers in which they
21 advised them falsely that the Dixon Arnett law, which is now
22 under an injunction in the State of California, even though
23 some of its features were declared constitutional, continues
24 under injunction, cannot be implemented.

25 The letter in effect stated the Dixon Arnett Bill or

1 law was in effect and employers who hired people without docu-
2 ments would be subject to civil fines and possibly to criminal
3 sanctions.

4 We have cases, especially cases in which union-
5 management disputes were going on, where this letter was used
6 in order to intimidate workers. We have a case of the factory,
7 Superior Fireplace in Anaheim, where the employer received this
8 letter and used it as a reason to discharge workers. We have
9 additionally another example of the kind of violation that Mr.
10 Schey was talking about when employees in effect go to other
11 federal or state agencies for relief for claims, and INS in
12 effect comes in and breaks, and arrests those people even
13 during hearings.

14 We have the case of the workers from Ortho Mattress,
15 Ortho Mattress --

16 MR. DIMAS: Would you delete the names of the indi-
17 viduals involved? We are just interested in the particular
18 facts right now.

19 MR. RODRIGUEZ: Fine. While those workers were
20 processing unemployment insurance claims and appeals, INS
21 agents came in and arrested them on the spot, and the workers
22 had to undergo the rest of the hearings under arrest by INS.
23 There had to be pressure placed upon INS even to permit those
24 workers to eat, and those kinds of violations in effect, we
25 believe, the kind of actions on the part of INS, which are

1 designed in effect to make workers more exploitable, to make
2 them submerge, even more than they are, and not exercise their
3 rights under the law to organize and to demand relief whenever
4 they feel that their rights are being violated by actions of
5 employers.

6 That would be all at this point.

7 MR. DIMAS: Thank you, Mr. Rodriguez. Mr. Rosenbaum
8 could you please explain the ACLU's concerns in this area?

9 MR. ROSENBAUM: Yes. The practices which Mr. Fenton,
10 Mr. Rodriguez, and Mr. Schey have already talked about have
11 been made known to the American Civil Liberties Union. We are
12 presently engaged in one specific legal action, and have
13 indicated that we will become involved in other related actions
14 because the sort of workplace raids that have been described
15 seriously transgress the most fundamental constitutional
16 values.

17 They are practices which trade on the ignorance and
18 the fear of the workers involved. The treatment that we have
19 seen so far represent to us the unwanted truth with respect to
20 American society, and as I indicated, they do reflect the most
21 fundamental violations of constitutional rights.

22 Let me briefly go into some of those violations which
23 have caused us concern, and which we have already seen present,
24 and then I am sure each of the attorneys will want to expand
25 further.

1 First, as is clear, and as I think no one disputes,
2 the raids themselves are raids that take place on the basis of
3 at best -- at best -- anonymous tips as to persons who may be
4 undocumented workers. INS agents come to the factories invol-
5 ved without any particular knowledge that any particular per-
6 sons in the factories have committed any violations or are here
7 in violation of any laws, so we have at the very outset, in
8 even the most generous of terms, a general search, a search
9 which is often used, as Mr. Schey indicated, is often authorized
10 through property search warrants, but even whether or not there
11 is a warrant or not, there is no particularization, and this
12 is a clear violation of the most fundamental fourth amendment
13 values, of values that say before we impinge upon anyone's
14 liberty, be they citizen, be they noncitizen, be they anyone,
15 that we must have some articulated knowledge as to the fact
16 that the person is in violation of one of our laws, so that
17 is how the raid begins.

18 It begins on a footing that violates the Constitution
19 but it continues, for once inside the workplace, the question-
20 ing is questioning that is reminiscent of the most blatant
21 racist practices in our history.

22 The workers who are questioned once INS enters the
23 workplace are questioned based upon one criteria, and one cri-
24 teria alone, and that is their skin color, whether or not they
25 appear to be chicano. That is the only reason that persons are

1 singled out. White persons are not questioned. Black persons
2 are not questioned. Only brown-skinned persons are questioned.

3 CHAIRPERSON HATA: What about Asians?

4 MR. ROSENBAUM: We have some examples, we have found
5 some examples where in certain areas, depending upon the parti-
6 cular situation, some Asians have been questioned, but frankly
7 our factual data at this time that I am aware of don't indicate
8 one strong practice one way or another.

9 CHAIRPERSON HATA: Is that because you haven't stu-
10 died it?

11 MR. ROSENBAUM: That is because the cases have not
12 been brought to our attention. We have not studied that in
13 full. Perhaps Mr. Fenton or Mr. Schey or Mr. Rodriguez have
14 more information, but the workplaces that we are aware of are
15 workplaces with large numbers of Mexican American persons, and
16 that is the basis upon which persons are singled out for
17 questioning once inside the workplace.

18 So the second step, that is, who is questioned and
19 who is asked the basic fundamental interrogation questions is
20 also clearly in violation of the most basic Constitutional
21 values.

22 The third step, which is the actual questioning it-
23 self, is in further violation of fundamental Constitutional
24 values, and you have to get some idea of the way INS positions
25 itself once inside the workplace.

1 Once inside, INS blocks all exits. There is no way
2 that a person is free to leave the workplace once INS enters,
3 so you have a classic custodial situation, in which freedom and
4 liberty is removed from all persons, and the message is
5 extremely clear, to all those who are involved, that they must
6 comply with the questioning, they must answer the questions,
7 and they must answer them generally in the way that INS wants.
8 There is no freedom to refuse, just as I could refuse to answer
9 questions now, you could refuse to respond. It is a clear
10 custodial situation in which there is no liberty not to respond
11 to the questions.

12 Furthermore, there is no effort to indicate to any
13 of the workers who are being questioned what is really taking
14 place, what is the purpose of the questions that are being
15 asked, what rights if any are being told in the particular
16 situation.

17 For example, in the situation, we don't have a situa-
18 tion which INS generally characterizes, where they are simply
19 talking to someone as if someone comes up on a street. Rather,
20 they ask, or they are asked extremely pointed questions,
21 questions that can ultimately lead to the person's deportation,
22 and the person who is being asked the question is asked the
23 question in such a fashion that he or she has no choice but to
24 respond, so throughout the entire structure, from the moment
25 INS leaves and begins to choose where it is going to do its

1 questioning to the actual questioning itself, you have viola-
2 tions of the fourth amendment rights against searches and
3 siezures, general searches and siezures, and you have violations
4 of fifth amendment rights of due process, and against any sort
5 of incrimination.

6 CHAIRPERSON HATA: Can you give us one example of one
7 question?

8 MR. ROSENBAUM: Sure. The question is very simple.
9 It is generally, do you have papers, which immediately sets the
10 entire process in motion for the ultimate deportation. That is
11 frankly all the answer that INS needs generally in order to get
12 the process in operation and to get the person actually deported.

13 At times we have found that the questions go further,
14 so that there is a quick questioning, questions are, when did
15 you enter the country, under what conditions did you enter the
16 country, all the sorts of facts that are necessary ultimately
17 to have the person deported, and this is all done in an extreme
18 custodial situation, without the person being apprised of their
19 rights, or without the person having any understanding of what
20 the implications are, without an opportunity to see and consult
21 a lawyer, a friend, a family, so the situation is one that is
22 inherently set up so that persons, whether or not they have
23 papers or not are going to talk to INS and are going ultimately
24 to answer the sorts of questions which will result in their
25 deportation.

1 Now, there is also an entire series of questions and
2 conduct that takes place generally after this initial question-
3 ing in the workplace which is equally violative of the rights
4 of the workers involved, and equally transgresses the dignity
5 of the persons in the entire situation, but I take it that those
6 are the sorts of matters that we ought to go into later, if
7 you are interested.

8 MR. DIMAS: Thank you. Mr. Smith, would you briefly
9 describe your agency's role in these types of surveys, and
10 address some of the issues that have been raised, if you will?

11 MR. SMITH: There was an indication that when we went
12 to a business place that there was no awareness that we were
13 coming or we were there, that we surprised the people suddenly,
14 but as I stated before, before we conduct these surveys, we
15 will have previously contacted the manufacturer to advise him
16 that we have received reports of the presence of persons in
17 the country illegally, and we have asked for his cooperation
18 to allow us to come in.

19 Now, in the majority of such contacts, the manufactur-
20 er cooperates with us. Such a contact is made several weeks
21 before we arrive at a company. Consequently -- and we advise
22 the employer, do not keep it a secret from your employees.
23 Allow them to know that you have been contacted by INS. There-
24 fore they can -- the law does require that any alien in the
25 country have in his possession, if the alien is, I believe, what,

1 18 years or older? Evidence of alien registration with him.

2 That way, should we arrive, should we determine that
3 a person is foreign-born, he would have his evidence of lawful
4 status with him, so in the majority of cases where we have
5 conducted our surveys, it should be no secret to anyone that
6 our arrival is imminent.

7 The law does give us the authority to questions per-
8 sons whom we believe are aliens. Once alienage is established
9 then there is a burden placed upon this alien to establish his
10 lawful presence in the United States.

11 MR. DIMAS: The visits to the places of employment
12 are pursuant to this authority to question persons believed to
13 be aliens?

14 MR. SMITH: Well, the visits to the places, to the
15 manufacturing plants, are motivated by the fact that we have
16 received a report of the presence of illegal aliens, undocument-
17 ed workers, pardon me.

18 MR. DIMAS: The issue was raised a little while ago
19 that most of these tips were anonymous. Is that correct?

20 MR. SMITH: The majority are anonymous. When I say
21 anonymous, the person who makes the report refuses to furnish
22 his identify, and I have to presume, because if he is an
23 employee there at the time or is applying for the job, he does
24 not want to have his position put in jeopardy. We will not --
25 we will examine each and every report, and we do not want to

1 waste our time and resources to go to someplace where we think
2 there are not undocumented workers there.

3 MR. DIMAS: Mr. Fenton, would you describe your par-
4 ticular case, taking into account some of the issues that have
5 been raised, for example, the issue of the search warrant and
6 whether or not one was used in your case?

7 MR. FENTON: Very well. Our case, we have three
8 examples that we cite in our case. As I indicated, it is a
9 class action which attacks the entire practice, and we will be
10 going into a lot of material which will give us a much better
11 indication of exactly what is going on out there generally.

12 I think Mr. Schey has a good understanding and tre-
13 mendous experience in that area, but we will actually be going
14 through the search warrants, through the affidavits, talking
15 to the agents and so forth, but what we know now is in terms of
16 the lawsuit that we filed we have three examples. Two are
17 surveys that were conducted pursuant to warrants, and they are
18 warrants as described by Mr. Schey. They purport to be warrants
19 for the search of property, and the property is described as
20 illegal aliens, without any specification.

21 They are based upon affidavits which in and of them-
22 selves are entirely deficient. The affidavits consist of a
23 statement by an agent who perhaps has received an anonymous tip
24 or perhaps who has spoken to somebody outside a factory who he
25 has interrogated unlawfully from the outset. He will approach

1 a woman perhaps. She is standing outside the factory, she
2 appears to be latin, and he will ask her what her status is.
3 He will say, where are you from, oftentimes, just as often as
4 they ask whether the worker has papers, they will ask where
5 are you from, and then from that person, the affidavit indi-
6 cates that, or the person will indicate, well, there are other
7 illegal aliens in there, and there is no indication in the
8 affidavit as to how this person knows it, whether she really
9 knows it, whether it is simply a rumor and so forth, so the
10 affidavit will have a statement from somebody who was ille-
11 gally stopped in the first place, indicating in a hearsay
12 fashion that there are other illegal aliens in the factory,
13 basically, and then -- from the affidavits that we have seen,
14 and then they also say, well, I saw 30 latins standing outside
15 the door, and that is also in the affidavit, which is somewhat
16 indicative of the importance that the Service places on the
17 fact that there are latins there.

18 That seems to indicate that they think that per se
19 constitutes reasonable cause to search the establishment, and
20 then based upon that -- so that is the situation where you have
21 a warrant, and then as they see it, once they have this warrant,
22 they go into the factory, and they will go down the lines
23 systematically, interrogating mostly latin workers, and I know
24 there was a question about oriental workers, and we have begun
25 doing some discovery, and there was some mention that -- I have

1 a feeling that if there is an anonymous tip about workers from
2 Hong Kong or from wherever, they would go out there too. There
3 was some information that we received to that effect yesterday
4 in fact, but I think that given that you have such a tremendous
5 concentration of latin workers, that is what we have encountered
6 most.

7 And then they will go down systematically and they
8 will seal off the exits. I don't think there is much question
9 about that. They will sweep through in a row of agents. They
10 will have their badges there. They will have handcuffs, and
11 they will immediately without providing anyone with rights,
12 they will ask questions such as, where are you from, and follow
13 up with, are you a U.S. citizen, where were you born, do you
14 have your papers, and then they will make arrests right away,
15 assuming that they encounter someone, and they often do, who
16 doesn't have papers, and they will handcuff that person.

17 Immediately, that heightens the fear and the anxiety
18 on the part of the other workers in the factory, no matter what
19 their status might be.

20 We have situations where people who have lived here
21 for many, many years were interrogated in this fashion. We
22 even have a situation of one man who was born in Texas, young
23 man who was born in Texas, went to school here, and was
24 interrogated and said that, I am a U.S. citizen. He says, sure
25 you are. You're from Tijuana. He says, no, I am from Texas, and

1 they arrested him, and he was advised that he could have a
2 hearing if he wanted. He would have to spend a week or two in
3 jail. His other alternative was to go to Tijuana, and he was
4 shipped off to Tijuana, and he eventually got back here to the
5 United States.

6 MR. DIMAS: Wasn't he able to prove he was a U.S.
7 citizen?

8 MR. FENTON: Well, he was born in Texas. He didn't
9 have any papers with him, I mean -- I don't know how many of
10 you, those of us who were born here, carry papers with us.
11 They simply disbelieved him because he appeared to look latin.
12 He was a young Mexican fellow and maybe they didn't like his
13 attitude, or whatever the reason, but they took him into cus-
14 tody, and I should indicate that we encountered him with really --
15 before we had done any investigation.

16 He was, in terms of the two or three plants that we
17 initially indicated, we came across this man, so I would -- you
18 know, we haven't gone into it and studied it in great detail,
19 but I would imagine that this is something that occurs not too
20 infrequently.

21 MR. DIMAS: Mr. Rodriguez?

22 MR. RODRIGUEZ: Yes. With respect to the alleged
23 cooperation by most employers, I think that we should on the
24 other hand explain what happens if there is no cooperation and
25 how employers are placed under the gun. If when INS shows up at

1 a factory, demands entry, if the employer refuses to allow them
2 in, agents block all exits while other agents go back and ob-
3 tain a warrant.

4 What that means is, is that since all exits are
5 blocked, no worker, no one from inside the factory, can go out
6 of that factory, unless at the risk of having his fourth amend-
7 ment rights violated, and at the risk of being arrested, that
8 is, in order to leave the factory, one is going to have to
9 answer questions regarding citizenship, regarding manner of
10 entry, et cetera, so that what we have then is a situation not
11 only of a general search to be taken place if one decides to
12 leave, but there is a definite kidnapping of all people present
13 inside a factory.

14 No one can leave. We have seen cases where as much
15 as three to four hours were taken in order to get a warrant,
16 and during that time, no one from the factory was able to leave.

17 MR. DIMAS: Mr. Schey, you had a remark?

18 MR. SCHEY: I think one other problem that has to be
19 alluded to in this entire process is the fact that it is very
20 unclear at what point in this process that has been described
21 to you both the interrogation that takes place at the factory
22 and also if people are then moved down to the Immigration
23 Service, a further interrogation or what is called by the INS
24 as processing, takes place down at the Immigration Service, and
25 it is one of the real problems we also face, is that it is very

1 unclear at exactly what point people's right to counsel attach-
2 es, namely it is unclear exactly at what point people are in-
3 formed that they have a right to counsel. That is one thing.

4 It is unclear at what point they are advised that
5 anything they say may be used against them in subsequent hear-
6 ings, and thirdly, it is unclear at what point they can in fact
7 be given access to counsel, namely at what point, if there is
8 an attorney out there who is waiting to see the person, and let
9 us say the person is now down in the detention center of INS,
10 it is unclear at what point they are entitled to see that law-
11 yer, and I think that that also presents some real problems
12 and somehow needs to be addressed.

13 MR. DIMAS: Mr. Smith, what type of rights are avail-
14 able to a person who is being interrogated, and when are they
15 informed of whatever rights they do have?

16 MR. SMITH: Let us see. Naturally, we talk to a per-
17 son in the field.

18 MR. DIMAS: In the field, in a plant?

19 MR. SMITH: Yes, sir, in the plant or wherever we
20 might encounter someone we might suspect is in the country
21 illegally. If a determination is made at that time that he is
22 in the country illegally, and he is likely to abscond before
23 a warrant could be obtained, then we would take him into cus-
24 tody.

25 I should remind you that last year, that the

1 government removed in excess of a million aliens who were in
2 the United States illegally, and also at the present time, the
3 Border Patrol in the San Diego area is arresting somewhere in
4 the neighborhood of 1,000 a day, and we know that we are not
5 arresting all that attempt to enter the country illegally,
6 but after the fact is established that the person is in the
7 country illegally, he is taken to our office, where he is ad-
8 vised of his right to consult an attorney.

9 CHAIRPERSON HATA: It is only at that point that he
10 or she is advised of his right to get an attorney?

11 MR. SMITH: That is correct. If I would have reason
12 to talk to you before I started the type of conversation, I
13 would not advise you of your right to an attorney, because I
14 might just say, hello, how are you, or something like that, but
15 it is after we do establish the illegal status, and before
16 further questioning continues, he is advised of these rights.

17 Now there again, our process is a civil administra-
18 tive process. We do not prosecute -- naturally, if we arrested
19 in excess of a million aliens last year, we certainly could not
20 flood or inundate the courts with a million prosecutions, so
21 only a very small percentage of the aliens that we do take
22 into custody are prosecuted under the federal criminal statutes.

23 MR. DIMAS: Approximately what percentage? Do you
24 have any idea?

25 MR. SMITH: I couldn't estimate right now. I would

1 have to consult some statistics, and then this would go on a --
2 based on an area to area base.

3 CHAIRPERSON: So only after they have answered a
4 question that is possibly probably incriminating do they re-
5 ceive in Spanish, in another language if they are monolingual
6 in a foreign language other than English, it is only then that
7 they receive this kind of statement, that they are now there-
8 fore entitled to an attorney.

9 MR. SMITH: That is correct, depending on whether
10 this an arrest with or without warrant, but there again, we
11 are dealing with a civil administrative and not a criminal
12 process.

13 MR. DIMAS: Mr. Smith, you mention that you would be
14 talking to a person in the field suspected of being in the
15 country illegally. Is this also applicable in a factory situa-
16 tion? Do you speak to those people suspected of being in the
17 country illegally?

18 MR. SMITH: Yes, when I said in the field, I was
19 referring to either in a factory or wherever we might encounter
20 the individual.

21 MR. DIMAS: The same standard applies wherever you
22 are, for questioning.

23 MR. SMITH: By and large, I would say yes. The
24 immigration laws do give us this right.

25 MR. DIMAS: Mr. Rosenbaum, Congress is presently

1 considering the administration's proposals to enact employer
2 sanctions law, an employer sanctions law, and I take it you are
3 familiar with that proposal?

4 MR. ROSENBAUM: Yes, but I am not as familiar with it
5 as either Mr. Schey or Mr. Rodriguez, so I would rather have
6 them answer the sort of question I think you are addressing.

7 MR. DIMAS: I might finish the question first, and
8 then see if you would defer. Would you anticipate if such
9 legislation is enacted any more severe problems such as you
10 have described, or would they remain about the same?

11 MR. ROSENBAUM: Well, that is not a complicated
12 question. Mr. Smith indicated earlier in his testimony that
13 there were no efforts to determine whether or not a discrimin-
14 ation was taking place, and I think it is clear that if this
15 law is enacted as it is presently drafted, that we are going
16 to see massive discrimination against brown skinned persons,
17 that employers are clearing going to be the censors in the
18 situation, and that all decisions are going to work to the
19 detriment of the brown-skinned worker.

20 MR. DIMAS: Are you basing that on what you say is
21 happening right now?

22 MR. ROSENBAUM: That is right. Already, Mr. Smith
23 indicated that when questioning takes place, the basis of
24 questioning that is utilized to go up to the person is one of
25 the skin color. He indicated that there is a suspicion of

1 alienage, and whether it is brown skin, or whether it is Asian,
2 or whether it is blacks on the east coast, that becomes the
3 basis. The message is going to be very clear to the employer,
4 as it already is, that if sanctions are going to be forthcoming,
5 the way to protect is simply not to have any confusion or any
6 ambiguities about these persons, and so I think we are going
7 to see an already serious discrimination problem exacerbated.

8 MR. DIMAS: Mr. Smith?

9 MR. SMITH: Mr. Rosenbaum has mentioned that I have
10 suggested some things, and he has mentioned my name. I pre-
11 sume this is the Smith that you are talking about, but I have
12 made no reference to what he has just referred to with respect
13 to any discriminatory acts or basis for us talking to people
14 based on skin color.

15 MR. ROSENBAUM: Well, perhaps Mr. Smith could en-
16 lighten us as to --

17 MR. DIMAS: Mr. Rosenbaum, if I may interrupt,
18 questioning will be done from the panel.

19 Mr. Fenton, would you say that some of the problems
20 you have described arise more from the unclear state of the law
21 rather than any other mal-intent on anybody's part?

22 MR. FENTON: Yeah, I wouldn't ascribe mal-intent to
23 the INS, but I -- and I don't know whether -- I don't regard
24 the law as unclear. It is just remarkable to me that the suit
25 that we filed wasn't filed far sooner, it is just that I think

1 the emphasis is wrong within the INS. I am not that familiar
2 with their problems, but I think that their problem is that
3 they are permitting people through the borders, and that is
4 one thing, but that does not justify a wholesale deprivation
5 of rights within the latin community in southern California,
6 and they have the centrally --

7 MR. DIMAS: What you are saying is, the law as
8 structured results in those deprivations.

9 MR. FENTON: Well, I am saying that it seems to me
10 that if they are receiving legal counsel, their legal counsel
11 must understand and must know that they are in fact violating
12 the rights of thousands of persons in order carry out their
13 functions.

14 I don't think that the law, you know, the Constitu-
15 tion is unclear with regard to the claims that we are making in
16 our lawsuit, but you know, I am not going to impute motive,
17 any type of motive to INS.

18 MR. DIMAS: Mr. Rodriguez, would you comment on that?

19 MR. RODRIGUEZ: Yeah. We think also that the Consti-
20 tution is very clear, and the malintent that can be ascribed
21 comes from understanding the racist motivations of those who
22 enforce immigration and naturalization law.

23 Those who would tell us that they suspect someone of
24 alienage on mere sight, have to be party to racist prejudices.
25 Those who would violate the law for a certain group of people

1 which happens to be a national group within the United States
2 which includes not only people who come from the other side of
3 the border, but includes people who come who were born on this
4 side of the border who are legal residents, have to be moving
5 from racist prejudgments, have to be moving from the type of
6 hysteria that is developed by the mass weights of anti-latin
7 American, anti-immigrant worker propaganda that we see, and
8 we have been seeing since -- for the last nine, ten years,
9 since late '69.

10 We have seen people like Saxbee. We have seen people
11 like Chapman, our former Commissioner of Immigration, make
12 statements such as the silent invasion, the waves coming in
13 from the other side of the border, headlines through newspapers
14 to the same effect.

15 So, the mal-intent obviously cannot be ascribed in
16 the classical sense, but for us who are victims of racism,
17 racism is mal-intent, and we believe racism should be punished.
18 We also have to understand the type of economic conditions
19 that serve as tools or serves rather as conditions to in effect
20 serve as justification for employees of INS to violate the
21 rights, the civil, the constitutional, and the human rights of
22 countless numbers of people and specifically of national groups
23 which by and large are not white.

24 On the other hand, I think that we can go one step
25 further and state that surely Mr. Smith and other employees of

1 INS understand whose rights they are violating, understand
2 that they are violating any rights, and in that sense, one can-
3 not then get away from clearly stating that if we part from
4 those positions, mal-intent does exist.

5 MR. DIMAS: Mr. Schey?

6 MR. SCHEY: I believe that there are two other
7 important myths with regard to the Immigration Service, and
8 their function in this society that have to be dispelled. I
9 would like to allude to allude to them and I think they are
10 things that this Commission through its staff or through its
11 counsel ought to be exploring.

12 First of all, I think that there is a common myth
13 that the Immigration Service is in the business of attempting
14 to assist with the entire immigration problem or problem
15 surrounding undocumented persons within the United States, when
16 in fact I think that at least 40 to 50 percent of the problem
17 can be laid right at the doorstep of the Immigration Service,
18 in a very specific way.

19 The Immigration Service gets a set budget from Con-
20 gress, and they then prioritize that budget, and they decide
21 how much of that money to put into law enforcement, and they
22 decide how much of that money to put into the process of docu-
23 menting people, and I think that a close examination of the
24 priorities of the Immigration Service would indicate that their
25 highest priority is that of law enforcement, that of going out

1 into the fields, going out into factories, and attempting to
2 locate, detain, and deport persons from the country.

3 There is no effort made to determine which of those
4 persons that they are physically removing from the country are
5 in fact documentable aliens, and while a high percentage of
6 their budget goes into this law enforcement effort, a low
7 percentage of their concern is directed towards the documenta-
8 tion process, the result of this is that hundreds of thousands
9 of persons remain in the United States in what can best be
10 described as a documentable but as of yet undocumented status.

11 Congress recently did a study of various federal
12 agencies, and determined that the Immigration Service provided
13 the worst service to people of any federal agency. It is a
14 matter of common knowledge that the delays in processing
15 applications, both for naturalization and for immigration are
16 extremely long within the Immigration Service, ranging from
17 anything from three months to two years on applications that
18 Congress when it enacted immigration laws contemplated would
19 take two weeks. .

20 And yet we find that for years, people remain in this
21 hybrid status of not having any documents. It seems to me that
22 if the Immigration Service went about the business of documen-
23 ting all of the documentable aliens within the United States,
24 we may well see that the entire problem which they spend so
25 much time trying to convince us exists may very easily be cut

1 by 50 percent.

2 We also find that some responsibility has to be laid
3 at the doorstep of the State Department, which is responsible
4 for the processing of immigrant visa applications outside of
5 the United States. An average person will wait two years be-
6 fore finally having their paperwork processed.

7 First the paperwork is processed by the Immigration
8 Service. Once the Immigration Service approves the documents,
9 they then are turned over to the State Department to a U.S.
10 Consulate outside of the United States for further processing.
11 We find that of all persons who finally get to that point in
12 the immigration process, and it is essentially the third base
13 before you get to home base, we find that of all persons who
14 get to that third base, 50 percent are then rejected for an
15 immigrant visa, so of course it is just logical that that 50
16 percent turn right around and re-enter the United States.

17 In order to even get to that 3rd base, they must have
18 close family ties within the United States, so I think one thing
19 we need to do is to look very carefully at both the role of the
20 Immigration Service in creating what everybody concedes are
21 the longest delays of any federal agency, and second of all,
22 to look at the role of the State Department, where 50 percent
23 of all applicants are denied with no form of either administra-
24 tive or judicial review whatsoever. A denial takes exactly five
25 minutes. A person has spent two years trying to immigrate, the

1 denial takes five minutes, and that person has no form of
2 appeal whatsoever.

3 The second myth that I think needs to be dispelled
4 is the myth concerning the border. The Immigration Service
5 takes the position that they are the guardians of the United
6 States Mexican border.

7 I have had top officials in the executive branch of
8 the government inform me that in fact there is a clandestine
9 secret policy on the border, and I think it is time that some
10 agencies begin to explore this, and this could be explored
11 through questions submitted to the Commissioner of the Immigra-
12 tion Service. It could be explored through questions coming
13 from a body such as this, being put to the State Department,
14 to the White House, et cetera, and basically memoranda prepared
15 for President Carter are relatively honest about this clandes-
16 tine policy, memoranda prepared by Griffin Bell, prepared by
17 Ray Marshall, that led up to the so-called Carter immigration
18 package, and I have copies of those memoranda and could provide
19 them to members of this Commission.

20 The policy essentially is in total, is 180 degrees
21 in contradiction with the stated public policy, and I believe
22 that in fact the federal policy is one of maintaining a purpose-
23 fully open and flexible border.

24 This is stated in a number of terms. One term is
25 western hemispheric stability. There is a concern for the

1 political stability of Mexico. There is concern for the need
2 to provide Mexico with what is called in these documents an
3 escape valve for their high unemployment and underemployment.
4 There is concern that essentially -- there is a concern for the
5 possibility of social upheaval in Mexico, and not only in terms
6 of what impact that may have on the border region itself, but
7 also there is concern over what impact that may have on the
8 \$5 billion in foreign investments that private interests in
9 the United States have in Mexico.

10 Those investments are growing at the rate of approxi-
11 mately 100 percent every year. As you know, in the late 1940s
12 there was nationalization of foreign investments in Mexico,
13 and there is real concern amongst the most powerful people in
14 this country that that process not repeat itself in Mexico.

15 Investments have grown at approximately the rate of
16 \$1 billion per year during the past five years. That is one
17 concern. What I have seen labelled by top administration
18 officials as so-called western hemispheric stability, I think
19 a second concern and a concern that is also evident in these
20 documents is a concern with providing certain United States
21 businesses with a form of cheap labor.

22 This is a form of cheap labor that they are simply
23 unwilling at this time to give up. It is a form of cheap
24 labor which obviously is easily exploitable. It cannot avail
25 itself of unionization processes, cannot avail itself of other

1 federal protections for workers.

2 It is clear when you read these documents that were
3 prepared for President Carter, it is simply clear that that at
4 this time is a major concern of the powers to be in Washington,
5 D.C., so I think that the time has come for some federal group
6 or some group with some clout to begin exploring what in fact
7 is the federal policy on the border. What in fact, when Ray
8 Marshall writes a memoranda to President Carter, on what
9 immigration policy should be, what in fact are they talking
10 about, and I would just highly recommend that the staff of
11 this Committee try to obtain those memoranda. I would be happy
12 to provide them with some copies of the materials that I have
13 and I am sure that that may lead to other materials, but I
14 think that that is something that definitely needs to be
15 explored.

16 MR. DIMAS: We would be happy to receive them, Mr.
17 Schey, and I think at this point the Committee members have
18 some questions.

19 CHAIRPERSON HATA: Thank you. Gentlemen, I have a
20 distinct impression from the kinds of comments that you have
21 been making this morning that you are in effect implying that
22 the tactics and the methods used by the INS in the factory
23 surveys and in their other discussions and other handling of
24 undocumented workers, that the INS is using Gestapo-like tac-
25 tics, am I correct?

1 MR. ROSENBAUM: Yes.

2 MR. SCHEY: Yes, I think you are absolutely correct.

3 MR. RODRIGUEZ: I think you must keep in mind, is
4 briefly, in understanding how it would move, in understanding
5 the mentality that INS agents would be moving from, a clear
6 example of the racist, fascist mentality that operates within
7 INS and the Border Patrol is the idea that David Duke, the
8 so-called Grand Dragon of the Ku Klux Klan actually was allowed
9 to land in his helicopter at the San Diego border, was given
10 a dignitary tour at that border.

11 The agents who allowed that to happen, who conducted
12 the tour, et cetera, have never been removed from the Service,
13 and Mr. Castillo has simply ignored the problem. If that is
14 the kind of condoning that takes place, we must understand then
15 that the agents in the field must be moving with green lights
16 with respect to venting their racist and their fascist mental-
17 ities.

18 MR. ROSENBAUM: If I could add to that briefly, I
19 think from our discussion already this morning, what is clear
20 is that the sort of procedures which INS utilizes, and the sort
21 of conduct which ultimately takes place is both conduct and
22 procedures which lend itself to the sort of Gestapo-like tac-
23 tics that you were talking about. At the present moment, persons
24 are not apprised of their rights, or they are apprised of their
25 rights in such threatening circumstances that they know it is

1 not well for them to exercise those rights.

2 We have documented instances, for example, where if --
3 if -- people are told of their rights, they are told of their
4 rights in the sense that, well, if you want a lawyer, you will
5 have to pay some \$2,000. If you want a lawyer, you are going to
6 have to stay in jail a considerable period of time.

7 They are not even told of lawyers, if they are even
8 told at all, until as you pointed out, all of their important
9 rights, all of the purposes for which they would want a lawyer
10 have long been abandoned.

11 So they are put in a situation at the very outset
12 where they are challenged not to exercise any rights, and if
13 they do exercise rights, they will not be able to avail them-
14 selves meaningfully of a process which can bring these procedures
15 to light.

16 CHAIRPERSON HATA: Mr. Rosenbaum, for the record,
17 you were talking about Gestapo-like tactics.

18 MR. ROSENBAUM: I am sorry. I am sorry. I am just
19 referring to that phrase. In addition, because of the political
20 situation with respect to undocumented workers, and generally
21 the racism which deals with workers who are chicano, Asian,
22 et cetera, we have a situation where no federal agency has come
23 to the Service and has sought to enlighten the procedures that
24 we are talking about in a strong way.

25 There is no political capital in coming to the defense

1 of these workers, so we have a situation which is a clear
2 backroom sort of situation. What takes place is not known to
3 the public, and the persons who are involved do not have the
4 sort of political clout that these conditions can be corrected
5 in a substantial way, so it is the worst possible set of circum-
6 stances, and it is the sort of circumstances that breeds racism
7 and the sorts of tactics that we have been talking about.

8 CHAIRPERSON HATA: Mr. Schey, you gave us some, or
9 made some statements this morning about INS secret plans, and
10 also about INS surveys occurring when workers try to use other
11 federal agencies for protection. Will you provide staff with
12 concrete documentation to support these statements this morning
13 so we have examples on the record?

14 MR. SCHEY: Yes, I will. It will probably take a
15 little more than this morning, since I just have selected ma-
16 terials with me.

17 CHAIRPERSON HATA: Well, fine, but I am sure staff
18 then will be able to get in touch with you and get some exam-
19 ples and supporting documentation.

20 MR. SCHEY: Yes.

21 CHAIRPERSON HATA: Ms. Gomez, you had a question.

22 MS. GOMEZ: Yes. Mr. Rosenbaum, to your knowledge,
23 how many of the people that are deported are children or young
24 women, and I mean persons under 18.

25 MR. ROSENBAUM: Could I yield to Mr. Schey to answer

1 that?

2 MS. GOMEZ: Sure.

3 MR. SCHEY: We have found in studying factory raids
4 and raids in the fields that a very, very high percentage, and
5 it is certainly in excess of 50 percent, of the persons depor-
6 ted from the United States are women, and in many, many cases
7 they are the parents of U.S. citizen children.

8 Part of the problem here is that under the current
9 law, and this law only came into effect on January the 1st,
10 1977, the parent of a United States citizen child does not have
11 the opportunity to lawfully immigrate into the United States
12 until that child is 21 years of age.

13 The result of that, and I should point out that prior
14 to that date, prior to January the 1st, 1977, it was possible
15 for a mother of a U.S. citizen child to lawfully immigrate
16 into the United States. Then with what are commonly referred
17 to as the Eilberg amendments to the Immigration Act, which
18 were snuck through Congress without any input from any groups
19 anywhere in the country, the capability to immigrate through
20 your child was eliminated.

21 This has resulted in two problems. One problem is
22 that thousands, and in all likelihood hundreds of thousands
23 of mothers of U.S. citizen children were not aware of that
24 sudden change in the law, and they therefore could not avail
25 themselves of the opportunity to file their applications before

1 the law went into effect. The law went into effect very
2 rapidly after Congress passed the law, and the law was part of
3 the housecleaning matters that are taken up really in the final
4 hours of Congress, so it virtually left hundreds of thousands
5 of people, and mothers -- and I am very surprised that this
6 issue has not gained more national attention -- it virtually
7 left hundreds of thousands of particularly mothers of small
8 children here in the United States, anywhere between the ages
9 of one and ten years old, who were left without an opportunity,
10 simply because they didn't have a lawyer, simply because they
11 didn't watch television, CBS News, they were placed in a posi-
12 tion that their ability to regularize their status was taken
13 away from them once and for all.

14 A second problem, again, is that thousands, and there
15 must be in excess of 50,000 mothers, filed applications that
16 the Federal Government is now claiming they never received, and
17 we virtually have in my office, we virtually have hundreds
18 upon hundreds of requests to bring a lawsuit to see if nothing
19 can be done for this group of people which again, I would esti-
20 mate must be in excess of 50,000 people who filed something.
21 They put something in the mail, and keep in mind --

22 Well, I should point out, these persons have to send
23 their applications to U.S. consulates outside of the United
24 States, so that all kinds of mail problems ensue, and there
25 simply have to be in excess of 50,000 people who claim that they

1 filed those kind of applications, that they put them in the
2 mail, and the Federal Government is claiming they were never
3 received.

4 We have heard reports that there was so much mail
5 going into certain of the U.S. consulates in Mexico that the
6 mail service there simply put them in big trash cans and burned
7 them because they couldn't handle --

8 MS. GOMEZ: Well, answer my question with regard to
9 children that are deported.

10 MR. SCHEY: Many, many children are deported. What
11 you have occurring are two things. First of all you have
12 thousands upon thousands of children every year being deported
13 from the United States who are not U.S. citizens, children
14 who entered the United States with their parents, children who
15 maybe entered the United States at a very young age, and of
16 course many, many of these young persons feel that this is
17 their home.

18 They are going to school here in the United States,
19 they speak -- many of them speak English as their primary
20 language, and many of them are -- only have one parent, and in
21 some cases their parents are essentially lost. They were
22 abandoned here in the United States.

23 We are working right now with some state agencies on
24 that very problem of homeless children that are being deported
25 back to Mexico. Nobody knows where their parents are in

1 Mexico, and yet they are being deported back to Mexico.

2 A second problem, and a problem which is just as
3 severe, involves the fact that the Immigration Service has no
4 compulsions about deporting the parents of U.S. citizen chil-
5 dren, and what this results in, in a very high percentage of
6 cases, is the de facto deportation of the U.S. citizen child.
7 There is virtually no option. The child either abandons the
8 love and the warmth and the affection and guidance of his or
9 her parents, or the child simply suffers a de facto deportation
10 even though the child is a United States citizen.

11 MS. GOMEZ: Thank you, Mr. Schey. I would like to
12 ask Mr. Smith a question with regard to what is the disposition
13 of a child after it has been arrested and deported? What is
14 the procedure, are the parents notified or is the child just
15 processed and taken across the border?

16 MR. SMITH: The only children that we ever take into
17 custody are those that come to our custody through the juvenile
18 authorities. We have an arrangement whereby if they should go
19 into juvenile custody, then we take custody only after consul-
20 tations with the Mexican or whatever consulate is appropriate,
21 and then these are then returned to Mexico and to Mexican
22 juvenile authorities.

23 About the only children that come to our custody
24 would be in the custody, occasionally, of their parents, and
25 the majority of our apprehensions are males, not females, as

1 has been suggested.

2 MS. GOMEZ: To your knowledge are there any surveys
3 around the schools that are predominantly --

4 MR. SMITH: Certainly not.

5 MS. GOMEZ: -- hispanic or --

6 MR. SMITH: No, certainly not. We are not looking
7 for children. The bulk of our surveys are conducted where
8 people are employed.

9 MS. GOMEZ: What would you say the percentage of
10 children that are deported monthly.

11 MR. SMITH: Well, I can't recall ever starting
12 deportation proceedings against any child. The only occasions
13 I can recall where proceedings have been instituted was for
14 the purpose of allowing the child with its parents to apply for
15 some form of discretionary relief in a hearing situation, where
16 the parents were also applying for the same relief in hearing,
17 but we certainly do not deport children.

18 MS. GOMEZ: I have on last question.

19 MR. SMITH: Yes, ma'am.

20 MS. GOMEZ: What recourse does a United States citi-
21 zen of Mexican descent have when he or she is interrogated and
22 deported? What recourse is there for that United States citi-
23 zen?

24 MR. SMITH: Now, you say -- first of all, we only
25 deport aliens. We don't deport United States citizens.

1 MS. GOMEZ: Well, are you saying there haven't been
2 cases where you didn't deport them?

3 MR. SMITH: Since I have had my position, which has
4 been a little more than two years now, I cannot recall any case
5 of an American citizen being sent outside of the country.
6 Several years ago, I recall having heard about a case of an
7 individual, a young man that was picked up, and apparently he
8 told the officers who interviewed him that he was from Mexico,
9 and he was returned to Mexico voluntarily.

10 After he was in Mexico, his parents contacted us, and
11 efforts were made, successful efforts, to get him back to Los
12 Angeles. I think he was -- had a slight mental problem, and --
13 but he claimed to us that he was a Mexican citizen. We will
14 not deport American citizens.

15 MS. GOMEZ: Not even by mistake.

16 CHAIRPERSON HATA: Ms. Hilborn?

17 MR. SMITH: If we have any indication that a person
18 has a right to United States citizenship, we will explore this
19 before the individual is returned to a foreign country.

20 MS. HILBORN: Earlier, I believe Mr. Smith indicated
21 that when knowledge of a factory survey was going to take
22 place, the employer was notified sometimes a week to ten days
23 prior to that time.

24 MR. SMITH: Well, the employer is contacted before we
25 conduct the survey. We do not advise the employer the date on

1 which we will return, but if we have been out to talk to him,
2 he can usually presume that we will be returning within a
3 relatively short period of time, and we do encourage him to
4 advise his employee group.

5 MS. HILBORN: All right, in regards to that statement
6 I would like to ask the other gentlemen, I don't recall anyone
7 responding to that comment by Mr. Smith, and it bothers me that
8 it was not brought up by anyone else prior to that time. I am
9 concerned that -- are you aware that this is taking place? I
10 would like to know what your feelings are regarding the employ-
11 er's position in this situation, when he is being notified, and
12 then apparently you say that when the INS arrives, it seems to
13 be a big surprise to everyone that it turns into in fact a raid
14 and a violation of rights.

15 I was just curious if anyone would like to comment on
16 that.

17 MR. SCHEY: Well, I don't think that what Mr. Smith is
18 saying is entirely inconsistent with our experiences. I just
19 got back from a trip to Las Vegas where I had the opportunity
20 to view some newsreels from a television news station of a
21 series of raids on essentially linen factories, linen cleaning
22 places, and those videotapes were typical of the manner in
23 which the Immigration Service conducts raids, and they essential-
24 ly block all the doorways.

25 If there is a loudspeaker system in the factory, they

1 get on the loudspeaker system, and indicate that the Immigration
2 Service is there, and generally the next thing that happens is
3 that many people scatter, people try to leave, people are fear-
4 ful, any Mexican person is fearful that they are going to be
5 picked up.

6 I have yet to come across a raid, and I virtually --
7 I have reviewed data on hundreds of raids, even right here in
8 Los Angeles I have reviewed data concerning virtually every raid
9 that occurred in the past year here in Los Angeles, and I have
10 yet to come across a raid in which the employees -- I have yet
11 to come across one raid in which the employees knew beforehand,
12 before they either heard a siren or they heard an order coming
13 over a bullhorn to stay right where they were.

14 I have yet to see a raid in which they had any advance
15 notice that the Immigration Service was going to detain and
16 interrogate them, however, I think part of what Mr. Smith says
17 is consistent with what we know to be the truth, and that is
18 that I am sure that in the vast majority of cases, the employer
19 does have advance notice, and that is because I think in the
20 vast majority of cases it is the employer in collusion with the
21 Immigration Service that is responsible for the raid. I think
22 it has to be more than coincidence, whether you look at the
23 experience of the United Farm Workers, whether you look at the
24 experience of the Sbicca workers that we are representing,
25 whether you look at the experience of virtually every raid that

1 has taken place in Los Angeles, you find that there is some
2 concerted union organizing activity going on, or there is some
3 other activity going on on the part of the worker to try to
4 improve their work conditions or their salaries, and it just
5 has to be more than coincidence that it is always at those
6 times that the Immigration Service shows up and picks up per-
7 sons, and I think the Immigration Service would also be the
8 first to concede that the people that they drop off in Mexico
9 in nine out of ten cases make it back to Los Angeles before
10 they do, and in many, many cases go back to the same employer,
11 but the result is that their efforts to improve their work
12 conditions are thwarted on every occasion.

13 CHAIRPERSON HATA: One quick comment. In the interest
14 of time, would you gentlemen make your answers as brief as
15 possible and try to confine them to California so we can remain
16 focussed on our topic.

17 MS. HILBORN: Just as a follow-up on that, have any
18 of you gentlemen experienced situations where in fact an employ-
19 er contacted one of your organizations or someone that you are
20 familiar with, and asked for advice as far as what they should
21 do after being contacted that a raid was imminent, which would
22 maybe support what you are saying -- or not.

23 MR. RODRIGUEZ: I have only had one instance where
24 an employer contacted us, and it is the instance where in the
25 morning, the employer found out that he was getting raided. He

1 asked what he could do. We advised him that if there was no
2 warrant, he could exercise his constitutional right not to
3 allow them into the factory, and this is the case where all
4 exits were blocked, and everybody was imprisoned for several
5 hours until INS was able to obtain a warrant.

6 That is the only occasion. On the other hand, we
7 are seeing that unions, an increasing number of unions, are
8 beginning to request legal assistance in order to begin to
9 fight what they consider an interference with labor/management
10 relationships whenever there is a labor dispute going on. That
11 we see is a very positive factor that is, workers are now being
12 defended by their organizations, regardless of their status.

13 MS. HILBORN: Mr. Fenton?

14 MR. FENTON: Yes, I was just going to indicate that
15 just recently we have received some inquiries from employers
16 who are unhappy with these raids and have asked us for some
17 advice, but I should indicate with reference to what you were
18 asking about before, the lawsuit that we filed on behalf of
19 the ILGWU is for workers and not employers, and even in the
20 situation where the employer gives his permission, of course,
21 he has no right to give away the rights of the employee. They
22 have no knowledge, and that would have nothing whatsoever to
23 do with the constitutional questions that we have all raised,
24 and the human questions that we have raised with respect to
25 the employees..

1 CHAIRPERSON HATA: We are rapidly running out of time.
2 Are there questions from this side of the panel?

3 MR. SPURLOCK: Yes, I have a few. Mr. Fenton, you
4 have indicated that you think that the law is rather clear that
5 there is a violation of constitutional rights in the way in
6 which INS conducts these surveys. It seems to me however, that
7 the law, it is clear, is probably on INS's side. Isn't it a
8 fact, really, that the law, that the courts have historically
9 treated questions dealing with alien rights different than they
10 have treated rights of citizens?

11 MR. FENTON: Well, there has been differences in
12 treatment, but there are cases -- for example, United States
13 Supreme Court cases which have examined situations where cars
14 were stopped near the border, simply on the basis that the
15 people inside the car were latin, and you know, the stop in and
16 of itself was considered to be unlawful.

17 Our lawsuit, the named plaintiffs in our lawsuit are
18 U.S. citizens and legal residents, and we are not only concern-
19 ed with the rights of aliens. We are concerned principally
20 in our particular lawsuit with the rights of people who have
21 a legal right to be here, and their rights are being violated,
22 you see, so --

23 MR. SPURLOCK: All right. In terms of INS's defining
24 its own methodology, they are going -- they are proceeding with
25 the state of the law as it currently exists, and in fact that

1 gives them significantly greater authority than, say, the FBI
2 would have in rounding up a group of people in a bar somewhere,
3 isn't that true?

4 MR. FENTON: Well, I don't agree that they are pro-
5 ceeding on the basis as the law currently exists. I think that
6 there are recent decisions which seem to indicate to me, at
7 least, quite clearly, that what they are doing is proceeding
8 without reasonable cause, for example, to stop people and
9 interrogate them.

10 There are already cases which have been decided,
11 which indicate that they can't even stop people in the street
12 and ask them two or three questions simply because they appear
13 to be latin, and in those situations, INS has attempted to
14 come up with a legitimate basis for talking to these people.

15 For example, they have said, well we look at what
16 they are wearing, and so forth, and the courts have rejected
17 this and have indicated that there is no way of separating
18 racist considerations from these kind of subjective considera-
19 tions that have been proffered by the INS.

20 Now, in the factory setting, of course you have even
21 greater rights of privacy that obtain. There are decisions
22 of the courts which indicate the workers and people do have,
23 you know, rights of privacy in the working place, and you have
24 a situation, they have a much greater right of privacy, because
25 the exits are closed off. People are being handcuffed.

1 People are being arrested, and I would disagree.

2 I think that while the statutory law may not be
3 conclusive, I think the case law, at least in our judgment,
4 would indicate that what they are doing is unconstitutional.

5 MR. SPURLOCK: Okay, I am not arguing -- you may in
6 fact be correct. It just seems to me that historically, INS --
7 the kinds of cases which have grown up under their jurisdiction
8 supports a different kind of a theory and concept for enforcing
9 the statute than almost any other kind of statute.

10 Let me ask -- I think you answered a question I had
11 with respect to the warrants. The warrants are directed to the
12 employer's establishment, not to the ability to question the
13 individual, is that right?

14 MR. FENTON: Well, it is not apparent what they are
15 directed at. They -- the warrants are really -- in a sense
16 they are arrest warrants. They purport to be search warrants,
17 but they are arrest warrants, because they describe illegal
18 aliens. They say illegal aliens generally, and then what they
19 are -- they use that, as I see it, as a basis for interrogating
20 everyone else in the plant.

21 You know, they don't describe anyone in particular
22 that they are looking for.

23 MR. SPURLOCK: Do you think that the new OSHA deci-
24 sion is going to stop what they are --

25 MR. FENTON: Well, I think that it supports our

1 position further. I think it makes it plain that, if it wasn't
2 plain before, that what they are doing is illegal.

3 MR. SPURLOCK: Okay. Just one comment with respect
4 to Mr. Schey's comments, and it is not really a question, but
5 to me, some of the comments that you made with respect to hidden
6 agendas and the fact that there probably is a national policy
7 which is unarticulated or covert, perhaps in this area, is per-
8 haps some of the most significant comments we have had, and I
9 think in a sense it doesn't even really deal with INS.

10 It deals with a national policy regarding the willing-
11 ness of the country to exploit persons for certain ends, and I
12 don't think we are going to get much more of that kind of
13 testimony, but I would hope that, you know, our final report,
14 there will be some kind of a mention or an elaboration of that
15 comment, because I think it, you know, that overlays the whole
16 confusion, I think, which exists in this area.

17 CHAIRPERSON HATA: I wanted to follow up on that, Mr.
18 Spurlock, because your statement, Mr. Schey, that there is some
19 use, informal or formal, covert or whatever, of cheap labor, and
20 I assume when you are talking about cheap labor, you are talking
21 about workers, for example, who don't get minimum wage. These
22 kinds of undocumented workers is an example of the government's
23 continuing support of the old concept, historical concept, of
24 aliens ineligible to citizenship, which gave rise to a very
25 clear statement, that was true around the turn of the century

1 and perhaps applies in another context to other immigrants,
2 that people did not indeed have a Chinaman's chance.

3 MR. SCHEY: Yes. I think the area is of course a
4 very, very difficult area to uncover information on, because it
5 is not an area in which can just write to Jimmy Carter and have
6 him send you a copy of some memo that is sitting in his desk.

7 I think there are definite areas, though, that can be
8 explored. One area, as I mentioned before --

9 CHAIRPERSON HATA: Very quickly, please?

10 MR. SCHEY: One area that, as I mentioned before, as
11 just a starting point and a springboard for this investigation
12 could be the documents that were prepared for President Carter,
13 and these documents began to originate in the Nixon administra-
14 tion. I think one other area that I didn't allude to before,
15 but that I think is very important -- I have tried to get infor-
16 mation on this, and I have just got a letter back saying it
17 would cost me \$1,000 to get the information. Maybe this
18 Commission can get it without the \$1,000 -- there is another
19 federal policy which I think very much reflects what I was
20 saying, and that is that the Department of Labor sets what is
21 called an adverse effect wage rate. That is a tough term, but
22 that is what they call it, an adverse effect wage rate, and the
23 information that I have tried to obtain is how they set that
24 adverse effect wage rate, but the importance of that adverse
25 effect wage rate is that any employer who wishes to bring

1 foreign workers into the United States only has to advertise
2 locally at anything at the adverse effect wage rate or above.

3 In other words, if the Department of Labor sets that
4 adverse effect wage rate at rock bottom, and does not include
5 in that adverse effect wage rate things like toilet facilities
6 for workers, if it does not include things like medical insur-
7 ance for workers, they basically somehow or another, the Depart-
8 ment of Labor, sets that at absolute rock bottom.

9 That then allows American corporations to advertise
10 locally, and once they go through that advertising process, and
11 of course they don't get anybody who wants to work at that rock
12 bottom wage rate, it then allows them legitimately to bring
13 foreign workers into the United States and put them to work at
14 that adverse effect wage rate.

15 I think that something just has to be done to find
16 out how the Department of Labor goes about setting that adverse
17 effect wage rate. I think that that is very important.

18 CHAIRPERSON HATA: I don't mean to cut you off, Mr.
19 Schey, but I think staff will continue the discussion with you.
20 Very quickly, Mr. Rodriguez, because I want to give Ms. Fonda
21 a chance to --

22 MR. RODRIGUEZ: Yes. With respect to the last ques-
23 tion, I think maybe this Committee should look into for example
24 the Kissinger Committee on Immigration, the existence of several
25 Committees under him, the ordering of things such as the Corwin

sic

1 report, the investigations of the Brooks Institute.

2 I think it is important to try to understand the
3 reasons why during the last six months of 1977, during the first
4 four months of 1978, a tremendous amount of diplomats, Congress-
5 men, a tremendous amount of people from the State Department,
6 Mondale himself, go to Mexico, and note with one purpose, and
7 one purpose in mind, to deal with the question of how they want
8 to pressure Mexico into selling oil for cheap prices, using the
9 question of undocumented people as a source of pressure, I
10 think it is important that that be examined, especially under-
11 standing that the tremendous national debt of Mexico, which is
12 private over \$15 billion, and public over \$20 million is owed
13 mostly to the United States, and it includes not only debts
14 directly to the State Department, but additionally to many
15 private banking institutions, most of it managed by the Inter-
16 national Monetary Fund.

17 It seems to me that now there are many, many studies
18 being developed in Mexico and the United States that deal with
19 this question, and definitely there is no question in our
20 minds that the question of immigration of Mexican people into
21 the United States has become one of the principle priorities of
22 the State Department and of international politics from the
23 view of the White House.

24 CHAIRPERSON HATA: Ms. Fonda has indicated she has
25 got no questions, and you gentlemen have raised a number of

1 points that I am sure the staff will investigate, either here
2 for the California or for the national study of immigration,
3 and I thank you all.

4 MR. DIMAS: Did you indicate Ms. Fonda had some
5 questions for the panel?

6 CHAIRPERSON HATA: She had no questions.

7 MR. DIMAS: Oh, I see.

8 CHAIRPERSON HATA: Ms. Miron, do you want to get
9 your next panel started?

10 MS. MIRON: Will Mr. Bluto, Mr. Russo, and Mr.
11 Vellanoweth please step forward to the witness table? I
12 would like to ask the witnesses to identify themselves, please.

13 MR. VILLANOWETH: My name is Carlos Vellanoweth. I
14 am an attorney in Los Angeles.

15 MR. RUSS: Phil Russo, Director of Organization for
16 the International Ladies Garment Workers Union.

17 MS. MIRON: Thank you. Mr. Vellanoweth, what is your
18 experience with immigration matters?

19 MR. VELLANOWETH: I have been an attorney in Los
20 Angeles, primarily in the area of immigration and labor for
21 the past approximately two years. I have been involved with
22 various political Mexican organizations since 1973, particular-
23 ly with the Law Students in Defense of Undocumented Workers,
24 before deportation proceedings, before appeals, and presently,
25 in terms of assisting various rank and file labor movements

1 within the light industry of the Los Angeles area, in terms of
2 organizing in unions and for other type of protective benefit.

3 MS. MIRON: Mr. Russo, does your union have any
4 membership requirements regarding citizenship status?

5 MR. RUSSO: No. No, we haven't.

6 MS. MIRON: Do you make any attempts to inquire into
7 the status of your membership under the immigration laws?

8 MR. RUSSO: No, we 'don't,' because unions don't do
9 any hiring. A closed shop has been outlawed by the Taft-Hartley
10 law since 1947. The employers do the hiring.

11 MS. MIRON: Does the organizing of undocumented aliens
12 pose any particular problems?

13 MR. RUSSO: Yes, it does.

14 MS. MIRON: Could you please describe for us those
15 problems?

16 MR. RUSSO: Okay, if I may, I have a policy statement
17 here concerning our policy towards undocumented workers by our
18 union, by the International Ladies Garment Workers Union. If
19 I may, I would just like to read a portion of it and then pre-
20 sent it to you. May I do that?

21 MS. MIRON: Sure.

22 MR. RUSSO: Okay. "In recent years, a great many
23 people from Mexico, Latin America, and Asia have come to the
24 United States illegally, and decided to live and work here as
25 Americans. In most cases, these illegal aliens have been drawn

1 to our country by the same hopes that moved immigrants to our
2 shore in other times.

3 "Despite the evidence that most of these aliens are
4 hard-working and law-abiding, their presence here has been
5 criticized as a threat to lawful immigrants and long-term resi-
6 dents. Now as in the past, the ILGWU makes no distinction
7 among workers as it carries forward its mission. It is deter-
8 mined to fulfill the purpose for which it was created without
9 regard to sex or color or national origin or religion.

10 "Accordingly, we shall continue to organize workers,
11 alien or otherwise, without regard to any other consideration
12 so long as they are in shops producing women's garments. To
13 do otherwise would be to betray the honored tradition of a
14 union founded, built, and sustained by immigrants and newcomers
15 and to surrender our national heritage as a refuge for the
16 world's hounded and hungry.

17 "However, our efforts to organize these exploited
18 workers are being frustrated again and again by unscrupulous
19 employers and by the use of raids or the threats of raids by
20 agents of the Immigration and Naturalization Service. Many
21 of these raids have been carried out without search warrants,
22 or with warrants that are unconstitutionally vague or otherwise
23 improper.

24 "Many of the raids are carried out on the day of an
25 NLRB election, or very shortly before, because anti-union

1 employers have developed a practice of calling for such INS
2 raids to destroy our organizing campaign."

3 That is my statement. I will give you specific exam-
4 ples of where this has actually happened.

5 "To end such unconstitutional procedures, we recently
6 brought a lawsuit against the INS in the United States District
7 Court for the Central District of California."

8 "The Carter administration has come forward with pro-
9 posals to deal with the illegal alien problem which are a step
10 in thi right direction. They are aimed at drastically reducing
11 illegal immigration and penalizing the unscrupulous employer
12 of illegal aliens, but they need further development.

13 "The President's proposals grant permanent residence
14 only to the small minority of undocument aliens who came here
15 before 1970. The great majority of aliens are granted only
16 temporary status. We think America can do more.

17 "We support legislation that would grant full perman-
18 ent amnesty to all undocumented aliens now in this country.
19 Anything else is not only unworkable but it is inhumane. Many
20 of these people have established families in this country, some
21 of whom are American citizens, and it would impose an immense
22 human financial hardship if they were compelled to immigrate
23 back to their native lands."

24 I will just end it there and present you with the full
25 policy statement. My concern primarily is in the area that deals

1 with nonunion workers, workers who have a tremendous desire to
2 want to better themselves, and under the law, under the National
3 Labor Relations Act, have a right to form, join, or assist in
4 formation of unions.

5 However, because of their status, they are found in a
6 situation which with or without the knowledge of INS are being
7 denied their rights under the Act, and the problem is this: is
8 that the Act is administered by a federal agency called the
9 National Labor Relations Board, and we feel that they have
10 jurisdiction in this area, and it is an area in which employers
11 will unscrupulously use the INS, with or without their knowledge
12 to actually encourage -- they are so successful at this that it
13 encourages them to continue violating the Act itself.

14 Now, let me give you some examples. I understand I
15 cannot name firms? Is that correct? I can?

16 MR. BACA: Yes. It is your right here on the stand.

17 MR. RUSSO: Can I name the area?

18 MR. BACA: Try one.

19 MR. RUSSO: Okay, most of the firms are in -- I will
20 limit it to just the Los Angeles County, okay? This particu-
21 lar firm, and it is a large manufacturer, and it is will known.
22 It is not a contractor. He has about 127 operators, production
23 employees. Okay, he circulated the rumor one day that Immigra-
24 tion would raid the premises tomorrow morning. The following
25 day six people reported to work. He now knew exactly what their

1 statuses were. He knew exactly where he was at.

2 He knew that there is tremendous fear on the part of
3 an illegal alien to run to a federal agency, that he is viola-
4 ting the law, and so the following week he assembled all of the
5 workers and told them that there would be a rate cut, and he
6 knew they would do absolutely nothing about it.

7 Fortunately, some of the people knew who we were,
8 where we were at, and we did attempt to do something. He then
9 fired an entire department, 16 marrow (phonetic) machine opera-
10 tors. We are constantly astounded every day about the courage
11 of the workers, and fortunately all 16 of them did come with us
12 to the National Labor Relations Board and they gave statements.

13 Now, the problem is this, is that the employer -- the
14 Board will take statements, affidavits, okay, but between the
15 time of the violation and the hearing itself, okay, the employ-
16 er is going to make damn sure that those people are picked up,
17 and I was told that the National Labor Relations Board had
18 received a letter from INS telling them that if ever they do
19 take any statements from people who are illegal, that they
20 should blow the whistle on them.

21 I called the Board, and they verified this. They said
22 it is true. But let me give you a few other examples. There is
23 a situation also in the county -- in the city. This is in the
24 City of Los Angeles, it is an employer who if you look at the
25 record, you will see that his premises are raided approximately

1 six months apart.

2 You will also note by the dates of the raids that
3 they occur on payday, and if you check the history of the firm,
4 you will find out that the employees are paid every two weeks.
5 That means that every year he gets a month of free labor. He
6 gets several hundred people to work an entire month, that is
7 two weeks every six months, and that is very nice.

8 You know, if you are a manufacturer and you can get
9 several hundred people to work at least 80 hours or more, if
10 you have overtime, and then not have to pay them and six months
11 again rip them off for another two weeks.

12 We had a situation -- okay, now let us get into the
13 area where Immigration is actually notified, okay? Now, this
14 last one they were. At the first plant that I mentioned, of
15 course they never were. They were just told that they were
16 going to raid and they were used in that sense, but I want to
17 give you some examples of where -- okay, the next two examples
18 I am going to give, and let me back up.

19 I will tell you about one in -- can I say North
20 Hollywood, the manufacturer? Okay. Here is a situation where
21 a majority of the people signed up unionization -- what we call
22 authorization cards. Okay, the employer hired a labor consul-
23 tant. The labor consultant comes in, and he speaks to the
24 people, and it is getting closer to the election time, and he
25 can't dissipate our majority, so what does he do? He

1 circulates a letter, a leaflet, in Spanish, telling them that
2 this union has a history of calling Immigration.

3 Common sense would tell you why -- what reason would
4 we do that? However, that set us up, and a day or two after
5 that, when we returned to the plant to leaflet, people -- the
6 few people that remained were very angry at us, because they
7 claimed that we had split up their families, their homes, and
8 so forth, that Immigration had been there and had raided.

9 Now, you know, try to prove that the employer actual-
10 ly made that call. We know that they circulated the leaflet.
11 But a lot of times, in most cases, the employer isn't going to
12 identify himself. He is going to call up saying that, you know,
13 he is a good American worker who is unemployed, and but for the
14 presence of illegal aliens, he would be employed. Well, it is
15 a lot of baloney, because in the garment industry, because of
16 the conditions that exist, it is very difficult to get anyone,
17 gringos or whatever you want to call them, to seek employment.

18 But the call was made, and the likelihood that it was
19 made from management or that particular labor consultant, who
20 has a history, by the way, of doing this -- okay, now the next
21 example I am going to give you, this is in just downtown here,
22 within the garment industry.

23 They hired the same labor consultant. We went to
24 Immigration, okay, and we told them -- we spoke to Mr. Sureck,
25 and we said, hey, this guy has a history of this, you know,

1 and stay away. There is another federal agency that has juris-
2 diction here, the National Labor Relations Board, and just stay
3 away. The two days before the election, Immigration shows up
4 and one of my organizers who is present in this room told the
5 agent, the INS agent, said hey, look, we, you know, we have
6 spoken to your Director, and he has agreed to stay away during
7 the interim that the National Labor Relations Board has juris-
8 diction, and we are going to have an election here in two days,
9 okay?

10 Now, would you believe that two days later, on the
11 morning of the election, okay, Immigration shows up with their
12 van. They have a paper in their hand which looks like what the
13 Board would call an excelsior list (phonetic). That is based
14 on a decision that was made that requires the firm to give us
15 names and addresses through the Board so that we can conduct a
16 campaign, we can send out mailings to them and so forth. It
17 looked like the same piece of paper. There were markings on
18 it, okay?

19 Now, obviously the employer would prefer not to have
20 his premises raided if he could turn the people around to vote
21 against themselves. Failing to do that, then it is necessary
22 for him to blow the whistle on them, so Immigration did show
23 up on that particular morning. Now, I am not saying that it was
24 with the knowledge of Sureck or not. It may have been simply
25 the act on the part of a particular agent, as the next cas I am

1 going to tell you about, the next incident would pretty much
2 convince you of that.

3 Okay, they went in. They raided the premises. They
4 pulled the people out, and they had several in the van. Three
5 of them were Asian. The supervisor comes out, tells something
6 to the agent, you know, that that was an error, because none of
7 the Asians in this particular plant were union supporters, so
8 they asked the three to come back out of the van and they can
9 go back in to work. Okay.

10 There were several people, one of which was what they
11 considered the ringleader, the strongest supporter for the
12 union and the person who signed up most of the people inside.
13 Fortunately, when he came into work, he had seen the van and
14 just made an immediate about-face and took off. They were
15 looking for this guy, and you know, you have to ask yourself
16 how did they know who he was and where did they get his name.

17 But the Asians went into the plant and now they are
18 asking other people, where is Tomas, where is Tomas, and they
19 said well, he will be in later. Well, he never showed up. So
20 it becomes obvious that there was a pattern here and it was
21 designed to really frustrate the people's desire to want to
22 better themselves and to form a union, but more than that, it
23 was violating -- it was done in such a way whereby the employer
24 can -- is encouraged to violate the act because he knows that
25 by violating it, we can't produce witnesses, because they have

1 been picked up.

2 Now, there is a Section of the Act, Section A, Nation-
3 al Labor Relations Act, which specifically forbids discriminat-
4 ing against employees, okay, and it mentions nothing about
5 their national status, okay, as regards job tenure. Okay, that
6 is what we call an AD-3, and but how do we come back and impr-
7 ove our case, and it is our very difficult. You can't do it
8 without witnesses. Now, let me give you one last example.

9 MS. MIRON: Mr. Russo, before you continue, I would
10 like to find out from Mr. Vellanoweth whether in your experience
11 there are also particular problems in unionizing or organizing
12 undocumented aliens.

13 MR. VELLANOWETH: Let me -- let us discuss it first
14 in a general sense because I think the problem that we are
15 facing, the problem that Mr. Russo presented is typical of what
16 happens within the light industry of the southwestern region of
17 the United States.

18 We are talking about an industry that continuously
19 and historically has to minimize the cost of production. They
20 have to minimize the amount of machines they use. They have a
21 high organic composition of labor. That means they have a lot
22 of workers, and the salaries they have to pay the workers in
23 order for them to sell their products, and it is a lot of
24 commercial products from garments to canned goods to furniture
25 equipment to any type of commercial things that are sold on the
market.

1 Now, in order for the commercial sector of the U.S.
2 economy in the light industry to function, it has to have a
3 high concentration of cheap labor, and we are talking about
4 wages below state and federal standards, and also we are talk-
5 ing about around the minimum wage area. We are talking about
6 anywhere from \$2.25 to \$3.50 an hour, and that, according to
7 federal U.S. Department of Labor Standards is low wages in
8 this country.

9 MS. MIRON: Have you ever had any specific experiences
10 with the problems involved in this area?

11 MR. VELLANOWETH: Yes.

12 MS. MIRON: Could you describe them, please?

13 MR. VELLANOWETH: Basically and essentially what the
14 problem is, is that the Immigration Service is used to perpe-
15 tuate the syndrome of cheap labor within the light industry of
16 the United States. Light industry is also characteristic of a
17 high turnover of employees. That means that on the average,
18 workers might work there for about a year to three years at the
19 most, because the wages are really low, and so the use of
20 Immigration during factory raids is an objective reality which
21 happens in order to keep production costs low, to prevent the
22 unionization of the plants.

23 We have various examples of this. We had an example
24 last year in a factory in Los Angeles. They made plastics,
25 and this factory has been operating within the Los Angeles area

1 probably for about 15 years, and the factory has a high inci-
2 dence of industrial accidents. Ninety-nine percent of the
3 factory is Mexican or Latin American labor, and probably the
4 overwhelming majority of that labor is undocumented.

5 A certain particular union in the Los Angeles area
6 attempted an organizing campaign to organize the workers who
7 do the shop. They achieved authorization cards of the majority
8 of the workers, and the company refused to recognize the union
9 as bargaining representative for the workers, so the union had
10 to file a petition with the National Labor Relations Board.

11 Now, one week prior to the conducting of the election
12 the employer called the Immigration Service to raid the factory
13 and the Immigration Service raided the factory and deported
14 80 percent of the labor force.

15 MS. MIRON: How do you know that the employer called
16 the Immigration and Naturalization Service?

17 MR. VELLANOWETH: We have had -- there was a committee
18 formed of the workers, and one of the workers heard one of the
19 supervisors tell the secretary to contact Immigration on a
20 certain date, and that is basically the evidence we have on
21 that particular case.

22 We have other examples where not particularly labor
23 organizing drives, but where the Immigration has been used in
24 an attempt to defraud the workers of their labor rights under
25 a collective bargaining agreement. We had this factory in

1 Burbank, and 99 percent of the factory is Latin American or
2 Mexican labor. Now, they have been under a collective bargain-
3 ing agreement and were represented by a local union in the Los
4 Angeles area for about five years.

5 A lot of the workers had seniority rights and they
6 had protections under their collective bargaining agreement.
7 One day, the Immigration Service raided a factory and arrested
8 29 workers. After they arrested the workers, the Immigration
9 agents approached the employer with a letter from the District
10 Director of INS, Joseph Sureck, and the letter stated to the
11 employer that we have just conducted a survey of your factory
12 and we have found 29 people to be, quote unquote, "illegal
13 aliens in the United States." And the letter continued, stated
14 that under Section 2805 of the California Labor Code, it is
15 illegal for an employer to knowingly hire a person without
16 papers, and if he does rehire the 29 workers, he will be in
17 violation of the law and he will be fined.

18 Now, what that letter did not state was that Section
19 2805 of the Labor Code is presently unenforceable in the State,
20 of California, and has been as a result of an injunction in a
21 suit filed in 1974, and the only agency empowered to enforce
22 that Section is the Department of Industrial Relations, and
23 they have sent us a letter stating that because of the
24 injunction they cannot enforce that Section.

25 So the 29 workers were deported from the United

1 States. They all signed voluntary departure. Two days later
2 they returned to the factory and they asked for their jobs
3 back. The employer told them that we cannot rehire you because
4 Immigration told us it was illegal to hire you in the first
5 place, and if we rehire you, you would be in violation of the
6 law.

7 Well, the 29 workers didn't know what to do, so they
8 came to us, and we decided to go to the labor union and tell
9 the particular union basically the circumstances of what had
10 happened. The first reaction of the labor union, because they
11 were generally ignorant of the immigration laws, and the fact
12 that Section 2805 was not enforceable, their first and primary
13 response was that we cannot force the employer to violate a
14 law, and even though the rights of the 29 workers were viola-
15 ted, in that they were fired without sufficient cause under the
16 contract, they would not take the case.

17 But after a lot of mobilization and a lot of pressure,
18 the particular local union decided to take the case to arbitra-
19 tion to force the employer to rehire him. That case was taken
20 to arbitration, and at that case, all 29 workers were allowed
21 to return to their jobs, notwithstanding the fact that they are
22 all in the country -- they were all in the country admittedly
23 without any papers, and the reason is because the National
24 Labor Relations Act guarantees to all workers the right to
25 organize, the right to be represented by a labor union of their

1 own choice, irrespective of whether or not they have documents
2 or not, and so that is another type of example where the
3 employer -- where the first example is where the union -- ex-
4 cuse me, the employer, will work closely with INS to prevent
5 the legitimate rights of workers to organize for better wages
6 and working conditions.

7 The second example clearly demonstrates the utiliza-
8 tion of a federal agency to defraud workers of their rights
9 under collective bargaining agreements.

10 MS. MIRON: Thank you. Mr. Russo, were there any
11 particular problems with having undocumented aliens as witness-
12 es in complaints to the NLRB?

13 MR. RUSSO: Yes. The biggest problem, of course, is
14 they are unavailable. They have been deported, and it is so
15 effective that it encourages the employer to continue utilizing
16 that method. How can you find an employer guilty of violating
17 the National Labor Relations Act if you can't produce a witness
18 who can give testimony, convincing testimony that he in fact
19 did violate the Act.

20 MS. MIRON: Did you have any experiences with that
21 problem?

22 MR. RUSSO: Yes. We have, in one particular case
23 just happened several months ago. Again, it was one of the
24 known labor consultants, okay, that we know will just prior to
25 the election or on the election day get Immigration there if

1 at that point he has not convinced the majority of the people
2 to reverse their support for the union, so we went -- again,
3 we went to Mr. Sureck, and mentioned it to him, and he said he
4 would cooperate, and in that he would not -- as long as the
5 National Labor Relations Board had jurisdiction, in other words
6 as long as they were conducting hearings, as long as they were
7 conducting the election, he wouldn't interfere, until such time
8 as -- you know, he wouldn't promise beyond that.

9 Okay. The morning of the election, there was an
10 Immigration van parked strategically in a place where it would
11 be visible to all of the workers, and I just couldn't believe
12 this. So -- and it looked like a double-cross, and I was very
13 angry and though it was trespassing I went into the plant,
14 because I wanted to see the Immigration officer. There was
15 only one, which was kind of unusual, because if you are going
16 to conduct a raid they would have had several vans and there
17 would have been more than one agent.

18 And I asked him who his supervisor was, and he said
19 a Mr. Smith, who I think testified earlier this morning, and
20 I said -- and I know that -- I knew that when we had this
21 agreement with Mr. Sureck, he called Mr. Smith and told him
22 about it, and I asked him if he had been under instructions
23 from his superior to stay away from this place, particularly
24 on election day, and he gave some vague answers. He became
25 very nervous and he didn't want to stay in the plant any more

1 and we just walked out and we continued our conversation.

2 Okay, what happened was that at the same time that
3 the van was parked there, and it was set to remain there a
4 specific time because the employer was going to assemble the
5 workers, and even though it is a violation of the Act to give
6 a speech 24 hours before the election, all the employer wanted
7 to do was inform the workers -- because he is a -- you know --
8 he is a real nice guy -- that Immigration was outside, okay?

9 The strategy was not that the people would be picked
10 up because he wanted to continue to exploit them, but that
11 they would run, they would panic, and they would run out and
12 not be available for when the election polls would open within
13 about 30 minutes.

14 Fortunately, it backfired. There was only one exit,
15 and that is where the van was, and they thought that they would
16 have been picked up. There was panic. People hid in trashcans
17 and elevator shafts and so forth, but they feared leaving the
18 premises, and so they remained.

19 When two agents of the National Labor Relations Board
20 showed up, and I indicated to them that that gentleman by that
21 van is an officer of INS, and what his purposes were, and that
22 we would be filing objections to the conduct of the election,
23 that scared the INS officer. You wouldn't want me to name him,
24 would you? No. Okay.

25 Because it is the same agent that was involved in the

1 other case, okay, and he has a pattern of this, and the agent
2 then took off. Needless to say, we won the election, like 133
3 to 11, okay. But let me tell you what happened, is that the
4 employer now since we notified Washington, and we told them
5 what happened, and we notified Mr. Castillo the Commissioner,
6 and he sent a representative here, Arnold Flores (phonetic) who
7 we spoke to, and he investigated the matter.

8 The employer who denied that he ever made the call
9 or had any specific deals with this particular agent, now he
10 himself panicked, and he actually sat down and bargained, okay,
11 quote unquote "good faith," and we got a contract.

12 The first 30 days of that contract, INS returns, and
13 they raid the place, and over the weekend many of the -- about
14 a twelfth of the workers were not -- many of them returned
15 and they were accepted employment, but there were 12 people
16 that were not. They were our strongest supporters. They were
17 people that he still had a vendetta towards and he refused to
18 take them in.

19 Now, we represent -- they were our members. We repre-
20 sent them, and I don't think we had any alternative but to take
21 the company before an arbitrator. Now, what happened the day
22 that we were going to arbitrate this issue, even though the
23 employer took back -- it is a known practice, okay, in the gar-
24 ment industry? I think it was testified earlier, that after
25 a raid many of the people return to the former place of employment.

1 The outside the arbitrator's office was an Immigration
2 van, and my organizer says, do you think it just possible that
3 there might be agents in the office of the arbitrator just
4 waiting, you know, for these 12 witnesses? Now, we are talking
5 about witnesses, and I think you asked me that question. So
6 McGann, Machook (phonetic) and myself, we went upstairs, up
7 to the tenth floor, which is where the office of the arbitrator
8 is, and sure enough, in the lobby were two agents that we recog-
9 nized.

10 They had a brown paper bag, and when we looked at
11 that bag, upon closer inspection, we saw that they had hand-
12 cuffs in there and waist chains, and this was one hell of a
13 way to see our members, people that we represent, were going to
14 be ushered down ten floors of that building, handcuffed and
15 waist chained.

16 Now, let me tell you. We went on with that arbitra-
17 tion, okay, without witnesses, and we lost.

18 MS. MIRON: Mr. Russo, before I turn this over to the
19 Advisory Committee panel, I would just like to ask you what
20 was done, what came out as a result of your complaint to the
21 Commissioner about union interference?

22 MR. RUSSO: I am sorry?

23 MS. MIRON: What was ever done as a result of your
24 complaint to the Commissioner about the intereference with
25 union activities?

1 MR. RUSSO: Okay, Arnold Flores flew in from Washing-
2 ton and we told him all this. We told him what the pattern was
3 and the agreement that we had with Mr. Sureck, and he said he
4 would look into it. I really don't know what transpired as far
5 as INS, what he told them, you know, it is the same agency, and --

6 CHAIRPERSON HATA: The answer is nothing, then, Mr.
7 Russo, as far as you know?

8 MR. RUSSO: Pardon?

9 CHAIRPERSON HATA: The answer, then, is nothing as
10 far as you know?

11 MR. RUSSO: As far as I know, no, and it really com-
12 pelled us to institute the lawsuit that was mentioned earlier.

13 CHAIRPERSON HATA: Thank you gentlemen. I am sure
14 that you have got many more examples to give the Committee, and
15 in the interests of time, will you please submit it to the
16 Committee in writing for the record? Are there any questions
17 from the panel?

18 MR. SPURLOCK: I don't have any questions. I would
19 ask some questions, because I think your testimony was just
20 really extraordinary, but in the interest of time, we won't,
21 but would you submit a copy of the Complaint you filed in your
22 lawsuit?

23 MR. RUSSO: Oh, sure. You have it.

24 MR. SPURLOCK: Okay, all right.

25 CHAIRPERSON HATA: Just one quickie question. The

1 INS truck that sits outside of these factories and so forth,
2 are they clearly labelled INS?

3 MR. RUSSO: No, but they are caged.

4 CHAIRPERSON HATA: Okay. There are -- signs.

5 MR. RUSSO: It is very obvious, right, and they are
6 air-conditioned, and every undocumented worker knows what they
7 look like.

8 CHAIRPERSON HATA: Fine. Thank you very much.

9 MS. MIRON: Thank you. Would Mr. Davis and Mr. Sbicca
10 please come forward to the witness table? Is Mr. Davis here?
11 We will start with you, Mr. Sbicca.

12 MR. SBICCA: I would like to begin and explain the
13 beginning of the Sbicca shoe factory.

14 CHAIRPERSON HATA: Excuse me, Mr. Sbicca, would you
15 identify yourself for the record?

16 MR. SBICCA: I am Arthur Sbicca, President of Sbicca
17 of California. We manufacture young women's shoes. My father
18 and mother who were both immigrants from Italy started this
19 factory in 1920. At that time, only immigrants worked in the
20 shoe business, and I am sure in the garment business.

21 I went to work in 1933, and at that time it was still
22 ethnic groups employed in the shoe factories. To this day --
23 we moved from Philadelphia to California, and again we have
24 ethnic people working for us, Mexican Americans primarily.
25 So we have a great amount of experience in the field of

1 employing people who are immigrants and know how they work and
2 how they behave and how they act.

3 Our experience in California is considerable. We have
4 been here since '43, so I feel that the immigrant should be
5 allowed to work in this country if he is a good worker and a
6 good citizen and does not take but give, and in many cases
7 these immigrants do give a full day's work, and in our particu-
8 lar case we pay them good wages and good benefits, which is not
9 normal, according to the previous witness, I hear, and we can
10 prove everything I say.

11 In fact, our wages are above average, and I can prove
12 that.

13 MS. MIRON: Thank you. Mr. Sbicca, what has been
14 your contact with the Immigration and Naturalization Service?

15 MR. SBICCA: We have periodic inspections, and we
16 lose from 15 to 20 percent, sometimes 10 percent. However, we
17 employ over 750 people, and we are continuously adding to our
18 employment rolls, and it is very difficult for us to control
19 who we employ. We use everything in our power to see that the
20 person is employable according to the law.

21 MS. MIRON: What do you mean by periodic visits?

22 MR. SBICCA: Well, sometimes it is once every six
23 months, or once a year, and one time in one year it was three
24 times. It can be a year -- one a year, two a year, or three a
25 year, and generally the reason given is that someone turned us

1 in because we were employing illegal aliens and we were taking
2 jobs from Americans.

3 CHAIRPERSON HATA: Are you notified of these visits
4 before they arrive?

5 MR. SBICCA: We originally were not notified, and I
6 think we have been notified once or twice, but I am not sure
7 of that. In fact, most of the time they just appear.

8 CHAIRPERSON HATA: When are these notifications star-
9 ted?

10 MR. SBICCA: What was that?

11 CHAIRPERSON HATA: When are these notifications
12 started?

13 MR. SBICCA: I am saying, I am not sure we ever were
14 notified. They usually appear at the plant, say eight or eight
15 thirty. We begin work at seven thirty.

16 MS. MIRON: Might this be unusual for you as an employ-
17 er as opposed to other employers? Are you aware whether that is
18 a different procedure?

19 MR. SBICCA: Well, other employers, we know -- every --
20 in every industry, I am sure the manufacturers talk to each
21 other. In the shoe industry it is quite -- the word goes like
22 wildfire when a factory has been inspected. Somebody will call
23 up and say, we hear you were hit today, or something, what
24 happened? It is a normal thing.

25 MS. MIRON: Do you give employees notice that the

1 Immigration and Naturalization Service is coming?

2 MR. SBICCA: Well, we can't, because we don't know
3 when they are coming.

4 MS. MIRON: Do you have an agreement with the Immigra-
5 tion and Naturalization Service about hiring undocumented aliens?

6 MR. SBICCA: We -- every time we are inspected, we
7 sit down and talk to them, say, how are we going to avoid these
8 inspections because it is very costly and disruptive. In fact
9 we feel you are invading the rights of the citizens that are
10 working here because they get no work done, and you are invading
11 my rights because it costs me a lot of money to have my produc-
12 tion line shut down for three, four, or five hours.

13 Production is ruined for the whole day and possibly -
14 in fact, production is ruined for a month, until we get back
15 to normal in a plant our size.

16 MS. MIRON: Why is that?

17 MR. SBICCA: Well, because you don't -- see, we work
18 on a production system. Now, if you take out key people in
19 certain areas, by the time you have replaced them, it takes
20 quite a while to break in new people or find new people for
21 those jobs. It isn't like if you are producing 4,000 pair a
22 day and everything -- people have been coming in and they have
23 been working steadily, and even if you took five percent of
24 the people, but if they happen to be in key jobs, you could
25 lose 40, 50 percent of your production, and the other people

1 would have to go home and couldn't work until the production
2 was cleaned out because you would create backlogs because in
3 those key jobs you wouldn't be able to get them done and the
4 shoes would stop.

5 MS. MIRON: Do the INS agents who come generally have
6 a search warrant?

7 MR. SBICCA: No.

8 MS. MIRON: Do you require a search warrant?

9 MR. SBICCA: No.

10 MS. MIRON: Why is that?

11 MR. SBICCA: Because one time we stopped them from
12 going in, quite a long time ago, and they went out and got a
13 search warrant, and it took a lot longer to survey our place
14 that day than it did later, and that is the reason we never
15 did it again.

16 MS. MIRON: And why do you think that was?

17 MR. SBICCA: What was that?

18 MS. MIRON: Why was that? Why did it take longer?

19 MR. SBICCA: It just seemed longer, and I think it
20 was longer.

21 MS. MIRON: Uh-huh.

22 MR. SBICCA: I mean, the idea is, if you are agree-
23 able, I imagine, it is better. I mean, it was our feeling we
24 would be better off to cooperate, and we are a legitimate
25 factory, and we pay legitimate wages, and we are running a

1 legitimate business. As you realize, we have a difficult problem
2 with the imports. The imports from Korea and Taiwan where they
3 employ slave labor, and twenty cents an hour, is our competi-
4 tion. I am paying above minimum by quite a bit, and lots of
5 benefits, and I have to compete with that kind of labor, so I
6 have got the problem between surveys and imports, so it is very
7 difficult.

8 If it wasn't for our good knowledge and expertise in
9 manufacturing and design, we wouldn't even be in business. In
10 fact, 55 percent of all shoes sold in this country are imports,
11 and the shoe factories are dropping off like flies because we
12 don't have qualified people to run manufacturing plants, and
13 we do not have enough workers.

14 Right at the moment, I can use more workers, in my
15 particular case, because we are experts in our business.

16 MS. MIRON: Have you received any guidance from INS
17 on employing undocumented aliens?

18 MR. SBICCA: What was that?

19 MS. MIRON: Have you received any guidance from INS?

20 MR. SBICCA: INS has suggested that we, when we em-
21 ploy new people, that we call in someone to look at their pa-
22 pers to see if they are legal, and we have agreed to that.

23 MS. MIRON: How have they suggested this to you?
24 How was this communicated to you?

25 MR. SBICCA: Verbally.

1 MS. MIRON: Did you seek this, this arrangement?

2 MR. SBICCA: No. No way. We cannot have these dis-
3 ruptive inspections. I mean they just, you know, they just are
4 very costly and it just is very bad for our business. I mean,
5 we can't make deliveries. We happen to have very good shoes
6 and a very desirable shoe that our customers want, and they are
7 very upset when they don't get deliveries, and everyone is
8 upset, our regular workers which are over 85 percent of our
9 staff, and it is just -- I mean, we are being treated like
10 criminals, and here we are trying to run a legitimate business,
11 and I don't think it is right, and I don't blame anybody par-
12 ticularly, but that is the way it is.

13 MS. MIRON: Then did you ask for advice from the
14 Immigration Service, or did they give it to you? How did that
15 come out?

16 MR. SBICCA: Well, it was through the conversations,
17 why do you -- everybody asks, why do you pick on us? Here we
18 are running a legitimate business. Why? And they will say,
19 well every time we come, we find ten, 15, 20 percent, and you
20 know, you can't do this. I mean, it is against the law.

21 Well, how are we going to stop this, well, would you
22 consider this plan? And we said yes, we will consider any-
23 thing.

24 MS. MIRON: Right. And so what were the efforts that
25 you made, and how did they turn out?

1 MR. SBICCA: Well, we had the applications. We ad-
2 vised a person that is applying for the job that they will be
3 subject to an interview from an INS agent. That is the time
4 of employment.

5 MS. MIRON: Is that the only efforts that you have
6 made in that --

7 MR. SBICCA: Yes.

8 MS. MIRON: -- direction? I think at this time I
9 will turn over the questioning to the Advisory Committee.

10 CHAIRPERSON HATA: Mr. Sbicca, have you received a
11 copy of the INS form letter that we received this morning?
12 After such an inspection takes place apparently the INS sends
13 employers a form letter and then a list of individuals whom
14 they have found in violation of the law.

15 MR. SBICCA: I haven't received that letter yet.

16 CHAIRPERSON HATA: You have never received anything
17 like that?

18 MR. SBICCA: Well, you say you just received it this
19 morning?

20 CHAIRPERSON HATA: Right. This is a copy of the
21 form letter that apparently has been going out with a list of
22 workers that have been found to be undocumented.

23 MR. SBICCA: We have gotten from two inspections two
24 lists from the INS that I know of.

25 CHAIRPERSON HATA: Okay. I was also concerned about

1 the paychecks of these workers who are taken in by INS. What
2 happens to their paychecks?

3 MR. SBICCA: The paycheck is picked up by relatives
4 very quickly, and we give it to them. We have never kept a
5 single paycheck. These people are entitled to their pay and in
6 fact they get their benefits, too.

7 CHAIRPERSON HATA: When do you find the INS --

8 MR. SBICCA: And their vacation pay and holiday pay,
9 whatever they are entitled to, they get, every penny of it.

10 CHAIRPERSON HATA: When do the INS surveys or inspec-
11 tions take place, have you found any kind of a pattern?

12 MR. SBICCA: There is no pattern. It is not any
13 particular day. It is generally in the morning, however, from
14 eight to eight thirty?

15 CHAIRPERSON HATA: Is it generally before payday or
16 around payday?

17 MR SBICCA: Well, payday in our factory is Fridays.
18 We have had inspections on Tuesdays, Wednesdays, and Thursdays
19 that I can remember.

20 CHAIRPERSON HATA: And payday is every Friday?

21 MR. SBICCA: Every Friday. We pay once a week. We
22 do not pay bimonthly.

23 CHAIRPERSON HATA: Are there any questions from the
24 Committee?

25 MR. SPURLOCK: One question, Mr. Sbicca. Do you

1 employ labor counsel?

2 MR. SBICCA: I engage an attorney, a labor attorney,
3 yes.

4 MR. SPURLOCK: And do you delegate to this person
5 significant authority with respect to making decisions regard-
6 ing labor matters?

7 MR. SBICCA: No. We have the final say on everything.

8 MR. SPURLOCK: So that if any calls were made, could
9 have been made to INS with respect to any kind of raids or
10 factory surveys, they wouldn't, could not have been made with-
11 out your knowledge, is that correct?

12 MR. SBICCA: Well, we would never think of calling
13 the INS.

14 MR. SPURLOCK: All right.

15 MR. SBICCA: We need all the help we can get.

16 MR. SPURLOCK: Okay. Do you know of this practice
17 generally existing in the industry?

18 MR. SBICCA: I do not believe that it does exist.
19 Every manufacturer I know needs all the help they can get. Why
20 are these people employed? These are the people that applied
21 for the jobs, and we called the job bank or the unemployment
22 and we never get anybody.

23 MR. SPURLOCK: Do you know about your competition
24 perhaps engaging in such activities?

25 MR. SBICCA: They would not do it. I am positive.

1 I know them very well. This is, I am talking about the shoe
2 industry now.

3 MR. SPURLOCK: Yes.

4 CHAIRPERSON HATA: Any other questions from the pan-
5 el? I understand, Mr. Sbicca, that your company has a loan
6 agreement with the Federal Government?

7 MR. SBICCA: Yes.

8 CHAIRPERSON HATA: Which provides that you make
9 good efforts, good-faith efforts to employ --

10 MR. SBICCA: Yes.

11 CHAIRPERSON HATA: -- citizens.

12 MR. SBICCA: And we do. We do everything in our
13 power to be sure that the person is a legitimate person. We
14 have signs and we talk to them. We ask them a lot of questions
15 I think is against the law even, but we do, because we do not
16 want to hire people unless they are American citizens and are
17 legally entitled to work.

18 CHAIRPERSON HATA: Are these signs in Spanish as
19 well as in English?

20 MR. SBICCA: Spanish and English, and they are very
21 visible.

22 CHAIRPERSON HATA: Staff? If not, we thank you very
23 much, Mr. Sbicca.

24 MR. SBICCA: Send us some more help, how about it?
25 We need it, really.

1 CHAIRPERSON HATA: Well, we thank you for coming.

2 MS. MIRON: Thank you.

3 MR. SBICCA: Okay, thank you.

4 CHAIRPERSON HATA: If there are no other witnesses,
5 Mr. Davis has not appeared for the record.

6 MS. MIRON: Mr. Bluto.

7 CHAIRPERSON HATA: Mr. Bluto has not appeared, for
8 the record, and if not, we will adjourn for lunch and be back
9 here at one o'clock. Off the record.

10 (Whereupon, at 11:55 a.m., the hearing in the above-
11 entitled matter was recessed to reconvene that same day at
12 1:00 o'clock p.m.)

A F T E R N O O N S E S S I O N

(1:12 p.m.)

1
2
3 CHAIRPERSON HATA: On the record. I would like to
4 call the afternoon session of our open meeting to order. Ms.
5 Campbell will begin the questioning.

6 MS. CAMPBELL: Would you each please give your name
7 and your relation to immigration concerns, please?

8 DR. NAVARRO: Dr. Armando Navarro, Executive Direc-
9 tor for the National Institute of Community Development, lo-
10 cated in San Bernardino in the City of Ontario. We were in-
11 volved in an issue in October of 1977 involving immigration.

12 MS. CAMPBELL: Thank you. Mr. Steiner?

13 MR. STEINER: William Steiner, Associate Counsel and
14 Director of the Mexican American Legal Defense and Educational
15 Funds, Los Angeles Office, and this organization has been
16 extensively involved with immigration issues, both in litiga-
17 tion and other forms of advocacy with government organizations
18 and agencies.

19 MR. REITER: Lou Reiter, Commander with the Los
20 Angeles Police Department.

21 MS. CAMPBELL: Thank you. Dr. Navarro --

22 CHAIRPERSON HATA: Excuse me. There is someone else
23 on the panel, didn't identify himself.

24 MR. CHULETA: Lawrence R. Chuleta, I am the Adminis-
25 trative Coordinator for the National Institute for Community

1 Development.

2 CHAIRPERSON HATA: I would also like to read some-
3 thing else into the record. I understand that the Sheriff's
4 Department was asked to participate in our hearing, and this is
5 the letter of response from Sheriff Peter J. Pitchess, dated
6 the 5th of June, 1978.

7 "California Advisory Committee to the Commission on
8 Civil Rights, Gentlemen,"

9 Our token male is not here.

10 "Gentlemen: The policy of the Los Angeles County
11 Sheriff's Department relative to the enforcement of immigration
12 laws is as follows:," quote, "If when conducting routine
13 Departmental business, it is found that a subject is an illegal
14 alien, then all pertinent information shall be forwarded to the
15 U.S. Immigration Department for their disposition." End quote.

16 "We do not actively seek out or arrest illegal
17 aliens. We hope this information will be of some assistance to
18 you during your meeting in Los Angeles on June 15 and 16. If
19 you require further information, please feel free to contact us.
20 Sincerely, Peter J. Pitchess, Sheriff."

21 I turn it back to you.

22 MS. CAMPBELL: Okay, I would like to call Mr. Ron
23 Isner up to the witness stand, please. Would you state your
24 name, please, and occupation?

25 MR. ISNER: Yes. My name is Ronald Isner. I own a

1 restaurant in Malibu.

2 MS. CAMPBELL: Okay. Mr. Isner, could you briefly
3 describe the events that occurred on April 12th, 1978, speci-
4 fically those activities of the Border Patrol in your restau-
5 rant and the surrounding area?

6 MR. ISNER: Yes. I was called at home on that date,
7 and they had stated that the Border Patrol had come into my
8 restaurant and removed three of my employees from the restau-
9 rant. I immediately went to the restaurant, at which time
10 there was still activity in the field with the Border Patrol.

11 They were in the process as I came in -- just as I
12 came in -- they had stopped a car on Heathercliff Road and had
13 questioned the occupants of the car, and I think they both
14 exited. They were both latin passengers in the car, the dri-
15 ver and the passenger.

16 I proceeded on to the restaurant, still watching
17 what was going on. They detained them for a little while.
18 They got back in the car and left. I went into my restaurant
19 and talked to my father-in-law, who is the manager, and he --
20 asked him basically what happened, because I wasn't there at
21 the time.

22 He said that he was in the front, and all of a sud-
23 den they were taking these people out in handcuffs, out of the
24 restaurant, so I later talked to one of the cooks that I have
25 who speaks good English and is a legal resident of this

1 country, and asked him what happened, and he said that he was
2 just -- what had basically happened was one of my dishwashers
3 had gone to the market to buy some lemons or something, and on
4 the way back he was stopped by the Border Patrol, and I guess
5 they had ascertained that he was illegal.

6 They followed him back to the restaurant, went through
7 the back door into the kitchen, and questioned other employees
8 there at the time, determined that two of them, I suppose, were
9 illegal, and took them out of the restaurant also.

10 They never at any time presented a warrant, asked, or
11 anything.

12 CHAIRPERSON HATA: We can barely hear you.

13 MR. ISNER: I am sorry. At no time did they ask to
14 be admitted to the restaurant, show a warrant of any kind, or
15 indicated what it was that they were doing there. My feelings
16 of the whole operation was very Gestapo-like tactics on their
17 part, very dehumanizing to the people that they were dealing
18 with, in that I had another friend of mine observe that they
19 had, for example, after they had handcuffed one of these aliens,
20 picked him up by the seat of the pants, and kind of just shoved
21 him across, you know, in a very, very -- not brutal way, but
22 very dehumanizing way to him.

23 I had an occasion to talk to several of the people
24 after they got back to this country, not that worked for me,
25 but some of the other ones, and one of the people -- am I doing

1 all right? Do you want to ask me anything or do you want me to
2 just go on and tell what I want --

3 MS. CAMPBELL: Continue.

4 MR. ISNER: Okay, thank you. I had an occasion to
5 talk to one immigrant, or alien, I am sorry, he is not an
6 immigrant, who, in questioning him about this, since I had not
7 run across this before, and asked him, you know, what his
8 experiences were. He has been back and forth across the border
9 ten or 12 different times, and I asked him, well, what is this
10 costing you, you know, I mean, and it is costing him about
11 two or three hundred dollars each time he comes across, so my
12 question to him was, well, after one or two times, you should
13 be able to do it all by yourself. Why are you paying two or
14 three hundred dollars?

15 And he said, well, every time he tried it by himself
16 he got caught. Every time he went with a 'coyote' he didn't
17 get caught, which seemed very strange to me, since they went
18 the same exact way each time.

19 This particular pick-up in Malibu, as far as I can
20 ascertain, was perpetrated by the Oxnard Border Patrol Center,
21 in Oxnard. For them to have come to Malibu and pick up 30
22 immigrants, they would have had to have passed right by maybe
23 five or six hundred illegal immigrants in their own back yard.
24 It seemed rather strange that they would spend -- I would be
25 very interested in what this operation cost the taxpayers, for

1 them to pick 30 immigrants up when they could have picked four
2 or five hundred up in their own back yard. It seemed a bit odd
3 to me that this would happen.

4 MS. CAMPBELL: Continue.

5 MR. ISNER: The Sheriff's Department was involved
6 some way in this operation. I later had an opportunity to talk
7 to the man who was in charge of the Border Patrol in Oxnard.
8 He indicated to me that there was probably cause. I questioned
9 him on what he felt probably cause was at the time, and appar-
10 ently if somebody tells him that there is an alien or there
11 are aliens someplace, that is probable cause for them to go in,
12 into an area, at least that was his indication to me.

13 Apparently the Sheriff's Department had indicated
14 that there were aliens in the area. He also indicated that he
15 would be back, and that since he found aliens in my restaurant,
16 that is probably cause to come back again. I didn't feel that
17 that was probable cause to come back again on his part.

18 MS. CAMPBELL: Mr. Isner, could you tell us what
19 type of investigation the Sheriff's Department conducted prior
20 to --

21 MR. ISNER: Yes.

22 MS. CAMPBELL: -- calling the Border Patrol?

23 MR. ISNER: Apparently what happened was there was a
24 congregation of Mexicans on a street, and the reason that they
25 were congregated was that it was a pick-up place for them to go

1 work. Malibu, being the area that it is, depends very heavily
2 on labor forces there, and there is no labor force in Malibu,
3 period. It is not that kind of community, and they used to
4 come and stand there and wait for people to come and pick them
5 up and take them to jobs, and apparently there was some beer
6 drinking going on or something like that, and some of the citi-
7 zens complained to the Sheriff's Department about it.

8 So, apparently the Sheriff's Department came out,
9 asked for green cards, from some people there, didn't find
10 some and arrested a few people, or at least one person there,
11 at which time, they called the Border Patrol, and said that
12 there are aliens in the area, and the Border Patrol came in
13 and made their roundup.

14 I called the Sheriff's Department and asked them
15 what part they took in it. They indicated just that, that they
16 had had some complaints, that they called the Border Patrol,
17 the Border Patrol came in. However, there was a Deputy Sheriff,
18 at least one, on duty at the time, pointing out people, as to
19 the people that should be picked up.

20 CHAIRPERSON HATA: And you saw this?

21 MR. ISNER: I did not see this, but -- no, this was
22 told to me by somebody else. No, I did not see the Sheriff.
23 However, enough people saw it that there is no doubt that it
24 is true. I mean, there were enough people told me that there
25 was a Sheriff standing there, you know, pointing out. The

1 Sheriff happened to be of a Mexican descent, or a latin descent
2 of some kind, and I don't know why he was there, but --

3 MS. CAMPBELL: Mr. Isner, how long was the Border
4 Patrol in the area, and the Sheriff's Department?

5 MR. ISNER: Well, apparently, they must have been
6 there several hours, and they not only came into the business,
7 my business there, and in the immediate vicinity of the coffee
8 shop. They also went down the private streets in the area of
9 Malibu with no public -- there was no commercial property at
10 all, went down private streets, and apparently picked up a
11 couple of gardeners there, and some people off of construction
12 sites that were in the area.

13 I would see no reason at all that they would be going
14 down private streets in a community, you know, just residential
15 streets at that time. They must have been there at least from
16 like eight until eleven, noontime, type of -- from all the
17 indications I got from the time that they first showed up there
18 until they finally eventually vacated the area.

19 MS. CAMPBELL: Mr. Isner, how were you personally
20 affected by the events of that day?

21 MR. ISNER: Well, I feel that number one, that my
22 civil rights were violated by them coming on my private proper-
23 ty without warrants and without announcing themselves at all.
24 I also had a very strong feeling that to come as far as they
25 did to an area to pick up 30 illegal aliens out of a million

1 and a half that are here, was like spitting in the wind,
2 probably, so to speak, or pouring a glass of water in the
3 ocean. I didn't feel it was --

4 MS. CAMPBELL: How was your business affected?

5 MR. ISNER: Well, I had to close. I eventually --
6 what happened was because this happened during my morning shift
7 I was running very short, and the afternoon people, then, did
8 not come to work, and I ended up closing for about four hours,
9 the business completely, and I eventually got back opened on
10 that day, but it was only because my family can work and they
11 know how to do it, and I got them in to reopen the business.

12 MS. CAMPBELL: Did the customers who were in your
13 store at the time that the Border Patrol entered have any
14 particular reaction to their entry?

15 MR. ISNER: They didn't even know it, because they
16 basically came straight through the back door into the kitchen
17 and took them out. There were customers that were aware of it
18 because after they took them out, then of course they had to
19 transport them I guess back to whatever vehicle they were
20 going to put them in, so they did see it, naturally.

21 We had several customers that not only knew about
22 what was happening there, but sat in the coffee shop, in my
23 restaurant, and observed what they were doing out in the park-
24 ing lots, picking people up in and around the parking lot, and
25 in through there.

1 MS. CAMPBELL: Okay. I have no more questions of
2 Mr. Isner.

3 CHAIRPERSON HATA: The Committee, anybody have any
4 questions for him? If not, thank you very much, Mr. Isner.

5 MS. HILBORN: Oh, I do.

6 CHAIRPERSON HATA: Oh, you do. Okay.

7 MS. HILBORN: I was curious. You mentioned that you
8 had talked with a person who had returned across the border
9 many times.

10 MR. ISNER: Yes.

11 MS. HILBORN: I wanted you to follow up a little bit
12 on what kind of feelings you had in regards to this coyote
13 thing, where you say certain people seem to be able to get
14 across the border if --

15 MR. ISNER: Yes.

16 MS. HILBORN: -- they pay a fee. Are you -- did you
17 get the impression that this person was trying to bring some
18 kind of a tie-in thing with the Border Patrol?

19 MR. ISNER: I got the impression that the Border
20 Patrol looked the other way when the coyotes came across.

21 MS. HILBORN: They had some kind of a deal going?

22 MR. ISNER: That is the impression I got, yes.

23 MS. HILBORN: Have you heard this at any other time
24 from any other person, or just this one experience?

25 MR. ISNER: Just the one particular one that I had

1 talked to, was the only -- I didn't get into it any more.--

2 MS. HILBORN: I see.

3 MR. ISNER: -- than that, but that was at least the
4 impression I got was when he did it on his own he didn't make
5 it and when he came across with the coyote he made it all right
6 and he is never stopped, so he made it across.

7 MS. HILBORN: Thank you.

8 MR. ISNER: I might say also that the fellow I talked
9 to in Oxnard, I don't know who he was, whether or not I was
10 wrong by employing aliens, which I didn't know that they were,
11 or whether I did or whether I didn't, did not alter the fact
12 that I am a citizen who owns a business in this country, and
13 pays considerable taxes in this country, and he was -- as a
14 public employee, I felt, a bit on the you-can't-touch-me, I
15 am above you, and if you don't like it, tough, type of indi-
16 vidual.

17 I didn't like that at all. I didn't like his atti-
18 tude as far as that was concerned. In other words, he put
19 down the thing is, is there is aliens there, we are going to
20 pick them up. I don't care what you do about it. It makes
21 no difference. We don't have to answer to you or anybody else.

22 MS. HILBORN: Have you made any efforts to take
23 legal action because of this what you feel to be illegal entry
24 and a violation of your rights?

25 MR. ISNER: I have. I have talked to my attorney.

1 We have not taken any action to this point. He feels strongly
2 that my rights were violated. Whether or not we do or not
3 would be dependent upon him, what his advice is.

4 CHAIRPERSON HATA: Mr. Isner, did the officer who
5 entered your restaurant, did he speak Spanish? Did he communi-
6 cate to your workers in another language, or was this --

7 MR. ISNER: Yes.

8 CHAIRPERSON HATA: -- all done in English?

9 MR. ISNER: No, it was done in Spanish. They were
10 in plain clothes. They didn't even have uniforms on.

11 CHAIRPERSON HATA: Did they show some sort of identi-
12 fication?

13 MR. ISNER: Not to anybody that I know, they didn't.
14 I, of course, wasn't there. They did not show it to the mana-
15 ger of the store. As they walked in and took possession of
16 these people, I think they said something like, we want to
17 see the owner, you know, after they had already -- in other
18 words, once they were in the kitchen, and already had ascertain-
19 ed, I suppose, that these people were aliens -- I don't know
20 what method they used, but I thought -- it was my impression
21 that some Supreme Court had put down the ruling that being la-
22 tin was not probably cause to stop somebody and ask them for
23 papers, and they certainly were doing that.

24 They were stopping people in cars, and they had no
25 way of knowing whether they were illegal or not, other than the

1 fact that they were latin appearing.

2 CHAIRPERSON HATA: Thank you..

3 MS. CAMPBELL: Thank you, Mr. Isner. Dr. Navarro,
4 could you briefly describe the events which occurred in Ontar-
5 io between the community and the Immigration Service prior to
6 your involvement?

7 DR. NAVARRO: Okay. Well, the whole situation began
8 to develop during the month of September. Father Chavez, who
9 was the head priest there of Our Lady of Guadalupe, Ontario,
10 brought it to attention of a meeting in Colton (phonetic).
11 This was in September, and he was very disenchanted with the
12 situation, because for approximately two or three months the
13 INS or the Border Patrol had been patrolling the area around
14 the church very heavily, and to the point that they were
15 intimidating and harassing the parishioners ever Sunday.

16 In fact, on one instance, two or three individuals
17 were picked up on church property, which created a lot of
18 consternation, a lot of fear, a lot of concern, and when the
19 Father brought it to our attention, it was basically a situa-
20 tion where there was nobody there to assist him.

21 So he said, I need help. Something has got to be
22 done. I am losing a lot of parishioners, approximately 30
23 percent of my parishioners are not attending mass on Sundays,
24 and there is a violation taking place. Where do I go?

25 So as the Executive Director of the National

1 Institute for Community Development, with one of project is
2 called Project Organize, beginning to develop a strong base of
3 organizations throughout the Riverside-San Bernardino County
4 area, we saw the opportunity to begin moving on the issue.

5 It was an emotional issue. It was an issue of jus-
6 tice, social justice. There was an issue where there was a
7 flagrant violation of many of the civil rights of the parish-
8 ioners. So what we did, we proceeded to monitor the situation
9 every Sunday.

10 We set up committees, surveillance committees --

11 MS. CAMPBELL: Dr. Navarro, I just wanted to inter-
12 rupt you to ask you, when the community felt they were being
13 harassed, what do you mean by that?

14 DR. NAVARRO: Harassed in the sense that the presence
15 of the police and the INS or the Border Patrol was very ap-
16 parent every Sunday. In other words, it was commonplace on
17 many occasions for individuals coming to the church on Sundays
18 to be stopped by INS officials, and asked for papers and so
19 forth.

20 MS. CAMPBELL: What was the area that they patrolled
21 around the church? In other words, what other areas were they
22 patrolling besides the church?

23 DR. NAVARRO: Well, at this time the main concern
24 was their patrolling of the church, the property around the
25 church, the area around the church. This is a barrio where it

1 is approximately 90-some percent chicano. Obviously the area
2 does appeal to a lot of the undocumented workers. There are
3 many undocumented workers in this area, and it is quite common
4 on every Sunday to see a lot of people coming in from many of
5 the streets or areas around the church walking to mass, so it
6 was a good strategy, a good tactic for the INS, in collabora-
7 tion with the Ontario Police Department, to pick up the people
8 on Sundays.

9 MS. CAMPBELL: What role did the Ontario Police have?

10 DR. NAVARRO: Pardon me?

11 MS. CAMPBELL: What role did the Police Department
12 have?

13 DR. NAVARRO: They were very supportive. Actually
14 their function was twofold. Number one, they physically
15 cooperated by providing physical assistance, and we have docu-
16 mentation of this in the pictures that we took. Secondly,
17 they acted as an intelligence-gathering type of agency because
18 during the weeks that preceeded the confrontation that we had,
19 they admitted to us that they were channeling information to
20 the INS in terms of where they could locate undocumented
21 workers.

22 All right. So, the situation developed to the point
23 that for four consecutive Sundays we monitored the situation,
24 and we had our committees out there. We took pictures on
25 several occasions where the Border Patrol was patrolling along

1 with the Ontario Police Department. We documented this and
2 then on October the 2nd, excuse the expression, hell broke
3 loose close to the church, because on this Sunday, on this
4 particular Sunday, after the mass, approximately nine o'clock
5 in the morning, I was there, Lawrence Chuleta was there, and
6 quickly some of the people brought it to our attention that
7 there was a sweep taking place right adjacent to the church,
8 and this was approximately I would say just across the street
9 and no more than 500 feet away from the church, close to the
10 Valencia Market, and there were three vehicles involved, three
11 Border Patrol vehicles plus two black and white units involved.

12 And they were going into the homes without search
13 warrants. They were looking for undocumented workers. On one
14 occasion during the situation, one official went into a home
15 where a lady was taking a shower. The gentleman was inside the
16 home. He proceeds to walk into the restroom where the lady is
17 walking out of the shower without no clothes on, so it was
18 very embarrassing for her. The gentleman did not ask permission
19 to enter the home, so this was one instance in particular that
20 aggravated the situation that morning, because it was brought
21 to my attention.

22 I proceeded to literally confront the officials and
23 the Border Patrol officials, and we had almost a verbal confron-
24 tation. I say almost, because it was getting out of hand there
25 for a while. But they backed down because very quickly there

1 was a crowd of approximately 50 people surrounding us, and
2 charges were being made by INS officials and Ontario Police
3 Department officials that we were the provocateurs. We were
4 the individuals that were provoking and inciting what was going
5 on, that we were responsible and that they knew that we were
6 responsible for the actions.

7 Furthermore, that we were obstructing justice. I
8 proceeded to mention to the Ontario Police Department official
9 that the only individuals or individuals who were obstructing
10 justice were them, and I pointed out their inconsistencies or
11 their infractions of the law, mainly the situation where the
12 official goes into the house without having a search warrant.

13 MS. CAMPBELL: And what was their response?

14 DR. NAVARRO: They backed down. They saw the people
15 getting very restless to the point that they were angry, and
16 frankly as an organizer, I used that very effectively in terms
17 of the emotion, and from there we proceeded to document. We
18 took the pictures. We have plenty of documentation. The whole
19 situation accelerated very rapidly in the forthcoming days.

20 We attempted to mobilize the communities from through-
21 out the area. We disseminated the information. We used the
22 press, the power of the press, as well as communicating direct-
23 ly with many of the organizations, the agencies throughout the
24 area, and the whole community, especially of Ontario, was
25 placed on a war footing, all right?

1 We used it as an effective means to begin organizing
2 the community. We proceeded to also contact the INS officials
3 because we wanted to have a meeting with them, and we also
4 proceeded to contact the officials, the City Mayor of Ontario,
5 the Chief of Police and so forth to hold some meetings to dis-
6 cuss the matter in terms of the involvement of the Police
7 Department and also the flagrant violations of the INS.

8 So, in the course of the next two weeks, the whole
9 thing culminated with a meeting that took place October the
10 11th, if I remember correctly. We had a press conference on
11 October the 6th, and the whole culmination of the effort was on
12 October the 11th, where we set up a press conference, INS
13 officials along with city officials that were under the
14 impression that it was going to be just a small meeting with a
15 small number of community representatives, but they were
16 surprised.

17 When they got there, there was approximately 150 to
18 200 people there, there were media representatives from Channel
19 2, Channel 4, Channel 7, Channel 9, Channel 11, Channel 34, so
20 the whole thing was staged and orchestrated to the point to
21 maximize the exposure of the situation.

22 Here is a situation where the first amendment to the
23 Constitution is being violated, and we used it very effectively
24 emotionally, organizationally, because the whole thing conclud-
25 ed with the INS committing themselves to pulling out. The

1 Police Department, of course we used the Attorney General's
2 opinion that was made in September, about -- it was illegal
3 for the Ontario Police Department or any police department to
4 assist the INS unless there was probably cause of some criminal
5 act being perpetrated.

6 We used that very effectively to the point that they
7 also rescinded that action. Initially they were involved, they
8 were going to participate, then they didn't. So now it has
9 been a success. They are not being harassed or not being
10 intimidated, and I think the moral to the story is that the
11 only way the INS or any agency of the government is going to
12 respond in a very effective way in terms of the chicano
13 community is by demonstrating the power of organization, and
14 the power to deliver what they understand, and that is numbers,
15 that is exposure, that is using the law, using every method
16 available to put them on the defensive, and us mounting an
17 offensive, and this is exactly what was done very effectively
18 I think.

19 MS. CAMPBELL: Thank you, Dr. Navarro. I would like
20 to turn over the questioning to the Committee.

21 CHAIRPERSON HATA: Are there any questions from the
22 Committee? No? Thank you, Dr. Navarro. You were very thor-
23 ough.

24 DR. NAVARRO: Thank you very much.

25 MS. HILBORN: Let me ask you, are these copies of

1 these pictures that we may keep here?

2 DR. NAVARRO: Yes, and we have some articles.

3 MS. HILBORN: I think he provided the articles also,
4 right? Yes. Thank you.

5 MS. CAMPBELL: Thank you very much. Mr. Steiner,
6 would you please tell us again what your position is with the
7 Mexican American Legal Defense and Educational Fund?

8 MR. STEINER: Yes. I am the Associate Counsel and
9 Director of the Los Angeles Project Office for MALDEF.

10 MS. CAMPBELL: We would like to ask you some ques-
11 tions about MALDEF's position in regard to enforcement of
12 immigration laws by state and local police. First of all, if
13 you would like to give MALDEF's position on that, and describe
14 the practical and legal reasons for adopting that position.

15 MR. STEINER: I would be very happy to, Chair Hata,
16 and members of the Committee. I am very happy to have the
17 opportunity to address the Committee on this important question
18 which I believe is of importance not only to hispanics and
19 hispanic organizations, but to all persons who are concerned
20 with civil liberties in the United States. MALDEF has taken
21 the position that state and local law enforcement should not
22 be involved in the enforcement of federal immigration laws.

23 There are a number of reasons for this, and I might
24 point out at this time that our position is based on a rather
25 extensive study of immigration problems, both from a legal and

1 a human perspective. We have done a considerable amount of
2 research, which is reflected in the documents that I presented
3 to the Committee this morning.

4 Also, I have given each of the Committee members
5 MALDEF's litigation docket, which explains some of the cases
6 that we are presently involved in, and I have also given you
7 our most recent newsletter which discusses again some of those
8 cases where immigration problems are being dealt with, partic-
9 ularly with reference to local police enforcement of immigra-
10 tion laws.

11 MALDEF is also involved in litigation at the present
12 time concerning abuses of immigration law enforcement by state
13 and local authorities, and finally, I should point out that
14 MALDEF has regular contact with a number of organizations,
15 government agencies, and private attorneys who are in the
16 immigration law area, and many of our conclusions are drawn
17 from the combined experience of these agencies, organizations
18 and attorneys.

19 I might also add that since 1975, prior to joining
20 MALDEF in October of last year, I was a private practitioner
21 in the Los Angeles area, and handled a number of immigration
22 cases in which these same problems did arise.

23 I mentioned that our position is, both legally and
24 from a practical standpoint, that state and local law enforce-
25 ment must not be permitted to become involved in federal

1 immigration law enforcement. There are a number of constitu-
2 tional bases for this legal opinion, and I won't go into great
3 detail on these, because I believe that they are adequately
4 covered in the legal memoranda which I have presented to the
5 Committee, but we are referring now to the Article I Section 8
6 regulation of the commerce clause of the Constitution, the
7 Article I Section 8 Congressional power to establish a uniform
8 rule of naturalization, and the Article VI Clause 2 supremacy
9 clause, which of course states that the laws of the United
10 States are the supreme law of the land.

11 There are at least four considerations which the
12 courts have taken in mind in determining whether or not states
13 should become involved in a federal area of law. One of these
14 with regard to immigration has to do with whether or not
15 immigration enforcement is exclusively a federal concern.

16 MALDEF has concluded that from the Constitution, from
17 the case authority, from the Congressional history, the
18 immigration law enforcement in this country is exclusively a
19 federal concern.

20 A second reason for believing that state and local
21 law enforcement should not become involved in immigration law
22 enforcement has to do with the fact that immigration enforce-
23 ment is essentially a federal concern. In some of the case
24 decisions, for example, there is language such as, immigration
25 control is inherently a federal concern, it is a paramount

1 federal interest, and Justice Black has written that it is one
2 of the most important and delicate of all international rela-
3 tions.

4 A third legal reason for the conclusion MALDEF has
5 reached has to do, without regard to the dominance of the
6 federal concern, simply with the legislative history and the
7 INS's own interpretation of this history and the provisions in
8 the Immigration and Naturalization Act. We feel that those
9 provisions, which I will not go into unless the Committee so
10 desires do indicate that except for one very narrow exception,
11 state law enforcement is not to be involved in the enforcement
12 of immigration laws.

13 And finally, a fourth consideration has to do with
14 the practical aspect of local enforcement of immigration laws.
15 Here, even if we were not to grant that we are talking about
16 an essentially federal concern, and even if we were to set
17 aside the Congressional and judicial history, I think we would
18 have to say that in practice, state and local enforcement of
19 immigration laws has conflicted with efficient federal action
20 in this area, and for this reason, state and local enforcement
21 must yield to federal action.

22 MS. CAMPBELL: Mr. Steiner, would you explain how it
23 has conflicted?

24 MR. STEINER: Yes. Here we are speaking principally
25 of the area of civil rights. Comparatively, the standards of

1 immigration law enforcement by the federal authorities have been
2 higher in practice than the standards we have observed by state
3 and local law enforcement authorities.

4 MALDEF -- to give one concrete example of a lawsuit
5 where this has arisen, in Wasco, California -- is presently
6 involved in litigation against the City of Wasco and the Chief
7 of Police of Wasco, where a number of citizens and permanent
8 residents have been harassed by local police authorities,
9 including the Chief of Police [REDACTED].

10 But that lawsuit was filed by the California Rural
11 Legal Assistance Organization, and very interestingly, the
12 Chief of Police decline, asserting the fifth amendment, to
13 testify in that lawsuit, in which we were asserting the viola-
14 tion of constitutional rights of these permanent residents and
15 citizens.

16 The fifth amendment was taken by the Chief of Police
17 because, presumably, he felt that he would criminally implicate
18 himself if he were to make statements concerning the activities
19 of local law enforcement. I think that this is a rather
20 shocking revelation of what is actually happening today in
21 California, when we are speaking about local enforcement of
22 immigration laws.

23 MALDEF entered that lawsuit recently. Since it has
24 entered the suit, I understand there have been rather generous
25 offers of settlement, and at the present time, a consent decree

1 is being prepared which hopefully will resolve this whole
2 matter out of court. Otherwise, we will be in court, fighting
3 on the question of the violation of citizens' and permanent
4 residents' rights by local police authorities attempting to
5 enforce immigration laws.

6 There are numerous similar examples in the documents
7 that I have presented to the Committee. One document I have
8 not given to the Committee, but I am sure is available, is
9 a document from the Chief of Police of Los Angeles, Ed Davis,
10 to the Honorable Board of Police Commissioners, dated August
11 15, 1977.

12 The Commissioner Montenegro had requested from the
13 Chief of Police an indication as to the number of undocumented
14 aliens who are arrested in Central, Rampart, and Harbor areas.

15 MS. CAMPBELL: Mr. Steiner, Could we go on to another
16 matter?

17 MR. STEINER: Certainly.

18 MS. CAMPBELL: I would like you to explain to the
19 Advisory Committee the recent California Attorney General's
20 opinion on police involvement in immigration law, and MALDEF's
21 opinion in regard to the memorandum.

22 CHAIRPERSON HATA: Mr. Steiner, just for your infor-
23 mation, we are asking you to go on to another matter because
24 Commissioner Montenegro was here yesterday, and we did discuss
25 that matter, I believe.

1 MR. STEINER: Fine. I understand. Yes, this, I
2 believe gets us into an area that is of importance, because
3 what we have at the present time are many different opinions,
4 legal opinions, by attorney generals, for example, Attorney
5 General Younger; the Attorney General of the State of Texas,
6 expressing their own points of view about the extent to which
7 state and local police authorities may legally enforce immigra-
8 tion laws.

9 Attorney General Younger has said that this is per-
10 missible under his legal analysis. MALDEF, on the other hand,
11 believes that the Immigration and Naturalization Service has
12 made it clear in a memorandum from Deputy Commissioner Green --
13 that memorandum is included in the packet I have given each of
14 you, that local police are not to become involved in the en-
15 forcement of federal immigration laws.

16 MS. CAMPBELL: Mr. Steiner, the opinion states that
17 an officer may detain a person suspected of being an undocu-
18 mented alien if a rational suspicion exists. Could you explain
19 what a rational suspicion would be?

20 MR. STEINER: A rational suspicion is whatever the
21 individual officer believes it is, one, and two, whatever a
22 court would deem would be rational suspicion in the event that
23 rational suspicion becomes challenged with lawyers, with a
24 lawsuit, or with an administrative hearing, a long process,
25 an expensive process, and one which rarely will occur.

1 MS. CAMPBELL: Are you saying, then, that that stan-
2 dard is not very authoritative in terms of informing officers,
3 state and local police officers of their ability to detain
4 persons?

5 MR. STEINER: Precisely, and we feel that the vast
6 experience that is reflected in these documents, and in the
7 lawsuits which are ongoing at the present time, indicate that
8 whenever local law enforcement becomes involved, there is a
9 great chance of abuse of constitutional rights, and this is
10 the result of a lack of training, a lack of experience on the
11 part of local law enforcement. There are many other --

12 MS. CAMPBELL: Lack of training in immigration?

13 MR. STEINER: Lack of training in immigration enfor-
14 cement, in uniform standards. The standards of Texas, which
15 are asserted by the Attorney General of Texas in his statement
16 are of course different, because the legal code of Texas is
17 different from our own, with regard to probable cause for
18 arrest, et cetera, and this is true of every state, and there
19 obviously is a need for uniform standards, training, experience
20 with this type of enforcement, experience which is not common
21 to local law enforcement, except in a very few areas, and in
22 those areas we have observed that there has been a great amount
23 of abuse of constitutional rights.

24 MS. CAMPBELL: I have no more questions.

25 CHAIRPERSON HATA: Commander Reiter, would you like

1 to comment on what was just stated by Mr. Steiner about officers
2 training and so forth?

3 MR. REITER: I think Ms. Campbell was going to ask
4 me those questions anyway in that area.

5 CHAIRPERSON HATA: Go ahead.

6 MR. STERN: Are you aware of any regulations or
7 directives from the state Attorney General's office here in
8 California concerning application of the Attorney General's
9 opinion concerning this matter?

10 MR. STEINER: The Attorney General opinion was in
11 August of 1977. I don't think that there has been any authori-
12 tative interpretation of it, at least I am not aware of any
13 such interpretation which has been published.

14 The effect of it is that local law enforcement is
15 continuing to become involved in immigration law enforcement,
16 and I think that that is the important thing, not whether or
17 not some decision has been published somewhere.

18 MR. STERN: My question is really directed at whether
19 your organization or somebody else, if there have not been any
20 regulations, that the state Attorney General interpret in a
21 plain way for law enforcement officials how the broad line of
22 the opinion should be put into practice in local areas.

23 MR. STEINER: We have addressed the Attorney General
24 Griffin Bell, Commissioner Leonel Castillo, and others, and
25 have requested specifically that either the Attorney General or

1 the Commissioner of Immigration and Naturalization Service
2 issue a policy statement similar to that of Deputy Commissioner
3 Green, which would be authoritative and which would communicate
4 to all of the INS field offices and to the Attorney Generals
5 what the proper policy should be.

6 MR. STERN: I was referring to the California
7 Attorney General's opinion.

8 MR. STEINER: We have, to my knowledge, I am not
9 aware of any meeting we have had with the California Attorney
10 General, but we feel that the proper authority is the federal
11 authority here, and that it would be more appropriate for the
12 Attorney General or the Commissioner of INS to handle this
13 type of a matter.

14 MR. STERN: Would they have any authority over local
15 police officers?

16 MR. STEINER: There is, of course, authority in the
17 sense that constitutional limitations of law enforcement are
18 going to be interpreted and clarified by the U.S. Attorney
19 General and by the Commissioner of INS. I think that if a
20 policy statement were to be made by either of these two offices
21 it would have great weight with regard to the constitutional
22 limitations of local law enforcement.

23 CHAIRPERSON HATA: Are there any other questions from
24 the panel? I have got one more question for you, Mr. Steiner.
25 Yesterday -- and please correct me if I have misinterpreted

1 his statements, Commander Reiter, since you were here yesterday.
2 Commissioner Montenegro expressed his belief that the new
3 Police Chief; Police Chief Gates, was very much concerned about
4 the rights of undocumented workers, and that he would not be as
5 supportive as others have been in the past, of cooperation
6 between the Police Department and INS.

7 Is that the general -- do you agree with that general
8 conclusion?

9 MR. REITER: To a degree. I believe, though, that we
10 are obligated to cooperate with INS as a resource and backup
11 for them. I think some of the practices that have gone on in
12 the past, that that is true. We wouldn't have taken the same
13 enforcement posture in regard to immigration laws.

14 CHAIRPERSON HATA: Fine. Have you seen, Mr. Steiner,
15 any evidence that Commissioner Montenegro's belief should be
16 maintained by the new police chief? Has he done anything con-
17 crete to support Commissioner Montenegro's good faith?

18 MR. STEINER: Well, I am not sure I understand exact-
19 ly what you are asking.

20 CHAIRPERSON HATA: I am looking for evidence of good
21 faith, or evidence to support the Commissioner's belief that
22 past practices would not be continued.

23 MR. STEINER: I am not aware of anything of that
24 nature. It has been such a short time that Police Chief Gates
25 has been in office. I am not aware of any concrete statement

1 or any evidence that is going to change past practice here. If
2 that statement has been published or has been made in the press
3 or by way of some regulation or training or announcement to the
4 Police Department, I think that is great, but I am really not
5 aware of it.

6 CHAIRPERSON HATA: Thank you.

7 MS. CAMPBELL: Okay, Commander Reiter. Thank you
8 very much, Bill Steiner. Commander Reiter, could you please
9 just describe to us the current policy of the Los Angeles
10 Police Department regarding arrest and detention of undocument-
11 ed aliens?

12 MR. REITER: Well, the current policy is in a state
13 of flux, and I think that is the reason that Chief Gates asked
14 myself and six other members of the Department to come up with
15 a new policy and new operational guidelines.

16 The policy, though, we are following our interpreta-
17 tion of the Attorney General's opinion, which is that we do not
18 arrest for illegal entry, that local law enforcement does not
19 have the authority to arrest for illegal entry. I am not as
20 familiar -- I talked with Ms. Campbell a little bit about the
21 detention aspect.

22 I know that we do detain in unusual cases. We have
23 an incident just recently where we found I believe it was al-
24 most 200 in a truck, trailer truck, of undocumented aliens,
25 and it was obviously the work of a coyote, and we detained that

1 because that is an unusual incident, and it was of course two
2 o'clock in the morning. We do not do much in the way of detain-
3 ing, and I can't really say we never do that because I am sure
4 we are. We have detained on occasion and called INS for
5 assistance if we run into an incident that later turns out that
6 the person involved is an undocumented alien.

7 The problem that the Police Department has really had
8 is in the evening hours and morning hours because of the limit-
9 ed resources from a field standpoint that INS have, we just
10 don't have the response that we need because we have time
11 limits and we find now that officers because of that do very
12 little in the area of detention because we can't get the re-
13 sponse that we would like to get, and that is mainly due to the
14 lack of resources of INS.

15 But I would like to say that we do believe that we do
16 not have a right to arrest for illegal entry only, and the
17 interpretation of the Department is that the Attorney General's
18 opinion, and he is the chief law enforcement officer of the
19 state, has said that because of the time and the distance fac-
20 tor, and the fact that it is a federal law, it is something
21 that law enforcement does not have the authority to become
22 involved in, illegal arrest only.

23 CHAIRPERSON HATA: I need some clarification. Let us
24 backtrack. I got a little bit lost. You said that when you do
25 detain people, you sometimes call on INS for assistance.

1 MR. REITER: We call on them, that is right, because
2 we can't arrest, so we call INS to determine what is it you want
3 to do? Do you want to assume, and come here and investigate
4 this and assume custody of this person or otherwise we will
5 release the person.

6 CHAIRPERSON HATA: On what basis, then, do you make
7 that phone call? After you have determined that that individ-
8 ual does not have papers or documentation to support his legal
9 residence?

10 MR. REITER: That is right. When we pick up someone,
11 it might be -- we don't stop people only because of suspected
12 undocumented alien status. We, in our policy manual -- the
13 procedural manual states that, that our prime -- we do not stop
14 people primarily for any undocumented alien status. We have to
15 stop for probable cause of a crime other than illegal entry,
16 and now, if during the investigation, we find that the person
17 is an undocumented person, if we arrest that person, we are
18 obligated to notify INS that we have arrested someone, and we
19 suspect that they may be an undocumented alien. If we deter-
20 mine through our investigation during the detention period that
21 we do not in fact have sufficient cause to make an arrest of
22 that person for the original circumstances that we made the
23 stop on, and during that investigation we have suspected that
24 the person is an undocumented alien, we will call INS prior to
25 releasing the person to determine if they want to investigate

1 it or if they want to assume custody, otherwise, we release
2 the person.

3 CHAIRPERSON HATA: At what point up to this telephone
4 call to INS do you give the person an indication of what his or
5 her rights are?

6 MR. REITER: When we bring a person in, we have to
7 inform them of their constitutional rights. We do not make any
8 distinction between someone who might be an undocumented alien
9 and who might not be.

10 CHAIRPERSON HATA: Is this done also in Spanish if
11 the person you pick up doesn't speak English?

12 MR. REITER: Well, we would have to get someone who
13 knows Spanish. Now, our card, our admonition of the constitu-
14 tional rights, is printed in both English and Spanish. We have
15 admonished officers who are not fluent in Spanish to not try to
16 give the admonition, so they would have to find someone who is
17 fluent in Spanish to give it.

18 MS. CAMPBELL: I would like to ask you, Commander
19 Reiter, about what efforts has the Department made to train
20 officers under these policy guidelines.

21 MR. REITER: Well, training, I am not directly in-
22 volved in training. We have published lists of immigration
23 laws. We have published also some orders which are not proce-
24 dural -- they are kind of more of a descriptive -- explaining,
25 like in for instance the Attorney General's opinion.

1 We have not given, to my knowledge, any specific
2 classes in immigration laws. It might be a segment of the
3 Academy, but I don't know that, really, because that really is
4 not a primary concern that we are charged with, and we really
5 do not encourage officers becoming involved in strictly immigra-
6 tion associated incidents.

7 MS. JAMES: Related to that, though, when Younger's
8 memo came out, how was that position conveyed to all the
9 officers?

10 MR. REITER: There was a written document, and it
11 would either be a memorandum or an office of operations order.
12 I don't know. I would have to look that up, but where we did;
13 describe what the Attorney General's opinion was and what effect
14 it would have on field officers' performance.

15 MR. STERN: Can you provide that to us?

16 MR. REITER: Yes, I can get it for you.

17 MR. STERN: There has been a lot of discussion about
18 regulations and authority and guidelines in a very loose sense
19 here. One of the questions asked by the Chairman pertained to
20 the authority on which you relied in calling the INS. Is there
21 a specific written regulation, guideline, code section, on which
22 you relied for that. I am not disputing the legality of it,
23 necessarily here, but is there something that you can cite us
24 to so we know exactly what you are referring to, so we know
25 what the written authority on which an individual officer is

1 relying when he does phone the INS?

2 MR. REITER: Our department manual lays out -- now,
3 if you are looking for the legal authority, I don't know. I
4 know that as a law enforcement agency, and INS, too, one of
5 their functions is law enforcement, we cooperate, and we pro-
6 vide assistance. Now, our manual, while one of those sections
7 is no longer in effect because of the Attorney General's opin-
8 ion, there is one other section that does describe to officers
9 when they encounter someone during the normal routine of their
10 police activities who they suspect of being an undocumented
11 alien, how to go about the notification.

12 MR. STERN: This is of course a little confusing to
13 us, because this is the first time, perhaps, many of us have
14 run into these procedures. Would it be possible for you to
15 give us copies of those manual sections so we could look at
16 those in preparing the report, out of which -- which will
17 follow this hearing?

18 MR. REITER: Mr. Stern, yes. Chief Gates did send
19 copies over to Ms. Campbell, and she has them, but I would like
20 to say that the one regarding illegal alien arrests, which was
21 dated March, I believe, 1975, was preempted, of course, by the
22 Attorney General's opinion, so it is no longer in effect. I
23 think the other section you will find identifies what an
24 officer should do when he encounters someone through the normal
25 routine of his operation, and then subsequently finds there is

1 no criminal charge, what he should do at that point.

2 MR. STERN: Thank you very much.

3 MR. REITER: I would like to say one thing we have
4 talked about, though, and if I can have an opportunity, I have
5 been working with the Committee, and we culminated our work
6 one month ago. We submitted a report which was a recommendation
7 to Chief Gates, on the formation of a new policy, an awareness
8 program for the Department, then operational programs that
9 would help field officers determine what to do, and would better
10 address ourselves to the undocumented alien issue.

11 Chief Gates has reviewed that. We have not met on
12 it. I have seen him in passing and he likes the substance of
13 it. There are some minor changes. I am sure it is in the
14 number of people we may want to assign to a unit, or where they
15 would be organized, but I think it would be important for you,
16 while I can't give you a copy of the policy statement, because
17 it has not been approved by him, nor has it been approved by
18 the Police Commission, that should be -- I think I could relate
19 to you what the policy is. It would give you an idea of what
20 Chief Gates, at least the thrust of his desires in regard to
21 field officer performance. So if I could have about five
22 minutes I would appreciate it.

23 We start off, and this would be a policy that would
24 be directed to the entire Department. The reason for this is
25 because Chief Gates has had officers continuously ask him.

1 They are uncertain of what our policy is in regard to the
2 enforcement of immigration laws and our association with undocu-
3 mented aliens.

4 This is a Department policy regarding contact with
5 undocumented aliens. We start off with an excerpt from our
6 current policy manual, "The motto, 'To Protect and to Serve',
7 states the essential purpose of the Los Angeles Police Depart-
8 ment. The Department protects the rights of all persons within
9 its jurisdiction, to be free from criminal attack, to be secure
10 in their possessions, and to live in peace." Los Angeles
11 Police Department Policy Manual.

12 And this goes on to the new policy. "The Los Angeles
13 alien community has grown tremendously during the past several
14 years, and there is little indication that it will decline in
15 the near future. Many aliens, whether from Asian, European,
16 African, or Latin American countries are here with legal sanc-
17 tion. Others are undocumented and without legal sanction.
18 Undocumented aliens are in the United States normally in search
19 of employment; hope, and a better life style for themselves.
20 and their families.

21 "It is the job of law enforcement to distinguish
22 undocumented aliens who are law violators from those who are
23 simply here without legal status. Therefore, it is incumbent
24 upon all police personnel to make a personal commitment of
25 equal enforcement and service regardless of alien status or

1 personal belief.

2 "Undocumented alien status itself is not a matter for
3 the commitment of the Los Angeles Police resources nor energies.
4 There are more immediate needs for these precious and very
5 limited resources.

6 "In dealing with the undocumented alien it is
7 necessary to identify and distinguish police problems from
8 social problems. The Department acknowledges the social
9 problems such as health, welfare, education, housing, and em-
10 ployment, which are connected with the influx of undocumented
11 aliens. We will continue to cooperate with those persons
12 responsible for those social issues.

13 "Police service afforded to undocumented aliens will
14 continue to be the same level of service provided to any per-
15 son while in Los Angeles. We provide special assistance to
16 persons, groups, communities, and businesses, who by the nature
17 of crimes being committed upon them require individualized
18 policing.

19 "The undocumented alien often requires this kind of
20 service. Crime prevention assistance is necessary to involve
21 them in programs that can help them safeguard their property,
22 and lessen their potential to be a crime victim. The Depart-
23 ment is developing programs that will encourage and facilitate
24 the undocumented person's willing cooperation as witnesses in
25 criminal prosecutions.

1 "Only a small percentage of undocumented aliens are
2 involved in crime. Undocumented aliens' cooperation with
3 police investigations is possible as evidenced by many notable
4 cases. They are concerned about aliens who violate local laws
5 and disrupt the community.

6 "While the undocumented alien needs us, we also need
7 their willing participation to ensure that we have the ability
8 to maintain a safe community. The Los Angeles Police Department
9 will continue to take positive enforcement action against undoc-
10 umented aliens who commit criminal offenses other than simply
11 illegal entry status violations.

12 "The California Attorney General has opined that
13 the illegal entry is not enforceable by our police officers.
14 Undocumented aliens who are identified as committing misdemea-
15 nors, however, will be processed the same as other misdemeanants.

16 "Convicted felons who are undocumented aliens should
17 not be given the opportunity to prey a second time on law-abid-
18 ing persons in our city. Processing of undocumented aliens
19 who are identified as committing felonies will be intensified.
20 They will be given special treatment to ensure that they are
21 brought to the attention of the criminal justice system and the
22 federal authorities.

23 "To ensure that these principles can be effective,
24 the Los Angeles Police Department has developed and implemented
25 new tools for police employees and community members. Some of

1 these are Operation Estafadores, the Asian Task Force, Spanish
2 Language instruction for police officers, expanded communication
3 service to Spanish speaking persons, 24-hour availability of
4 Spanish speaking investigative expertise, increased liason with
5 governmental agencies involved in the undocumented alien issue,
6 and an increased awareness within the Police Department.

7 "The expected results of this policy are multi-fold,
8 but it can only be measured by a positive and productive
9 relationship with the alien community.

10 "Police service shall be readily available to all
11 persons, including the alien, to ensure a safe and tranquil
12 environment. Participation and involvement of the alien
13 community in police activities will increase the Department's
14 ability to protect and to serve. Operational tools to deal with
15 the police-alien needs will result in more cost effective law
16 enforcement.

17 "Los Angeles will continue to guarantee to all persons
18 the highest level of police service."

19 And we go on after that to explain in a systematic
20 way our awareness program to ensure that all officers are aware
21 of this policy, and will ensure that they follow it. Then we
22 go into operational tools. Probably the most essential tool is
23 the public awareness of our policy, what to expect from law
24 enforcement, so that if there are violations, we as a Depart-
25 ment can take efforts to correct those persons who were

1 responsible for the violations of our own policy.

2 We go into the creation of an alien investigative
3 resource unit, which would involve also, hopefully, the Asian
4 task force, because the oriental community is a very large and
5 growing segment of Los Angeles, and they also have problems
6 with undocumented aliens who are of oriental descent, so I
7 think that that is one of the things we need to provide
8 assistance to field officers. We need to provide a guidance
9 for judges, prosecutors, probation, parole officers, juvenile
10 authority. We need to also provide guidance for our own
11 investigators.

12 CHAIRPERSON HATA: Commander Reiter, I think the name
13 "Asian Task Force" should be a good indication that members of
14 the Asian American community would prefer to be called Asian
15 rather than be stuck with the negative stereotypes that
16 "oriental" connotes, and staff will send you a copy of our
17 Asian American report so that you can include that also in your
18 field study. Yes, Sally?

19 MS. JAMES: Yes, I would like to ask this again just
20 because you read this. Now, how specifically would that docu-
21 ment get to individual street officers?

22 MR. REITER: Okay. This would be published and sent
23 out to all officers, but more importantly, I think we plan the
24 awareness program, are a series of seminars with the Captains
25 and above, to ensure that Captains understand why we are

1 doing this, because we have found that unless you ensure a
2 full cooperation from the area Commands, the man's immediate
3 superior, it will not have as great an impact as if you simply
4 read it at roll call. It will be read at roll call. It will
5 be passed out to all officers. Chief Gates will make a tape
6 which will further describe it, so all officers will be aware
7 of the policy, plus we will also publish it to the entire
8 community.

9 MS. CAMPBELL: Thank you, Commander Reiter.

10 CHAIRPERSON HATA: Commander Reiter, would you
11 summarize in your own words again what the report said with
12 respect to the Attorney General's opinion on law enforcement
13 and cooperation with INS, or support of --

14 MR. REITER: Well, this report simply says that the
15 California Attorney General, from our interpretation, his
16 opinion states that we cannot arrest for illegal entry status
17 violation alone.

18 CHAIRPERSON HATA: So when you arrest somebody for
19 some other violation, for a violation of some sort, or on
20 suspicion of a violation, and you find that that person does
21 not have documents, and then you call INS --

22 MR. REITER: That is right.

23 CHAIRPERSON HATA: -- does that constitute a breach
24 or at least a -- are you again disobeying or --

25 MR. REITER: No.

1 CHAIRPERSON HATA: -- ignoring this opinion?

2 MR. REITER: No, Ms. Hata, that is not true, because

3 CHAIRPERSON HATA: I am asking that.

4 MR. REITER: -- as an example, if we were to go into,
5 and this has occurred, if we were to go into a bar for enforce-
6 ment of a liquor law violation, and if we were to make an
7 arrest there and also note that there were health violations,
8 it would be incumbent upon us to notify the Health Department.

9 Now, any enforcement action is incumbent upon them.
10 So in this case, if we arrest a person and if we are actually
11 going to book them, we go ahead and book them for our criminal
12 offense, and we send a copy of that arrest report, which is
13 identified in all the information that we have that identifies
14 the person as a suspected undocumented alien, we send that to
15 INS.

16 It is incumbent upon INS at that time to do whatever
17 they might do as far as the enforcement of immigration laws.
18 Now, if we arrest a person on probably cause for a criminal
19 offense, and during that investigation we find that in fact
20 there is not sufficient cause to actually arrest and book the
21 person, then we will notify INS, but normally INS isn't there
22 for the notification, so we simply release the person, and in
23 the past, what they have done is have made a report, but
24 because of the volume of people that we are now contacting
25 without documents, we simply -- the officers are not making

1 even that report when the person is not arrested.

2 CHAIRPERSON HATA: Ms. Gomez?

3 MS. GOMEZ: Yes, Madam Chairman. Commander Reiter,
4 between the time that you make a determination that you cannot
5 hold a suspect and the time that the INS arrives, do you allow
6 that individual to make a phone call or have an outside contact
7 of any type, make an outside contact?

8 MR. REITER: Ms. Gomez, I really don't know, but I
9 will say that because of the limited resources of INS, rarely
10 do they respond.

11 CHAIRPERSON HATA: Who is they? What do you mean,
12 the Immigration --

13 MR. REITER: The INS officer, and they really are.
14 They are hampered. They have so few field investigators. In
15 our cases, you know, we are dealing with one person, and I am
16 sure that is a lower priority than many of the other incidents
17 that they have to be involved in, so we generally release the
18 person.

19 CHAIRPERSON HATA: Are there questions from other mem-
20 bers of the panel? Committee on this side? Mr. Stern? Ms. Fonda?

21 MR. STERN: Do you have any working relationship with
22 the LA County Sheriff concerning implementation of your
23 regulations?

24 MR. REITER: No. It would not be incumbent upon
25 them anyway, but we -- personally, I do not, and you know, our

1 policy is strictly a guide for our police officers alone, and
2 the persons within Los Angeles.

3 I will say, I noticed yesterday you asked everyone
4 about the Police Commissioner Montenegro. We did have a fair
5 cross-section on our committee. You asked him about the ethnic
6 breakdown of our committee, so there were seven of us there.
7 We had three -- Captain Rudy DeLeon, and Lieutenant Paul Astrada
8 and Investigator Al Rumero of Operation Estafadores, so three
9 of seven, and we had one Jewish participant, too, and I notice
10 that came up yesterday during the testimony.

11 CHAIRPERSON HATA: Staff asked Mr. Steiner to define
12 rational suspicion when it came to detention of suspects. Can
13 we ask you the same definition?

14 MR. REITER: I really haven't had any contact with
15 that legal term. We use -- it would be probable cause or
16 reasonable cause. I am not sure of Mr. Steiner's -- that term,
17 and of course, he being a lawyer, and I am not, he would be
18 much more knowledgeable about that area.

19 CHAIRPERSON HATA: Would Mr. Steiner like to make
20 any final comment in response to anything that has been said
21 so far?

22 MR. STEINER: Yes, I would. Thank you for the oppor-
23 tunity. I think it is significant that officer Reiter has
24 really indicated a desire that the L.A. Police Department not
25 become involved in this area, and I think it supports the

1 various points that I was trying to make, and basically that
2 this is not an area for state or local law enforcement. How-
3 ever, I would like to respond with regard to the admirable
4 policy statement which is being proposed. I think it is admir-
5 able in the sense that it is acknowledging that this is not an
6 area for local law enforcement, and it cannot properly be
7 handled by local law enforcement.

8 However, I feel that it misinterpret's the Attorney
9 General's statement, and his formal opinion of August, 1977,
10 which is very clear, I believe, in fact even to quote two lines
11 from it, "State and local peace officers have the authority to
12 enforce all laws, both state and federal, including those
13 concerning immigration (Title XIII; United States Codes.) not-
14 withstanding the absence of an apparent violation of a state
15 law or local ordinance."

16 I don't think that those words can be mistaken in
17 their intent and in their meaning. It simply does not say that
18 local police should not become involved in this area. In fact,
19 since it is within the authority of local police, I would think
20 that if the Chief of Police decided he did not want to do this
21 particular job that he might come under some criticism for
22 personally deciding that he didn't want to enforce this area of
23 law but he did want to enforce other areas of the law.

24 CHAIRPERSON HATA: Well, thank you. Are there any
25 other questions from staff? Then we thank you both very much.

1 MR. STEINER: Thank you.

2 CHAIRPERSON HATA: I would like to recognize the
3 arrival of another Committee Member, Lieutenant Governor
4 Dymally. We wish that you would join us up here. By all means
5 feel free to do so. Do you want to ask the L.A.P.D a question?
6 By all means. Commander Reiter? We have one final question
7 for you while we get the next panel together.

8 LIEUTENANT GOVERNOR DYMALLY: Commander, in arresting
9 Californians or Americans of Mexican descent, do you automat-
10 ically employ the federal hold? That is to say, in a number
11 of counties, any time any time anyone of Mexican descent is
12 arrested, and charges not filed against them by the Sheriff or
13 the P.D., that automatically a federal hold is put on that
14 person, irregardless of whether the person is an American citi-
15 zen or a Mexican national, and then they are subjected to
16 federal scrutiny. Do you employ that method in Los Angeles?

17 MR. REITER: No, we do not. The only time we put a
18 hold on them is if INS told us to put a hold on him, and that
19 would be after any information and investigation that they did
20 that had substance. We don't have a right, and we have a time
21 line, too. If we don't arrest, we don't have a right to just
22 put a hold on anyone and retain them indefinitely.

23 LIEUTENANT GOVERNOR DYMALLY: Okay. Pleased to
24 hear that. And I may not be here. I would like to ask when
25 the INS comes up here, ask them if they employ that hold

1 wholesale on Californians of Mexican heritage, because it is
2 employed in the rural counties indiscriminately, irrespective
3 of their citizenship.

4 CHAIRPERSON HATA: Thank you very much, Commander
5 Reiter. Ms. Campbell, would you like to get the next panel
6 together?

7 MS. CAMPBELL: Mr. Varela, and Mr. Hollopeter, would
8 you please step up to the witness table?

9 LIEUTENANT GOVERNOR DYMALLY: Before the next witness
10 comes up, may I just take a minute to explain the federal hold?
11 The federal hold -- I can't explain the legal technicalities
12 involved, but a federal hold works something like this. If in
13 a rural county, a person of Mexican descent looks suspicious
14 and is arrested, and if they find no violation of any state or
15 local laws, the Sheriff or the law enforcement agency before
16 releasing that person as they would a caucasian American, they
17 usually put a federal hold on that person, and then that person
18 is subjected to INS scrutiny, even though they may very well
19 have been born in East Los Angeles, and the point I am trying
20 to make is that very often they do not discriminate an American,
21 a Mexican American of American birth from a Mexican of Mexican
22 nationality.

23 In other words, everyone, whether you are an American
24 citizen or not, is viewed as an illegal alien, and this federal
25 hold is employed in a very discriminatory manner, and there is

1 something that needs to be looked into very carefully, because
2 it discriminates against Mexicans of American birth, as opposed
3 to Mexicans of Mexican nationality.

4 CHAIRPERSON HATA: Thank you. Ms. Campbell?

5 MS. CAMPBELL: Would you both please state your name
6 and your occupation?

7 MR. HOLLOPETER: My name is Steve Hollopeter, and I
8 am the coordinator of the National Immigration Project of the
9 National Lawyers Guild.

10 MR. VARELA: My name is attorney Delfino Varela, and
11 I am Chairman for the Los Angeles area of the National Coalition
12 for Fair Immigration Laws, and Chairman of the 56th Chapter of
13 the Mexican American Political Association.

14 MS. CAMPBELL: What organization are you affiliated
15 with now, Mr. Varela?

16 MR. VARELA: Well, both. Both with the Immigration
17 Coalition and with MAPA.

18 MS. CAMPBELL: You are currently Executive Director
19 of Mexican American Social Service, is that correct?

20 MR. VARELA: Yes, that is correct.

21 MS. CAMPBELL: Could you explain the purpose of that
22 organization?

23 MR. VARELA: That is what I do for a living. This
24 organization, the Mexican American Social Service, has been in
25 existence since 1959, and essentially it is a private practice

1 that assists people with problems of immigration and citizen-
2 ship.

3 MS. CAMPBELL: As Director of Mexican American Social
4 Service, have you received complaints regarding the deportation
5 process at the Immigration Service from your clientele?

6 MR. VARELA: This whole area -- I think the largest
7 number of complaints that have come my way over the years have
8 been in the area of apprehension and referring to your last
9 panel, my experience with this situation is that the most out-
10 rageous situations and violations of people's constitutional
11 rights are occurring not so much with the City of Los Angeles
12 Police Department as with the smaller police departments
13 throughout the area, and that is the area of the largest number
14 of complaints that I get.

15 For instance, the police departments, a colleague of
16 mine by the name of attorney Gilbert Lopez has informed me that
17 the police departments in Bell Gardens, in Maywood, and Hunting-
18 ton Park, before they ask about any law violations at all, you
19 know, of any kind, or indicate any kind of suspicion, their
20 first question is, where are your papers, and at the Coalition
21 office we became aware just Wednesday of a permanent resident
22 who was arrested by one of the local police departments, and
23 his alien registration card ripped up, and he was then turned
24 over to INS who was processing him for "voluntary departure,"
25 when they checked to see if they had a file on him, and

1 determined that in fact he was a permanent resident, but by
2 this time he had been held overnight and subjected to all of
3 this interrogation, and you know, all of the anxiety that goes
4 with this type of procedure.

5 MS. CAMPBELL: Could you explain what the voluntary
6 departure process is, and what effects occur from that process
7 according to the complaints you have received?

8 MR. VARELA: Yes. The voluntary departure process
9 that is engaged in by the Immigration Service is carried on on
10 a mass scale, that is to say, where persons are apprehended
11 either when they were apprehended in the community raids, on
12 the streets, on the laundromats, on the busses, or currently in
13 the raids at plants.

14 They are taken down and a short statement of informa-
15 tion is usually obtained from them, which they are asked to
16 sign, and then they are told that if they will sign an agree-
17 ment to depart the country voluntarily, they can be on the bus
18 the same day, and of course they are. But in many, this works
19 a great hardship because it leaves unattended families. We
20 have had the experience of women being shipped out the same
21 day and leaving U.S. citizen children at home, you know, un-
22 attended, or even children who are here without documents also,
23 with baby sitters and so on, and it just -- a summary process
24 that completely disrupts the person's life.

25 MS. CAMPBELL: How many complaints do you receive

1 about the effects of the sudden departures?

2 MR. VARELA: I run into many, many complaints. I had
3 one case, for instance, a year ago, where this was the husband
4 of a permanent resident who I sent down to request permission
5 to remain in the United States pending our completion of his
6 application for an immigrant visa, and he was referred to in-
7 vestigations, and he was in Tijuana that same afternoon, and
8 then it took us writing to, going through Congressman Roybal
9 and so forth, and the Immigration finally ended up paroling
10 him back in, but in the meantime, he had been separated from
11 his wife and family up here for two or three months.

12 MS. CAMPBELL: Have you had any incidents from
13 people as to whether the INS ever discusses leniency for those
14 persons facing deportation, and if so, under what circumstances?

15 MR. VARELA: Well, I have gotten a few reports late-
16 ly that when a person is apprehended, they are often promised
17 a little more time to remain in the United States if they can
18 indicate other persons at work, at the places where they work,
19 who they are, and their names, and so forth, and I understand
20 that this information is then utilized to obtain search warr-
21 ants for those particular plants, and regarding those partic-
22 ular individuals who have been informed on.

23 I might say that we have also had another interest-
24 ing area. I have had a lot of complaints from husbands of
25 U.S. citizens, who -- where the wife had filed visa petitions

1 on their behalf, and they were called in for interviews, because
2 there was some suspicion that there was a convenience marriage,
3 you know, involved, and one particular individual, a client of
4 mine, was beaten up rather severely at the interview process,
5 during the interview process on the visa petition, and he was
6 forced to admit that his marriage was in fact a sham marriage,
7 and he was requested to sign a voluntary departure, and was in
8 Tijuana the same day, and the person who went and brought him
9 back to the U.S. was the same wife to whom he was being accused
10 of being married to as a matter of convenience.

11 CHAIRPERSON HATA: Was he beaten at the interview
12 process?

13 MR. VARELA: Yes.

14 MS. CAMPBELL: What complaint procedure, or when you
15 are going to have a problem with the Immigration Service, what
16 do you advise them to do?

17 MR. VARELA: Well, that is one of the difficult
18 situations is that many of these situations are almost remedy-
19 less in the sense that the INS had wide discretion, and there
20 is also no particular structure within the INS that I am aware
21 of, where complaints against inappropriate behavior by individ-
22 ual immigration officers can be reported, and where the reports
23 could be impartially evaluated.

24 I think that the INS could use, you know, review pro-
25 cedures. I understand that the INS now has a national advisory

1 commission, and I would like to see the functions of that
2 commission broadened to include the power to hear complaints
3 of inappropriate behavior by INS officials.

4 MS. CAMPBELL: Thank you, Mr. Varela.

5 MR. VARELA: May I just make one final recommendation?

6 MS. CAMPBELL: Sure.

7 MR. VARELA: I would also recommend that your
8 Commission investigate in detail -- we have cases, specific
9 cases that we can refer to you, of violations of persons'
10 civil rights by the police departments that I mentioned in
11 Bell Gardens and Maywood and Huntington Park, and I would like
12 to have your commission consider recommending prosecution of
13 some of the police officials involved.

14 CHAIRPERSON HATA: Ms. Gomez had a question.

15 MS. GOMEZ: Mr. Varela, to your knowledge, are there
16 any children arrested, children under 18 years of age, that
17 you know of, and perhaps without the knowledge of the parents
18 or anybody, deported, then taken across the border?

19 MR. VARELA: Yeah. We have had some -- as a matter
20 of fact, I had some teeners that were living here with their
21 mother who was a permanent resident, and their stepfather, who
22 is a U.S. citizen, and these -- one of these kids, I think he
23 was 16, was picked up by the Huntington Park Police and held,
24 and was sent across by the INS.

25 MS. GOMEZ: One case.

1 MR. VARELA: Yeah, I haven't gotten too many of those.
2 In fact, that is the only one that comes to my mind.

3 MS. GOMEZ: Thank you.

4 CHAIRPERSON HATA: Are there any other questions from
5 the Committee? If not, then thank you very much.

6 MS. CAMPBELL: Mr. Hollopeter, could you explain the
7 purpose of the Guild's Immigration Project?

8 MR. HOLLOPETER: Yes, it was formed in 1973 to begin
9 to address on a national level the activity of Guild members
10 in the area of immigration. We saw a huge, massive disrespect
11 for the law by the immigration authorities and violation of
12 civil liberties of citizens and aliens, and it is an attempt
13 on our part to coordinate the work.

14 Since that time we have published a bimonthly, an
15 informative immigration newsletter, a very popular immigration
16 defense manual, which has sold out one addition, and brings
17 how to defend people and how to immigrate people to lay people
18 and lawyers alike, and also we carry on training seminars,
19 skill seminars, in all parts of the country, and have legal
20 materials, brief bank, and pleadings for use of our members
21 in the defense of aliens.

22 MS. CAMPBELL: Chairperson Hata, Mr. Hollopeter
23 would like to read a short prepared statement?

24 CHAIRPERSON HATA: How short?

25 MR. HOLLOPETER: Very short.

1 CHAIRPERSON HATA: Okay.

2 MR. HOLLOPETER: All right. The President, as you
3 have heard, over the last two days, there is a national contr-
4 oversy concerning the operations of the Immigration Service.
5 This is not new to Los Angeles. The history of the abuses of
6 the Immigration Service over the years and the decades, the
7 massive deportation roundups, the dragnet deportation raids,
8 and the deportation railroad have all had their impact.

9 With the coming of age of the more or less the end-
10 ing of the community-wide sweeps and the dragnet raids subject,
11 these were brought to a close more or less in 1973 around here
12 because of litigation.

13 More recently, litigation in Chicago have limited
14 these types of raids. We all know that the Immigration is
15 going after the factory workers at this time. What the Guild
16 members are concerned about particularly is the manner in which
17 the Immigration gets into the factory.

18 I don't mean to be repetitive about this, but it is
19 tremendously important, and I would just like to stress a few
20 aspects of it. If the Immigration survey team gets into the
21 factory, they will indiscriminately ask everyone there about
22 their immigration status without any following of their statu-
23 tory or regulatory duties to find the person is an alien and
24 then find that the person is undocumented.

25 Secondly, if the permission is not given to enter

1 into the factory, locally here, and the District Director
2 authorizes this, is to announce to the owner or supervisory
3 personnel that Labor Code Section 2805, the California version
4 of the employer sanction bill is in effect, and sanctions and
5 fines will be brought against the employer, and a letter has
6 been created by District Director Sureck to this effect, and
7 this is done with a full knowledge that Section 2805 has been
8 the subject of litigation, and the California Department of
9 Labor, State Department of Industrial Relations, is permanent-
10 ly enjoined from enforcing this Section, and will be indefin-
11 itely.

12 If that doesn't work, the Section 2805 lie doesn't
13 work, then the warrant must be obtained. In the past, some
14 arrest warrants were obtained. However, recently the Immigra-
15 tion Service has not been obtaining arrest warrants.

16 What they have been doing is getting search warrants,
17 and what they do instead of listing contraband or property to
18 be seized, they let it be known to a federal magistrate that
19 there is property, in the sense of illegal aliens, involved in
20 a factory, and search warrants are granted to actually go in
21 and arrest these people.

22 As Peter Schey and Mark Rosenbaum might have put
23 forward this morning, these warrant practices are also the
24 subject of litigation at this time here in the Central District
25 of California.

1 The most important thing is that those of us on the
2 defense of undocumented workers at deportation hearings are
3 faced with having a client that doesn't have very many remedies
4 under the law, if our client has been illegally arrested.
5 Usually, in any type of other judicial or administrative pro-
6 ceedings, when the government has been guilty of misconduct in
7 an arrest or in the obtaining of information, documentation
8 about a person's whereabouts and such as that, the government
9 is usually not rewarded by being able to use this information
10 in some type of an accusatory hearing.

11 The Immigration Service would have it, and say, these
12 are not criminal proceedings. These are solely administrative,
13 quasi-administrative proceedings, and therefore all of the
14 criminal safeguards don't attach to the proceedings, so we are
15 faced -- in practice, the attorneys are faced with rampant
16 violations of the fourth amendment, persons have been siezed,
17 documents have been siezed, and this evidence is consistently
18 used against the persons in deportation hearings to prove
19 their deportability.

20 When it comes to the fifth amendment, I have just a
21 few remarks more to say about that. In most proceedings, and
22 in deportation proceedings itself, it is up to the government
23 to prove if the person is here without proper documentation,
24 if the person is here out of status.

25 Oftentimes we have gone into hearings and our clients

1 would refuse to testify. They would refuse to state their
2 name, refuse to state where they are from, and all of that, and
3 it is up to the government to try to prove where they are.

4 They prove it by trying to introduce these statements
5 that have been taken from the clients before their rights have
6 been given, before they have been given opportunity to see an
7 attorney; having not been advised of their rights, and we have
8 been sort of halfway successful in trying to keep these state-
9 ments out, and it is being litigated at this time in the Ninth
10 Circuit Court of Appeals, federal jurisdiction.

11 What happens, though, when a client would take the
12 fifth amendment, is that one of the Immigration judges would
13 say, you don't have the right to take the fifth amendment,
14 because this is not a criminal proceeding, and you are not
15 charged with any criminal offense.

16 So, so far they haven't devised any real means to
17 make our people talk. I mean, they haven't tortured the peo-
18 ple. I mean, they really can't make the people talk, but the
19 Immigration judges have been particularly forceful and have
20 threatened to cancel people's bond unless they talk, which
21 would appear to violate their right to be free on bond.

22 They also tell us that because they are not the sub-
23 ject of a criminal investigation or criminal proceedings, the
24 fifth amendment doesn't apply at all. I won't repeat about the
25 sixth amendment, about the availability of counsel, Legal

1 Services, a corporation on the national level, and here in
2 California, has begun to penetrate the area. Legal Services
3 attorneys are becoming active in the area around the Sbicca
4 case and other cases.

5 Just to emphasize the voluntary departure, only five
6 percent of the people, or ten percent of the people arrested,
7 apprehended by Immigration, ever get to a deportation hearing.
8 Voluntary departure, or so-called voluntary return to Mexico
9 is a device that the Immigration Service came up with to avoid
10 giving people their right to a hearing.

11 They just pick people up. They tell them they have
12 got to leave right away. I don't want to go into the testimony
13 that was given this morning, but it is a real violation of
14 people's rights to kick them out on the same day.

15 What we are faced with juridically, legally, is a
16 massive breakdown of the immigration laws for the United States.
17 Everybody admits this, even the Service, but it is to the point
18 that millions and millions and millions of people each year are
19 constantly, intelligently, flagrantly violating the laws of
20 the United States. This is a civil rights -- this is a civil
21 disobedience movement.

22 This tells us something about the organization of
23 society itself, this seriousness, this large scale of the break-
24 down. Just finally, I want to mention, it hasn't been stressed
25 here, but since these hearings are around the Carter plan, I

1 would like to say that further attempts at the militarization
2 of the southwest border, the southern border, would appear not
3 to be a solution. The further arming and militarization, fur-
4 ther using of the obsolete devices used in Vietnam, would not
5 appear to be the type of solution that would be called for. It
6 would increase the violence and the type of escalation of
7 violence that would appear to be unnecessary. That concludes
8 my remarks.

9 CHAIRPERSON HATA: Thank you.

10 MS. CAMPBELL: Thank you, Mr. Hollopeter. Does the
11 Committee have any questions?

12 MR. STERN: Can I ask both Mr. Hollopeter and Mr.
13 Varela about the quantitative sufficiency and the quality of
14 immigration advice available to undocumented aliens?

15 MR. HOLLOPETER: Well, even to the general public,
16 it has been my feeling and with other members of the Guild, is
17 that when anybody goes to the Immigration Service, they get
18 bad advice, or no advice at all, or incorrect advice.

19 This is so apparent with the case of workers that
20 have been arrested. They are told at the time of their arrest
21 that unless they agree to leave the United States immediately
22 they are going to jail for a considerable period of time, in
23 order to remain they are going to have to pay \$2,000 cash,
24 which is incorrect. People are entitled to bond. People are
25 entitled to release on their own recognizance, and I have been

1 able to -- Sbicca workers won a little victory in that a lot
2 of them got out of jail on their own recognizance for the first
3 time. So, I guess that would be it.

4 MR. VARELA: I would like to comment on your question
5 a little different angle, and that is there is insufficient
6 legal assistance available within the legal field, you know,
7 even for pay, because I think in Los Angeles, for instance,
8 with a population that may go, you know, higher than a million
9 persons without documents, there is maybe 50 to 75 attorneys,
10 you know, who are conversant with and who practice immigration
11 law.

12 In many other cities of the state, small cities such
13 as Needles, Bakersfield, Stockton, and so on, there are no
14 attorneys available. As Steve said, the quality of information
15 and service available through the INS itself is very low, and
16 their turnover of personnel seems to be somewhat high, especial-
17 ly at the public contact points of the apparatus, and I have
18 also found that many, many clients, you know, received inaccur-
19 ate advice there at the INS.

20 Now, there is a group of -- a lot of people get
21 assistance from non-lawyers, who are known as immigration con-
22 sultants, and they are, I would say, more numerous than the
23 attorneys, and unfortunately, because it is a non-licensed and
24 an unrecognized group, the standards of practice are very
25 uneven, and we have had many bad experiences in the Mexican

1 community with poor quality service, you know, from many of
2 these immigration consultants, and my own position has been
3 over the years that in order to provide service for the undoc-
4 umented people and for the immigrants who need immigration
5 assistance, that the Federal Government should set up a cate-
6 gory of licensed and regulated immigration consultants, much
7 as the IRS has set up IRS representation from non-attorneys,
8 and by doing this, a level of competency could be demanded,
9 and a level of training could be demanded, and there are many
10 areas where people who would be immigration consultants do
11 provide assistance and would provide a better level of assis-
12 tance if they were licensed and regulated by the INS.

13 MR. STERN: We have heard a lot of stories about
14 people being, to use the expression, ripped off by these immi-
15 gration consultants, or notario publicos. To what extent is
16 that going on in the Los Angeles area today, if you know?

17 MR. VARELA: Well, I can tell you that I have been
18 highly aware of the situation over the years, in the years that
19 I have been in Los Angeles, and in my opinion, the situation
20 has improved greatly. For one thing, I was instrumental in
21 forming a group called the National Association of Immigration
22 Consultants, and we have skill sessions for the membership
23 where we go over cases and explain, you know, what to do and
24 what not to do in given types of cases, and also the Associa-
25 tion adopted a code of ethics, and there is a lot more

1 internal disciplining that is going on within the immigration
2 consulting field.

3 Also, Operation Estafadores, which was mentioned here
4 earlier, has done a very good job, and the City Attorney's
5 Office, through City Attorney Moreno when he was there, did a
6 very good job of bringing some unscrupulous operators, you
7 know, to prosecution, and this had a healthy effect, you know,
8 on the whole field.

9 Unfortunately, the immigration laws are so restric-
10 tive in terms of the small number of people who can legalize
11 their status and the need, you know, for legalization is so
12 great, that it becomes easy, you know, for an unscrupulous
13 operator to promise legalization and to say that he will deliv-
14 er in three or four years, and figure that, you know, he will
15 take care of the consequences further down the road, and the
16 temptation to take, you know, non-immigratable cases, I imagine
17 is there with many people, but as I say, the situation has
18 improved.

19 Also, I might say that in my experience, the rip-off
20 has not been confined to non-attorneys. A lot of rip-off situ-
21 ations have come to my attention where attorneys were involved,
22 so it is an overriding problem.

23 CHAIRPERSON HATA: Are there any other questions?
24 Mr. Varela, you are advocating INS licensing of --

25 MR. VARELA: The immigration consultants, because of

1 the unavailability of attorneys, and also because for many,
2 many needs within the immigration field, I don't believe that
3 attorneys are necessary.

4 I liken the immigration field to the income tax
5 field where there is different levels of competency required.
6 In other words, if you are going through tax preparation and
7 that is all you need, you can use the services of a tax
8 preparer. If you are going through a straight audit on as to
9 dependents at the IRS level, you can use an IRS representative.
10 If you are getting into some more complicated situations that
11 may end up in tax court or in the federal courts, then you go
12 to a tax attorney, so I think in the immigration itself, the
13 same situation exists.

14 There are many cases where people need assistance
15 only with completing visa petitions or forms for adjustment of
16 status, or applications to obtain duplicate alien registration
17 cards, or citizenship applications, you know.

18 CHAIRPERSON HATA: Thank you. I think we get the
19 point.

20 MR. VARELA: Okay.

21 CHAIRPERSON HATA: Mr. Hollopeter, has your organi-
22 zation addressed this issue of immigration consultants?

23 MR. HOLLOPETER: No, not directly we haven't. We
24 have noticed, though, that there are a lot of regulations in
25 the Immigration Service which provide for non-lawyers to

1 represent people. Recently they have been narrowed to allow
2 less and less of the non-lawyers. For instance, law students
3 have been restricted and other practitioners have been restric-
4 ted. We would, I think, as an organization, try to see this
5 expanded.

6 CHAIRPERSON HATA: One final question for you. You
7 have stated that judges have told lawyers that defendants,
8 people before them, cannot use the fifth amendment as a defense.
9 What kind of response in general do you advocate that the
10 lawyers use when the judges make this kind of a statement? Is
11 there a response from the defense attorney?

12 MR. HOLLOPETER: Well, we are terribly intimidated.
13 We are shouted at. We are assaulted. We feel that we are
14 pioneers in this area. We are not giving in to the government.
15 We are exercising the rights of our clients to remain silent,
16 and it is up to the government to prove any charges. This is
17 in the finest tradition, and is authorized by practice and the
18 California bar, and we will stand on that.

19 CHAIRPERSON HATA: Okay. Any other questions? If
20 not, then we thank you gentlemen.

21 MR. VARELA: I would just like to just wind up with
22 one final comment, and that is, in my opinion the reason why
23 let us say 80 to 90 percent of the people who appear before the
24 Immigration Service are unrepresented by any kind of assist-
25 ance is exactly because of the very restrictive regulations of

1 the Service as to who can represent individuals, you know,
2 before the service.

3 CHAIRPERSON HATA: Thank you.

4 MS. CAMPBELL: Would Mr. Judge Jay Segal please come
5 to the witness table? Would you please state your name and
6 position with the Immigration Service?

7 JUDGE SEGAL: Yes, Jay Segal, Senior Immigration
8 Judge of Los Angeles.

9 MS. CAMPBELL: Could you briefly describe the general
10 categories of cases over which you preside?

11 JUDGE SEGAL: Well, if I may at the outset, if I may
12 make a short statement, I have tried to summarize what the
13 Immigration Judge's duties and authorities are. If I may read
14 it.

15 The Immigration Judge is a quasi-judicial officer
16 who is selected by the Commissioner, to exercise the powers
17 and duties provided by statute, he presides at formal quasi-
18 judicial proceedings to determine the issues arising in exclu-
19 sion, deportation, and rescission proceedings.

20 In his decision-making capacity, the judge acts
21 absolutely independently and is free from supervision from
22 any source. His decisions are issued to the parties in his own
23 name, and may not be reviewed before publication. The decisions
24 are final unless appealed by the Government or by the alien
25 to the Board of Immigration Appeals.

1 The judge is the only official who can determine
2 whether an individual is deportable and issue an order of
3 deportation. He has that same authority with one exception,
4 exclusion proceedings. He also has the authority to review
5 determinations of custody by the District Director. During
6 the course of these proceedings, the judge is obligated to
7 ensure that the individual is made aware and clearly under-
8 stands the rights that he has.

9 They are his right to counsel, reasonable opportunity
10 to present evidence on his own behalf, to object to evidence
11 against him, and to cross-examine witnesses presented by the
12 Government. The judge is not privy to the administrative file
13 of the Service, but must base his decision upon the evidence
14 provided by the parties.

15 The discretionary applications that may be presented
16 in this proceedings could result in an alien being granted
17 lawful permanent resident status. These applications are
18 discretionary, and afford the judge an opportunity to consider
19 intangibles such as family, other equities, and attachments
20 that may have been acquired while in the United States.

21 If I may add an aside, I question Mr. Hollopeter's
22 comment about assaults by the judges. I don't think that any
23 of us have ever physically assaulted anybody. I take exception
24 to that comment as out of order and improper.

25 MS. CAMPBELL: Okay. Could you please tell us who

1 you report to?

2 JUDGE SEGAL: I report to the Chief Immigration Judge
3 in Washington, D.C.

4 MS. CAMPBELL: And could you describe your relation-
5 ship with the District Office of INS?

6 JUDGE SEGAL: Yes. We are tied to the District
7 Director's budget. Therefore, we are beholden to him for
8 clerical support, supplies, furniture, room space, and the like.

9 MS. CAMPBELL: Could you describe what obstacles if
10 any are present to assure that aliens understand their rights
11 that you have listed? Say, in terms of language, for instance?

12 JUDGE SEGAL: Well, we have qualified Spanish inter-
13 preters. We are limited in that we have at Los Angeles one
14 full-time Spanish interpreter. The rest of our interpreters
15 are part-time interpreters. Of course, we have interpreters
16 where needed in every proceeding.

17 MS. CAMPBELL: What is the problem with having just
18 one full-time interpreter?

19 JUDGE SEGAL: Well, considering that there are four
20 judges at Los Angeles, and 60 or 70 percent of our cases do in-
21 involve Spanish speaking individuals, and our cases do run from
22 8:30 or so into the afternoon, it is very difficult when you
23 are dealing with a housewife who may have to have someone care
24 for the child and then come in a little later, we sort of get
25 a little bogged down, and lose time that way. These

1 interpreters are not always available when we need them, in
2 other words.

3 MS. CAMPBELL: Because you only have one full-time
4 interpreter, what problems do you think aliens have had in
5 understanding what their rights are?

6 JUDGE SEGAL: I don't think they have any trouble
7 whatsoever, because we explain their rights very carefully, and
8 we are very concerned that they do understand their rights,
9 and that the interpreter explains their rights to them in their
10 native tongue.

11 MS. CAMPBELL: Is there any problem with the inter-
12 preters misrepresenting types of what their rights are?

13 JUDGE SEGAL: If an interpreter does not correctly
14 translate, it is possible. Now, many of our cases involve
15 various Chinese languages, Toy San (phonetic) Shanghai, Manda-
16 rin, and the like. I really have no idea what the interpreter
17 is saying. Our interpreters are sworn to tell the truth, and
18 I understand that they are fully qualified, and that is what
19 we rely on.

20 MS. CAMPBELL: Okay. How many cases are appealed,
21 say, on a national basis because an alien alleges that he has
22 been improperly informed of his rights at a deportation hearing?

23 JUDGE SEGAL: How many cases are appealed on that
24 basis that I am aware of? Maybe two, out of approximately
25 4,000 cases that are handled a year.

1 MS. CAMPBELL: How many aliens appearing before you
2 are represented by counsel?

3 JUDGE SEGAL: I would say about 60 percent.

4 MS. CAMPBELL: How does the presence of counsel im-
5 pact on the deportation hearing process?

6 JUDGE SEGAL: In many times, none whatsoever.

7 MS. CAMPBELL: Why would that be?

8 JUDGE SEGAL: Because many times, the issue may only
9 be the question of voluntary departure, and the judges at Los
10 Angelés are very concerned that the individuals are given an
11 opportunity -- if that is the only issue -- be given enough
12 time to be able to accomplish or be able to leave without the
13 traumatic break that would come with a sudden departure from
14 the United States.

15 We take into account the presence of family, and
16 other elements that are involved. We are very much concerned
17 with these questions, and many times we will send a trial
18 attorney to the District Director or to the other appropriate
19 people to see that if there is anything that is untoward in
20 this case, we are very concerned that the rights of the alien
21 are protected.

22 MS. CAMPBELL: Are you saying then that one of the
23 reasons that counsel, lack of counsel, does not impact great-
24 ly on the hearing process is because lots of times the issues
25 are very simple.

1 JUDGE SEGAL: That is exactly right. Many of the
2 cases would involve an individual who had admittedly entered
3 the United States without being inspected. The attorneys are
4 of tremendous value in connection with assisting an individual
5 to process an application for other benefits such as suspension
6 of deportation, where there are many elements involved, and I
7 think you really need an attorney to flesh out a case where
8 the statute requires a showing of extreme hardship. An uned-
9 ucated individual would have a very hard time understanding
10 that concept.

11 MS. CAMPBELL: How many persons that apply for that
12 relief are represented by counsel?

13 JUDGE SEGAL: Many, and as a matter fact, in many
14 cases, I and my fellow judges would, even though the individual
15 didn't want an attorney at the outset, advise him that he
16 should have counsel, and we have a list of organizations that
17 are qualified to appear in deportation proceedings, and we
18 hand them this list, the legal aid referral list.

19 MS. CAMPBELL: What would be your opinion concerning
20 provision in the law requiring appointed counsel for persons
21 appearing in a deportation hearing?

22 JUDGE SEGAL: I think it would be of great help, if
23 they were qualified, qualified appointed counsel, ready to
24 help and assist individuals. I think it would be a great help.
25 It would certainly help us.

1 MS. CAMPBELL: Could you go into how many deporta-
2 tion orders are appealed annually and on what basis? Approxi-
3 mately?

4 JUDGE SEGAL: Well, I would say maybe ten percent
5 are appealed. They are appealed on various reasons. Many of
6 the reasons have to do with denial of discretionary relief,
7 such as application for adjustment of status, whether it be
8 a statutory basis because somebody has applied as an investor,
9 many of the cases are of that sort.

10 On the suspension of deportation, and other techni-
11 cal grounds, but the percentage of appeals where the issue is
12 solely whether an individual entered the United States without
13 being inspected, and he has no other relief except voluntary
14 departure, there isn't a large percentage of appeals in those
15 cases.

16 MS. CAMPBELL: Okay. Could you tell me what stan-
17 dard of conduct Immigration Judges operate under, and how, if
18 you feel that this discretion is ever abused under the stan-
19 dard?

20 JUDGE SEGAL: Well, as the Immigration Judges are
21 all members of the bar, we are all professionals, and our
22 responsibilities are to comport ourselves in a professional
23 judicial manner, and to see that our hearings are conducted in
24 that manner, in a professional manner, that all people, all
25 attorneys representing their clients during these proceedings

1 or representing the Government act in a professional manner,
2 and so I think that the judges maintain a very high standard
3 of conduct. We expect a high standard of conduct from the
4 attorneys that appear before us, and we try to impart that
5 same standard.

6 MS. CAMPBELL: Okay. What changes, if any, would
7 you suggest to the deportation hearing process?

8 JUDGE SEGAL: I think that most probably the first
9 suggestion I would make, that the Immigration Judges be removed
10 from the Immigration Service.

11 MS. CAMPBELL: Why would that be?

12 JUDGE SEGAL: I think that although the independence
13 of the judges is well known and is understood by the Service,
14 it may be that there is a question of the appearance of inde-
15 pendence, in that we are dependent upon the Immigration Ser-
16 vice.

17 I think that additional step removed would be an
18 added protection.

19 MS. CAMPBELL: What feeling do you think an alien
20 would have due to the physical proximity of the immigration
21 Court to the District Office?

22 JUDGE SEGAL: Well, it would seem to me that an
23 alien may feel that this is just one long line in the meat-
24 packing process, and it is sometimes very difficult to get
25 across to him that it isn't, that we are a little different,

1 and I can well understand that. I have seen that and I have
2 observed it and we are very concerned about that. Of course,
3 it has to do with our physical proximity in the District Office
4 here in Los Angeles.

5 MS. CAMPBELL: Thank you. Judge Segal. I have no
6 more questions.

7 CHAIRPERSON HATA: How many judges are there, immi-
8 gration judges are there?

9 JUDGE SEGAL: In the United States, there are --

10 CHAIRPERSON HATA: No, here in Los Angeles.

11 JUDGE SEGAL: There are four in Los Angeles.

12 CHAIRPERSON HATA: Do you all share the same quarters
13 in the same building?

14 CHAIRPERSON HATA: Are all the quarters similar to
15 each other or are some quarters a little better furnished --

16 JUDGE SEGAL: No, they are sort of small hearing
17 rooms, and there is a waiting room outside, and our clerical
18 staff is right outside the hearing area. There are four sort
19 of small rooms. . As we can see, they are not adequate in that
20 they are so small that everybody is sort of bundling together
21 and really it makes it very difficult. Incidentally, the judges
22 at Los Angeles also are the judges in Honolulu and Guam, so we
23 do have quite an expanse and quite an area of travelling.

24 CHAIRPERSON HATA: How many of the judges are bilin-
25 gual in any second language whatsoever?

1 JUDGE SEGAL: I believe one judge speaks French
2 fluently.

3 CHAIRPERSON HATA: What about the judge's staff? Are
4 there any bilingual persons there?

5 JUDGE SEGAL: Yes. Well, our interpreter, a Spanish
6 interpreter, and --

7 CHAIRPERSON HATA: You have one interpreter, appar-
8 ently, and several --

9 JUDGE SEGAL: Well, he is a jack of all trades. He
10 does everything for us. Unfortunately, we are really under-
11 staffed. We have a docket clerk. We have an assistant to the
12 docket clerk, and we have a full-time interpreter, and then
13 we rely on our part-time interpreters to do most of our cleri-
14 cal work and the paperwork. There is so much paperwork in-
15 volved. It is a very tight little shop we have.

16 CHAIRPERSON HATA: In terms of budgetary priority,
17 where would you rank yourself in the INS budget?

18 JUDGE SEGAL: Towards the lower half.

19 CHAIRPERSON HATA: Lower half?

20 JUDGE SEGAL: The bottom.

21 CHAIRPERSON HATA: Mr. Stern, thank you. Oh, Ms.
22 Fonda.

23 MS. FONDA: Judge Segal, there has been considerable
24 discussion today about the INS surveys of factories and the
25 questioning of aliens both at the factories and after they are

1 taken into custody by the INS agents. Would you shed some
2 light on when or at what stage persons are questioned by INS
3 agents about their immigration status? When they must be ad-
4 vised under INS law of their right to see a lawyer?

5 JUDGE SEGAL: Well, I really don't know what pro-
6 ceedings are used or how a survey is actually conducted except
7 as it is brought in to these proceedings. There is a regula-
8 tion, 8 CFR 287.3, which concerns the use of Miranda warnings.
9 However, recently the Ninth Circuit has indicated that Miranda
10 warnings -- and the Seventh Circuit has also -- Miranda warn-
11 ings are not necessary in deportation proceedings.

12 As the Supreme Court has said many years ago, these
13 proceedings are civil in nature. I may point out, of course,
14 there were some comments concerning the invocation of the
15 fifth amendment, the privilege against self-incrimination.
16 Well, of course, there are cases that hold that if there is
17 compelled testimony in a civil proceeding, it cannot be used
18 in a criminal proceeding.

19 MS. FONDA: We have heard today some discussion about
20 the Sbicca case where over 100 workers were arrested by INS,
21 who believed them to be undocumented aliens. We also under-
22 stand that approximately 70 of these aliens are now demanding
23 hearings, and I would like to know what your view is of this
24 situation in terms of its impact on the Immigration Service
25 and on your Court.

1 JUDGE SEGAL: I may only say that we are presently
2 now holding those hearings. I myself have held and completed
3 one hearing. I don't think it would be appropriate to say any-
4 thing further except that these hearings, as I see them now,
5 will range on through the summer and probably reduce our capa-
6 bility to handle other cases greatly, and also to handle cases
7 including cases of individuals that seriously -- that could --
8 that would like to be adjusted, have a benefit in the United
9 States, and be able to give that benefit to someone else.

10 CHAIRPERSON HATA: Are there further questions?

11 MR. STERN: Yeah. Accepting the fact that a large
12 percentage of the people who appear before you do not speak
13 English, and a large percentage of them come from lower socio-
14 economic backgrounds, and a very large percentage of them have
15 very limited schooling, which usually took place in some other
16 country, how can you state with such confidence that these
17 individuals fully understand the constitutional rights as they
18 are read to them by the judge or through the interpreter, and
19 that only two of four thousand cases would have arisen last
20 year in which these individuals would not have understood --
21 that not more than this number of individuals would not have
22 understood the full meaning and impact of their constitutional
23 rights as stated to them by the hearing officer?

24 JUDGE SEGAL: What rights are read to them are the
25 rights that they are entitled to under Section 242(b) of the

1 Immigration and Nationality Act. Those rights, as I stated
2 earlier, include the right to counsel, right to cross examine
3 witnesses, the right to object to evidence, and the right to
4 present evidence.

5 Now, after those rights are told, or at least ex-
6 plained through the interpreter, hopefully they understand
7 their rights at that point. However, during the course of the
8 proceeding, assuming the Government wishes to introduce a docu-
9 ment, we will again go into the question of that particular
10 right and point out to him what his right is at that point.

11 Of course, I cannot state with a certainty that any-
12 body understands anything.

13 MR. STERN: Well, is that to say that there are a
14 large number of persons who are deported who may not have
15 understood the proceedings, and those proceedings may not have
16 valid, in fact?

17 JUDGE SEGAL: No.

18 MR. STERN: I want to just point to an example I saw
19 on television recently on a program, a segment of a mass hear-
20 ing held in El Centro -- apparently in El Centro. I believe
21 it was in El Centro -- in which there were approximately 25
22 or so individuals whose names were read off in a roll call.
23 An interpreter very hurriedly ran through a statement of what
24 you have just made mention of, and a determination of the
25 hearing at which not one of these individuals presented any

1 type of case whatsoever. That is, they did not attempt to pre-
2 sent any witnesses, did not present any evidence. They were
3 asked, they answered in unison, does anybody want to present
4 evidence? No, in unison. It was like the UCLA cheering sec-
5 tion. Does anybody have a witness? No. Not inquiring, of
6 course, how many of them were very close to the areas in which
7 they -- where they had been apprehended, and then at the con-
8 clusion, the question was something to the effect, do any of
9 you have any valid reason why you should be able to stay in the
10 United States?

11 The intent of that question aimed at the ability of
12 that individual to cite some regulation or law on which they
13 could rely to prefect their status to stay here without getting
14 deported. Can you from your experience tell us whether or not
15 persons under those circumstances are being given their proper
16 rights, given an ample opportunity to present a case under the
17 system that we operate?

18 JUDGE SEGAL: Well, I am not aware of that particular
19 set-up specifically, but I know here we did hold arraignment
20 proceedings, and I know the judges here are very concerned that
21 each individual understands what is going on, and that we would
22 explore with them to ask them whether they have any family
23 here, any visa petitions have been filed, or anything that
24 would benefit them, and let me say this, that in those cases,
25 there is a trial attorney. There is a government attorney in

1 every case, and the government attorney, the trial attorney,
2 is not a prosecutor in the sense that he is there to get a con-
3 viction. His responsibilities are to bring out all the facts
4 favorable and unfavorable, and many times a trial attorney will
5 bring up a fact, saying this person has this or that and the
6 other thing, there is a visa petition, do you know there is a
7 visa petition? I say, I didn't know that. I wouldn't know
8 anything.

9 Let us go into this, let us explore this, why hasn't
10 this visa petition been adjudicated? What has happened? Well,
11 they lost it. What do you mean they lost it? I will set this
12 case over. I mean, this is what we go into here.

13 MR. STERN: Are these mass proceedings held in Los
14 Angeles, such as they --

15 JUDGE SEGAL: We do not hold mass proceedings. We
16 may hold arraignment two or three at a time, but mass in that
17 we get groups of people in a room and have uniform, a chorus
18 of response, no. No.

19 MR. STERN: Would you deem that to be a proper pro-
20 cedure?

21 JUDGE SEGAL: No, I would not.

22 CHAIRPERSON HATA: Ms. Fonda?

23 MS. FONDA: Judge Segal, Mr. Smith of the Immigration
24 Service earlier testified that criminal law and INS law are
25 different in regards to taking statements from people

1 suspected of being undocumented aliens. Would you explain to
2 us under what circumstances a statement taken from a suspected
3 undocumented alien cannot be used in a deportation hearing?

4 JUDGE SEGAL: The statement can not be used for
5 deportation?

6 MS. FONDA: Cannot be used?

7 JUDGE SEGAL: If it is compelled. If it is coerced.
8 If he has, for example, been roused out of his house, taken
9 down to the Immigration office, made to sit until two, three
10 four in the morning, or something of the like, it would not be.
11 I would not permit it in these proceedings.

12 MS. FONDA: Do you have any opinions regarding the
13 legality of INS surveys at workplaces and factories such as
14 those we have heard about today that took place at the Sbicca
15 plant?

16 JUDGE SEGAL: No, I am not aware of it. I wouldn't
17 know anything about it.

18 MS. FONDA: Could you explain to us, given your
19 knowledge of immigration law, how a proper and legally conduc-
20 ted workplace survey should be conducted, specifically, how
21 should people be selected for questioning, and when should they
22 be advised of any rights they may have?

23 JUDGE SEGAL: I have really have never -- I can't
24 say. I really can't say, except that the courts have provid-
25 ed guidelines concerning the stop -- there are two areas there.

1 it would concerned with the stop and detention, and whether
2 that has been properly handled, or whether the Immigration
3 officer has a valid reason to be where he is, and whether the
4 question that he asked was given under one of those two cate-
5 gories.

6 CHAIRPERSON HATA: Judge Segal, have you ever been on
7 one of these factory surveys? Have you seen INS conduct --

8 JUDGE SEGAL: Never.

9 CHAIRPERSON HATA: -- a factory survey?

10 JUDGE SEGAL: Never.

11 CHAIRPERSON HATA: Have any of the other judges seen --

12 JUDGE SEGAL: Not that I am aware.

13 CHAIRPERSON HATA: -- a factory survey?

14 JUDGE SEGAL: Not that I am aware.

15 CHAIRPERSON HATA: So there is no personal knowledge
16 of how these surveys are conducted?

17 JUDGE SEGAL: No, not at all. Not at all. We would
18 only hear about this if it was brought up during a proceeding.

19 MS. FONDA: There has been a great deal of testimony
20 during the day, Judge Segal, describing a pattern of what is
21 described as INS misconduct and intimidation of suspected un-
22 documented aliens. What is your impression of this as a
23 judge?

24 JUDGE SEGAL: I am not aware -- I noticed that one
25 gentleman mentioned an individual being physically assaulted,

1 resulting in his admitting to a sham marriage. I am not aware
2 of anything like this at all. I know, and I can state this,
3 because one of our duties has been in the past to act as
4 hearing examiners in personnel proceedings, personnel proceed-
5 ings that may be brought by improper conduct that an Immigra-
6 tion Service officer may have been involved in, and when I know
7 as a fact that improper conduct is made -- is brought to the
8 attention of the appropriate authorities, the Service is quick
9 to act and quick to investigate, and if appropriate, quick to
10 start proceedings.

11 So there is a proceeding, there is a guideline. The
12 Attorney General has set out guidelines. The administrative
13 manual provides for those guidelines.

14 MR. STERN: Where does the individual who has been
15 abused complain?

16 JUDGE SEGAL: Well, I suppose he could start off
17 with the supervisor, and then go right up front to the District
18 Director.

19 CHAIRPERSON HATA: Mr. Montez?

20 MR. MONTEZ: Judge, what is the difference between
21 an Immigration Judge and a regular Federal Judge? I am talk-
22 ing about the appointment procedure. Are you people appointed
23 the same way as a regular Federal Judge?

24 JUDGE SEGAL: No.

25 MR. MONTEZ: Or is that a rotation assignment?

1 JUDGE SEGAL: No, we are -- we are formally Service
2 officers. We are appointed by the Commissioner, with the
3 approval of the Attorney General. There are 40 Immigration
4 Judges in the United States.

5 MR. MONTEZ: Well, so you are formally employees of
6 the Department --

7 JUDGE SEGAL: Exactly, right.

8 MR. MONTEZ: -- of INS.

9 JUDGE SEGAL: Right, right.

10 MR. MONTEZ: I see, and then that is the reason --
11 or the tie-in remains. It seems to me some -- I am quite
12 ambivalent about the fact that you are so close to INS, and
13 are supposed to -- you know, there is some question about that
14 in my mind.

15 JUDGE SEGAL: Right.

16 MR. MONTEZ: How do you feel about that?

17 JUDGE SEGAL: Well, as I said earlier, I feel that
18 we should be outside of the Immigration Service --

19 MR. MONTEZ: Like in a regular Federal courthouse.

20 JUDGE SEGAL: Exactly. I understand your feelings.
21 I quite agree.

22 CHAIRPERSON HATA: How long are your terms?

23 JUDGE SEGAL: I suppose for as long as we perform
24 without -- honestly and faithfully.

25 CHAIRPERSON HATA: And what happens when you are

1 through judging?

2 JUDGE SEGAL: Hopefully we retire to a long, happy
3 life.

4 CHAIRPERSON HATA: Do you go back, otherwise, back
5 into the Service?

6 JUDGE SEGAL: No, no, no. We are outside. No, we
7 wouldn't go back.

8 CHAIRPERSON HATA: Yes.

9 MS. HILBORN: Judge Segal, yesterday we listened to
10 various testimony from Mr. Smith relating to the INS practices
11 and one of the reoccurring issues that was brought up was the
12 intensive backlog due to the understaffing and on and on.

13 JUDGE SEGAL: Yes.

14 MS. HILBORN: I have heard mention of that from you
15 and before you comment on that, I would like to know if there
16 is a relationship between -- if there is a backlog, that, and
17 I am very bothered by the fact, as other people are, that there
18 is only one interpreter, and I wonder how that relates to the
19 backlog if there is one.

20 JUDGE SEGAL: Well, in addition to only one inter-
21 preter, we have very few transcribers, and so many times,
22 records are not transcribed for a period of up to two years,
23 and many times, the individual who has come in -- and these
24 would involve cases where somebody in most cases were applying
25 for benefits, and the benefits of course would be for both

1 them and their family, and so the delay is onerous for these
2 individuals.

3 In addition, when the case finally comes back to us
4 after it has been transcribed, we of course have forgotten what
5 the case was about. We have to spend a tremendous amount of
6 time trying to remember what the case was about, and in many
7 cases, the law has changed, and then you may have to reopen on
8 that procedure. And of course, as you say, it gets very diffi-
9 cult, it is a very difficult area of law because after all,
10 immigration law covers the entire curriculum of the law school
11 except for trusts, probates, and estates.

12 The immigration law is very complex. It involves
13 many, many things.

14 MS. HILBORN: I have the impression that of your
15 staff, which appears to be very limited, that possibly you or
16 people in your similar position are the only ones that really
17 can make some kind of a statement to the higher officials in
18 the INS regarding this kind of inequities, and I was wondering
19 if you or any of the other judges, to your knowledge, had taken
20 steps to protest.

21 JUDGE SEGAL: Yes. We have, and I could state that
22 the Deputy Commissioner, Commissioner Nodough (phonetic), is
23 very much concerned with these affairs, and is very interested,
24 and so is Commissioner Castillo, and they have both been made
25 aware of what our situation is, and they have expressed concern,

1 but again, I understand the Immigration Service is limited
2 generally by funds, and there are priorities.

3 CHAIRPERSON HATA: And your court is not a priority.

4 JUDGE SEGAL: Apparently not at this time.

5 CHAIRPERSON HATA: And your court is the only court
6 available, legal recourse available, in this civil process, is
7 that correct?

8 JUDGE SEGAL: That is correct. That is correct. If
9 everyone went to a hearing, it would make it a little difficult.

10 CHAIRPERSON HATA: Based on your limited resources,
11 then, do you see it as a general policy, official or unofficial,
12 of INS to try to discourage individuals from making it into
13 your court?

14 JUDGE SEGAL: I can't say that that is true. I
15 really don't know.

16 MS. HILBORN: Excuse me. Is the job of interpreter
17 a civil service position?

18 JUDGE SEGAL: Yes, yes.

19 CHAIRPERSON HATA: Any other questions? If not,
20 thank you very much.

21 JUDGE SEGAL: All right. Thank you.

22 MS. CAMPBELL: Thank you, Judge Segal.

23 CHAIRPERSON HATA: We will recess for five minutes
24 and be back here at 3:30. Off the record.

25 (Brief recess.)

1 CHAIRPERSON HATA: On the record. Mr. Montez would
2 like to make an introduction.

3 MR. MONTEZ: Committee members and ladies and gentle-
4 men, before proceeding, I would like to introduce our Deputy
5 Staff Director that came in last night from Washington, D.C.,
6 Mr. John Ho. (phonetic.) John, would you -- thank you.

7 CHAIRPERSON HATA: And now we will turn it back to
8 Staff.

9 MR. DIMAS: All right. And we will start things out
10 by asking our panelists to identify themselves, and briefly
11 describe their positions.

12 MR. SURECK: My name is Joseph Sureck. I am the
13 District Director, Immigration and Naturalization Service, and
14 my area of jurisdiction are all of the counties from Kern,
15 Ventura, so forth, south to the two counties along the border,
16 about nine counties.

17 MR. DIMAS: Could you briefly describe your duties,
18 Mr. Sureck?

19 MR. SURECK: My duties are twofold. One, to enforce
20 the immigration laws, and one to render public service. Of
21 course, the public service area is mixed enforcement and deal-
22 ing with the myriad of applications that we have filed within
23 the Immigration Service. These are the applications for people
24 seeking permanent residence, the various visa petitions, and
25 relative petitions, the petitions to grant sixth and third

1 preference, the visitor who seeks a change of status, for ex-
2 ample, the student who seeks an extension of stay, wants to
3 seek employment, the some 40 - 50,000 refugess who are seeking
4 adjustment of status at the present time, the person who seeks
5 investor status, the treaty investor, the treaty trader, I
6 could go on, many many kinds --

7 MR. DIMAS: That is probably sufficient on that point.

8 MR. SURECK: When you realize that last year we
9 received some 125,000 applications, you know we handle a lot.
10 In the enforcement area, of course it is to deal with the
11 proliferating illegal alien or undocumented alien problem in
12 this particular area, and also to investigate the various
13 violations of immigration laws. These can be criminal viola-
14 tions, and as Mr. Smith related to you, the investigations that
15 relate to the person seeking some benefit under the immigra-
16 tion laws, to determine his eligibility, determine he is of
17 good moral character and so forth.

18 MR. DIMAS: Thank you.

19 MR. O'CONNOR: My name is Ed O'Connor. I am the
20 Regional Commissioner for the Western Region of the Immigra-
21 tion and Naturalization Service. The Western Region is the
22 State of California, Nevada and Arizona, the State of Hawaii
23 and the territory of Guam.

24 My basic operation is to control, supervise, and
25 see that the instructions of the Congress and the central

1 office are implemented in this Region.

2 MR. DIMAS: Do you supervise the Border Patrol as
3 well as the Immigration Service?

4 MR. O'CONNOR: Yes, I do.

5 MR. DIMAS: Thank you.

6 MR. KARMIOL: I am Bernard Karmioli. I am the
7 Regional Counsel for the Immigration Service in the Western
8 Region, and incidentally, that is C-o-u-n-s-e-l, which means
9 I am the house attorney for the Immigration Service. The way
10 you have me here on your agenda is C-o-u-n-c-i-l, as if I
11 were a committee or a group. In effect, I am available for
12 consultation on all matters that you would understand a house
13 counsel or a corporation counsel in a large corporation to
14 perform.

15 MR. DIMAS: Thank you, and by way of apology, I
16 would like to note that the Committee has another one with
17 the correct spelling on that.

18 MR. KARMIOL: I wasn't criticizing the spelling. I
19 was criticizing the implication that the word would indicated
20 here.

21 MR. DIMAS: Thank you. Mr. Sureck, I noticed you
22 have been sitting in the audience for quite a while, and
23 possibly a good way to begin would just be to have you comment
24 on some of the testimony that you have heard throughout the
25 proceedings. Would you care to do that?

1 MR. SURECK: Well, first of all, I am certain that
2 members of this Committee will not accept as fact many of the
3 statements or allegations that were made here, much of which
4 was hearsay, and where there has been no opportunity for us
5 to look into the allegations that were made. I am sure that
6 you will weigh the statements that were made as being self-
7 serving statements unless there is some further investigation
8 conducted, and also, in connection with the allegations that
9 have been made about the lengthy periods of time that people
10 may wait at the Immigration office, there was no inquiry made
11 of the individuals as to when these lengthy appearances took
12 place, because I want to tell you at this time we have made
13 great inroads into our backlogs. We still have a lot of
14 backlogs, so that at the present time, if the person comes to
15 our information center, instead of a year-and-a-half ago when
16 you had lines that went almost around the building, we do not
17 have such lines because of new procedures and additional help
18 we have, and I don't think that any person ever waits more
19 than one or two hours at the information center.

20 With allegations that people may have waited up to
21 five hours, that may be possible, when we have a walk-in. You
22 must keep in mind that in trying to reduce our backlogs, we
23 have our officers scheduled all day long, so that if a person
24 comes in as a walk-in, he cannot be taken care of ordinarily
25 at that time, so consequently, this particular person may have

1 to wait. This is a problem that we are concerned with. Hope-
2 fully, when we get more people, we can set up a unit, as was
3 suggested here, a unit that could handle walk-ins only, try to
4 provide a little better service.

5 In connection with the combined processing that was
6 discussed yesterday, where at the present time we are accepting
7 the visa petitions and the applications for adjustment at the
8 same time, provided that there is prima facie eligibility,
9 which means that the person has been inspected and admitted,
10 on the face of it there appears to be no impediments, a visa
11 number is available, we will set the hearing down at the time
12 the person submits the application.

13 Also in the Los Angeles office, we authorize employ-
14 ment for that particular person at that time. Right now the
15 interviews are scheduled about three months hence. We hope to
16 reduce that eventually to two months. And also we have initia-
17 ted a plan where on the day of the interview if the person is
18 granted the status, we will ask him to wait 30 or 40 minutes
19 and we will issue the green card to him at that particular
20 time, so hopefully we have reduced it for the people who are
21 submitting their applications at this particular time.

22 I think at this moment we should also respond to
23 some statements that were made yesterday, and this is, again,
24 the respectful warning that I give you about allegations that
25 are made to you, and which may not be correct, and this is in

1 connection with the blood tests for Chinese. It is not only
2 for Chinese. We also have blood tests for Yemenites, and for
3 any country where records have not been kept, or the records
4 are very poor, where a person may not submit any primary evi-
5 dence, and cannot submit any good secondary evidence.

6 By secondary evidence, I mean if a person has been
7 living here a long time, there may be a census record going
8 back to 1930 or 1940 or earlier, showing where families, they
9 lived together to establish a relationship, or a person has
10 gone to school here, where at an early age, where there has
11 been no intent to make a misrepresentation, which will show a
12 family relationship, child to parent, but when an individual
13 can provide none of these, and they only submit affidavits,
14 and the person handling the case has doubts, he may ask for a
15 blood test.

16 It so happens that the Chinese are prevalent amongst
17 that. They come from a country where the records were not
18 kept until recently, and where we have many people applying,
19 and we actually have had blood tests from time to time for
20 Europeans in a similar situation where they can't produce any
21 documentation.

22 We have about one out of every ten Chinese where a
23 blood test may be required, and under the present system, again,
24 if an application is filed today, by the Chinese person, the
25 hearing will be scheduled about three months hence, and if the

1 documentation is all there, that is when he will get his
2 adjustment of status. Now, in connection with the --

3 CHAIRPERSON HATA: Excuse me, Mr. Sureck.

4 MR. SURECK: What?

5 CHAIRPERSON HATA: Just a point of clarification.

6 You said he may ask for a blood test, and then you said a few
7 minutes later, a blood test may be required of him.

8 MR. SURECK: If I said he may ask, I am sorry. I
9 meant that it may be required of him.

10 CHAIRPERSON HATA: The Service will ask him for a
11 blood test.

12 MR. SURECK: Right. Right, and I think if I said
13 "he," I meant the Immigration examiner who handled the case.

14 Also, since it was brought up yesterday, that will
15 be of interest, is the manner by which documentation may be
16 secured from a Chinaman (sic). I was in mainland China last
17 year. I visited our mission in Peking, and I came back with
18 a letter that the mission had sent to a lawyer here in the
19 United States. I provided that to the Immigration and Natur-
20 alization Lawyers Association. They in turn sent it to their
21 office in Washington. It was publicized nationally.

22 And in this particular letter, it advises people
23 that they may go to relatives in China, or if they have no
24 relatives, to the mission in Washington, D.C., and the way it
25 is done, the letter or the request for determination of

1 relationship is sent to the commune in China. They send the
2 man out on his bicycle into the village to determine the
3 relationship, to talk to people that may have known the fami-
4 ly. After the investigation is conducted, if it produces a
5 relationship, it is reviewed by a superior and then goes into
6 the people's court, where there is a certification, and my
7 officers tell me that results have been 50 percent on that
8 particular procedure.

9 I think that I have said enough initially. I will
10 pass it on to somebody else.

11 MR. DIMAS: Thank you, Mr. Sureck, Mr. O'Connor,
12 would you care to do the same thing?

13 MR. O'CONNOR: I think it was adequately covered,
14 unless you have a question about anything. I think Mr.
15 Sureck covered it in -- completely, and totally.

16 MR. DIMAS: I see, and should we continue?

17 MR. KARMIOL: Well, not necessarily. You are
18 talking about operational material. I will wait until you
19 have some questions in connection with possible application
20 of law itself.

21 MR. DIMAS: I see. All right. Very good.

22 MR. KARMIOL: Such as the application of the civil
23 rights laws.

24 MR. DIMAS: Very good.

25 MR. SURECK: I don't mean my stopping means I don't

1 have more to say, but I just thought I would stop and let some-
2 body else have something to say.

3 MR. DIMAS: I see, well, we will --

4 CHAIRPERSON HATA: Excuse me, Mr. Dimas, I think
5 staff should give Mr. Sureck some reassurance about his initial
6 concerns regarding getting supporting evidence for allegations
7 and also regarding giving INS a chance to respond to statements
8 that have been made, either here or perhaps in staff inter-
9 views.

10 MR. DIMAS: Certainly.

11 CHAIRPERSON HATA: There will be a chance for you
12 to respond to our staff, with our staff, and also the staff is
13 very conscientious in asking for evidence to back up the
14 allegations that have been made. We simply want to give you
15 that reassurance.

16 MR. SURECK: I would be appreciative if the staff
17 would come to me in the areas where they have concern, so I
18 would know in what area to respond.

19 CHAIRPERSON HATA: I am certain they will.

20 MR. SURECK: Thank you.

21 MR. DIMAS: Mr. Sureck, why don't we start off with
22 one of the areas that was covered this morning, that of business
23 surveys. There were some questions raised about the manner of
24 selection. Could you elaborate, based on your knowledge, about
25 how places are selected for surveys?

1 MR. SURECK: Well, first of all, we will get the
2 information, and although this morning it was mentioned that
3 the information is received from anonymous sources, we also get
4 it from other sources. We get it from the aliens that we pick
5 up, who are here illegally, who tell us where they work, and
6 they mention that there are other illegal aliens there, and we
7 had union members here who seemed to be complaining about the
8 employers who may come to us.

9 Well, in my experience, there have been no
10 employers that come to me, but union organization has come to
11 me when they are attempting to organize and they are not having
12 that much success.

13 MR. DIMAS: There have been no employers that have
14 come to you?

15 MR. SURECK: There has been no employers that have
16 ever come to me, to me, and I can't tell you if they have come
17 to other members. I am talking about coming in for a survey.
18 Now, it doesn't mean that employers have come to me and said,
19 Mr. Sureck, we would like to cooperate with you, would you send
20 one of your men down to talk to us and tell us how to go about
21 to cooperate with you, and how to determine what documents are
22 legal, and so on.

23 We have had a number of those. I have made many
24 appearances before employer groups, and as a result of that,
25 have generated considerable interest in employers who want to

1 know how they can clean their house, so to speak.

2 MR. DIMAS: What kind of advice do you give them?

3 MR. SURECK: I tell them this: I explain to them the
4 several methods that we may have to use, and that is, first of
5 all, we would like to have the procedure of say no confronta-
6 tion, no interruption of their business, and they can do that
7 by having our man come down there if they want him to, so he
8 can then indoctrinate the individual as to the types of docu-
9 ments that an individual will carry who is an alien, to deter-
10 mine what his status is in the United States, and unlike the
11 individuals who have testified here before, the people represen-
12 ting business organization, although there may be different
13 documents, in my opinion it is no great problem for the employ-
14 er to ask the individual who says he is an alien to present
15 documentation.

16 They keep saying that they are not Immigration offi-
17 cers. It is true. We are the Immigration officers. We issue
18 the documents. It may be the green card. It may be the I-94
19 with employment authorized, or another documentation of employ-
20 ment authorized.

21 All the personnel officer is at the place of employ-
22 ment is, is a ticket-taker. He does no more than the police
23 who stops you and asks you to present your driver's license.
24 The Motor Vehicles Department issues the driver's license, the
25 policeman looks at it. This is all the employer has to do.

1 So, we try to convince them that their own person-
2 el people should do this, but if they would like to have us
3 sit down with them to examine their employees, we will do so.
4 We had a very classic example of a very successful program on
5 Terminal Island about three or four years ago, where together
6 with management and the unions, we had 5 or 6 of our Immigra-
7 tion officers go through every cannery examining 5,000
8 employees, and as a result made 900 jobs for U.S. citizens
9 and aliens authorized to work.

10 MR. DIMAS: What precipitated this effort on this
11 island?

12 MR. SURECK: It was a desire on their part to do
13 so, on both the part of management and union.

14 MR. DIMAS: I mean, had there been a large number of
15 complaints about undocumented workers in that area?

16 MR. SURECK: It happened just as I came on duty here,
17 and I can't really recollect what brought it about, because it
18 was just commencing as I arrived on duty at the Los Angeles
19 District Office.

20 MR. DIMAS: How many plants did you say were in-
21 volved?

22 MR. SURECK: There were several, several, I don't
23 know how many, and it was a very successful operation, and
24 part of our understanding with management when we go in that
25 way is that if an employee does not report on duty in 72 hours

1 and doesn't come back with a valid reason as to why he was not
2 there, then they will terminate his employment and hire someone
3 else, and in that instance, while we were there, because this
4 particular survey took about three or four weeks to get through,
5 as new employees were hired, they were checked by the Immigra-
6 tion officer, and this type of operation kind of indicates
7 that the allegation made by employers that they cannot find
8 legal workers just does not hold water all the time.

9 Certainly I am not going to take the position that
10 there may not be some instances where employers may have diffi-
sic: 11 culty in finding employers, but we have been working with
12 dozens of employers. They have been able to replace their
13 illegals, their undocumented workers, with legal workers, some-
14 times at a higher pay, but I think that is healthy. I think
15 that is what we want. We want a living wage here in the
16 United States.

17 MR. DIMAS: When you do explain some of the voluntary
18 procedures to employers, Mr. Sureck, do you also advise them
19 about how to conduct some of these questions without violating
20 any anti-discrimination laws such as the Fair Employment
21 Practice Act?

22 MR. SURECK: We seek to advise them, but we really
23 refer them to the Fair Employment Practice Commission. They
24 have a booklet, and we want them to go to FEPC to determine
25 the proper questions to ask.

1 MR. DIMAS: Do you see any conflict between the
2 questions that you need to have asked and the questions that
3 the FEPC prohibits?

4 MR. SURECK: None whatsoever, although I might per-
5 sonally disagree with some of the interpretations of FEPC, but
6 I find that we can work with them. I say that because several
7 years ago when I was regional counsel, in Mr. Karmiel's posi-
8 tion, I wrote to the general counsel, FEPC, and he wrote back
9 pursuant to an inquiry I made, that it would not be violative
10 of FEPC for an employer to ask an alien as a pre-employment
11 requirement to produce a document showing his right to be here
12 and work in the United States.

13 Now, since that time, there has been a new interpre-
14 tation, indicating that perhaps -- and I am not really certain
15 about this, because it is a little confusing to me -- but
16 perhaps as a pre-employment requirement, they can make inquiry
17 as to his alienage, but not require him to produce documenta-
18 tion until after he is employed, but I cannot speak with ab-
19 solute certainty as to what I have told you just now.

20 MR. DIMAS: So you do not explain this to employers.
21 You merely refer them to the FEPC.

22 MR. SURECK: That is right. Right.

23 MR. DIMAS: Mr. O'Connor, you mention that you are
24 more responsible for policy and direction through the Region.
25 Could you tell us something about the policy regarding the

1 priorities, the enforcement priorities of INS, such as the
2 direction of the available staff?

3 MR. O'CONNOR: Well, these priorities are set in
4 Washington, Mr. Dimas, and my input to them would be only to
5 see that they are implemented as directed from Washington.
6 Many times we are asked ahead of time before a policy is promul-
7 gated whether or not we have an opinion on it, just what our
8 opinion would be, and then the policy comes forth and explain-
9 ing actually what my occupation is, is to see that it is carr-
10 ied out, and that the letter of the policy itself is given
11 either to the Patrol or to the District Directors and imple-
12 mented, and to the letter.

13 MR. DIMAS: Is there a policy right now directing
14 most of the enforcement efforts towards factory surveys, as
15 opposed to other types of apprehension?

16 MR. O'CONNOR: No, there is not. The policy with
17 regard to surveys would also apply to the Border Patrol with
18 regard to farm and ranch checks and line watch. It is a ongoing
19 constant activity of this occupation.

20 MR. DIMAS: What about neighborhoods? Is there any
21 Service policy with regards to check through neighborhoods?

22 MR. O'CONNOR: Mr. Dimas, in view of the fact that
23 we have so much work to do in factories, in our farm and ranch
24 check, on our line watch, unless there would be some type of
25 a disturbance and it would be brought to our attention by an

1 accredited police department or police unit, we would not nor-
2 mally go into a neighborhood looking, as it were, for illegal
3 aliens.

4 MR. DIMAS: What would be considered a disturbance?

5 MR. O'CONNOR: I would say something that would con-
6 tinually disturb a local police department. Many of the local
7 police departments don't have the language ability that our
8 people have, particularly in the Spanish language, we will say,
9 in southern California..

10 We are constantly asked to assist them or go with
11 them. It is their opinion that the people causing the distur-
12 bance are illegal aliens. Now, we have the manpower, we do
13 this. We would go along with them and stand aside. When they
14 are finished with their civil duties, if in their opinion this
15 person is not in this country properly, we would then be asked
16 to talk to them, which we would do.

17 MR. DIMAS: I see. Thank you. What type of infor-
18 mation generally would the local authorities have to communi-
19 cate to you before you would determine that the disturbance
20 was of sufficient importance to send some of your officers out?

21 MR. O'CONNOR: Well, they would have to have enough
22 articulable type facts, Mr. Dimas. They would have to say
23 that these people, their own intelligence has told them this,
24 their own officers have established that this is so, that
25 these people are most likely illegal aliens, or it is an area

1 that is known that illegal aliens frequent. That would be
2 sufficient evidence, and then they would request us to come
3 along.

4 MR. DIMAS: What would be an area that illegals will
5 be known to frequent?

6 MR. O'CONNOR: Well say, in the eastern section of
7 the City of Los Angeles, there are known areas to both the
8 police departments and the Immigration Service that are fre-
9 quented, lived in, habitated by people who are illegally in
10 this country.

11 MR. DIMAS: Mr. Karmiel, is that pronounced correctly?

12 MR. KARMIEL: Yes.

13 MR. DIMAS: Could you explain a little bit about the
14 legal standards required to interrogate a person as to alienage?

15 MR. KARMIEL: These standards are set out in guide-
16 lines that were stated by the Supreme Court in a decision about
17 two years ago known as Brignoni Ponce vs. INS, I believe, and
18 as a result of these standards, the Immigration Service tried
19 to elaborate on them for the guidance of their officers. The
20 standards -- well, in the Brignoni case, as I recall it, the
21 Supreme Court stated that merely because a person had a brown
22 skin or seemed to be of latin ethnic derivation, this would not
23 be sufficient to stop this person and speak to him, that other
24 so-called articulable facts -- these are the words of the
25 Supreme Court -- in other words, articulable facts mean that the

1 officer must have more than just a hunch that a person is an
2 alien, and consequently would be the subject of inquiry.

3 The officer would have to be able to explain at a
4 later time just exactly why, beside the fact that the man had
5 a brown skin, perhaps, he questioned the individual as to his
6 being a citizen or an alien, and then pursued the matter from
7 that point on.

8 MR. DIMAS: Didn't that case involve a border
9 situation?

10 MR. KARMIEL: That case involved a stop of an auto-
11 mobile, but the test has been used beyond the matter of stop-
12 ping an automobile. The Supreme Court has indicated that on
13 the basis of this test, other individuals can also be queried.

14 MR. DIMAS: So would that be applicable in, say, a
15 metropolitan area such as central Los Angeles?

16 MR. KARMIEL: It certainly would be, and it would be
17 applicable even in connection with farm and ranch checks, also
18 in connection with surveys of factories.

19 MR. DIMAS: Thank you. In other words, an agent has
20 to have specific articulable facts to question each employee?

21 MR. KARMIEL: To question each individual, not
22 necessarily each employee. He might even want to question the
23 owner or manager of the place.

24 MR. DIMAS: Not foreclosing the possibility that the
25 owner is also undocumented.

1 MR. KARMIEL: It has happened. It has actually
2 happened, and been shown in reported cases.

3 MR. DIMAS: Mr. Sureck, you mentioned a little while
4 ago about Terminal Island, and that every employee had been
5 questioned about alienage. Is this not in conflict with the
6 standard Mr. Karmiel has just set out? Do you see a conflict?

7 MR. SURECK: No, no, I don't think -- I don't think
8 there is any conflict. Of course, I might say first of all,
9 that took place before this particular decision, but even what
10 we do now, I don't think is in conflict, because we operating
11 under Section 287(a)(1) of the law, that says that we can
12 question any person believed to be an alien as to his right to
13 be or remain in the United States, and we are not talking about
14 a moving automobile where you stop the automobile, and I think
15 there is going to be a greater requirement to stop that partic-
16 ular automobile. We are talking about going into a sedentary
17 situation, into a plant and factory, and it is my belief that
18 we don't need to know that a person is in the United States
19 illegally before we question them, that as soon as we determine
20 that he is an alien, we can question him about his right to be
21 in the United States.

22 MR. DIMAS: Would you give us a description from your
23 experience, Mr. Sureck, the procedures that you go through when
24 an employer does not give consent for the conduct of a survey?

25 MR. SURECK: All right. Let us step back and review

1 again what happens when we get information that leads us to
2 believe that we should visit that particular plant or factory.
3 We send a contact or liason officer to that particular factory
4 to talk to the owner, manager, introduce themself, and to tell
5 them that we do have information that there are undocumented
6 aliens working at this place, and that we intend to bring
7 people down to go through the plant. Will he have any objec-
8 tions?

9 If he has no objections, then as Mr. Smith has already
10 y told you, we tell the plant owner that we will back at some
11 time in the future. We don't tell him when he is going to be
12 back. We tell him we have no objections if he wants to let his
13 employees know that we are coming, because we would like for
14 them to have their documentation with them when we come into
15 the plant.

16 MR. DIMAS: Do you have any knowledge about employers
17 actually informing their employees that you are coming?

18 MR. SURECK: I am sorry, I have never followed up on
19 that, so I do not know.

20 If the employer says he does not want to give us
21 permission to go in, we tell him thank you, and we leave. Now
22 in many instances, we will have information that from our point
23 of view will support the issuance of a search warrant. In
24 other words, we will show probable cause that a search warrant
25 should be issued, and if we do, we may go down to the U.S.

1 Attorney immediately, or if we don't, then we set ourselves
2 about to get that evidence, and it might be by having officers
3 merely coming to the front of this plant or factory and talk-
4 ing to people as they walk in, and picking up three or four or
5 five or six aliens illegally here.

6 On the basis of that, we will go to the U.S. Attor-
7 ney's office and prepare the necessary affidavits and apply
8 for a search warrant.

9 MR. DIMAS: You check employees coming out of the
10 plant after permission has been denied?

11 MR. SURECK: Or going into or coming out. It makes
12 no difference. We are not in the plant. We are outside.

13 MR. DIMAS: Mr. Karmiel, could you tell us something
14 about the legal standards required for the issuance of a
15 search warrant here?

16 MR. KARMIEL: Oh, yes. Much has been made in the
17 past few days by some of our speakers with reference to search
18 warrants being unconstitutional, the types that we use. The
19 emphasis was put on the fact that these search warrants were
20 issued under, I believe, Rule 41 of the Rules of Criminal
21 Procedure.

22 Now, Rule 41 is, as it says, a rule of criminal
23 procedure, and has to do with criminal search warrants in
24 which a law enforcement officer is seeking to go into some
25 premises, whether it is a home or a factory or what have you,

1 for the purposes of looking for physical evidence of a crime,
2 or tangible objects.

3 Naturally, human beings are not tangible objects. We
4 fought the Civil War on that issue, but the fourth amendment
5 to the Constitution is much broader than Rule 41. It just
6 happens that Rule 41 is the only rule that is published as
7 a means of obtaining a search warrant, and the only forms that
8 are used are the forms that have printed under Rule 41, but
9 under the Constitution, a search warrant is available, I
10 believe, on a much broader scope, and Rule 41 in my opinion is
11 not exclusive. It is possible to get a search warrant for a
12 much broader purpose.

13 MR. DIMAS: Under the Constitution?

14 MR. KARMIEL: Under the Constitution. Witness the
15 fact that in certain administrative agencies, there is the
16 use of administrative search warrants. Also, I think that our
17 purpose in using a search warrant wherein we, as emphasized,
18 scratch out the word, the term "property," and we put in
19 undocumented alien, or some term like that, is not illegal.

20 I think it is within the very scope of the courts,
21 that the court has a broad jurisdiction, and under the fourth
22 amendment to the Constitution, can issue a search warrant for
23 another purpose, and this is the way we use our search warrants.

24 Up until now, there has been no question about it.
25 Some questions have arisen now. There is this one suit that

1 was brought out, the International Ladies Garment Workers has
2 brought suit with reference to the use of the search warrant
3 that we do employ.

4 I think, perhaps, to lay the question to rest, Con-
5 gress might come up with some provision for us to use these
6 broader type of search warrants that we have. I think the
7 provision would be legal, but I think the way we are using
8 them now is absolutely legal under the fourth amendment.

9 CHAIRPERSON HATA: I need a point of clarification.
10 You are saying, in effect, that striking off the word "property"
11 from a warrant and putting in "illegal alien" in your opinion
12 is not an inconsistency?

13 MR. KARMIEL: No, it is not an inconsistency. The
14 warrant is a printed form. It is only a means. Would it be
15 better if we typed it up separately and used the same language
16 but when we came to that word "property" we typed in the
17 words "undocumented alien?" We are only using a form. The
18 form is not the substance. The substance itself is the purpose
19 of the warrant, and it is definitely possible under the Consti-
20 tution. I have a copy of the fourth amendment. If you would
21 like, I will read it into the record for you.

22 CHAIRPERSON HATA: I was a public history teacher.
23 I remember people like Dredd Scott being ruled property, and
24 all that -- all those --

25 MR. KARMIEL: That is what we fought the war for in

1 the Civil War.

2 CHAIRPERSON HATA: That is what I thought. I am
3 wondering if we are on the same wavelength. Mr. Dimas, please
4 continue.

5 MR. KARMIEL: Would you let me read --

6 MR. DIMAS: Certainly.

7 MR. KARMIEL: -- just to put this at rest.

8 MR. STERN: I think we know what the fourth amend-
9 ment is. We all took civics. Why don't we --

10 MR. KARMIEL: I am afraid that perhaps you may not,
11 because lots of other talk was done here with reference to some
12 of the other amendments to the Constitution, and --

13 MR. STERN: Look, the problem with the fourth amend-
14 ment -- excuse me -- it has been interpreted thousands and
15 thousands and thousands --

16 MR. KARMIEL: And it is still subject to being inter-
17 preted.

18 MR. DIMAS: Speaking of interpretations, have there
19 been any interpretations which would support your viewpoint?

20 MR. KARMIEL: No. There have not been as yet. But
21 wait just a moment. I have a -- the fact that it hasn't been
22 interpreted up to now, and these search warrants have been used
23 for so long, and have been issued by U.S. District Court judges
24 and have been issued by magistrates, and also it was suggested
25 by a Supreme Court judge in another case, the case Alameda

1 Sanchez (phonetic) in which -- I believe it was Justice White
2 suggested the use of what he called "area warrants" and this
3 was also for the purpose of searching for people, not searching
4 for property, so this concept is not unique with me. The
5 judges have accepted this concept up to now.

6 CHAIRPERSON HATA: We may wish to pursue this later,
7 but I think there are other questions that staff would like to

8 MR. KARMIEL: All right, I will pause at this point.

9 MR. DIMAS: We have many questions of everybody, I
10 am sure. Let me direct one to Mr. O'Connor. One of the wit-
11 nesses previously testified that the encouraging of employers
12 to refrain from hiring undocumented aliens was in effect the
13 enforcement of a national policy that is presently being de-
14 bated in Congress. Would you give us your opinion on that?

15 MR. O'CONNOR: Well, Mr. Dimas, these are the Presi-
16 dent's initiatives on immigration that I think you are alluding
17 to, and I think that as a good bureaucrat, I don't want to get
18 off on this. My opinion would really be, when they are passed
19 by the Congress and enforced, I will see that they are operated.
20 I really have no opinion on it at this point, though.

21 MR. DIMAS: But you see no conflict between doing it
22 on a voluntary basis now, before the enactment of such legisla-
23 tion?

24 MR. O'CONNOR: No, I really don't. I love this coun-
25 try. I think that the singularly biggest privilege in this

1 country is the right to work, and I think that that right to
2 work should be guarded, especially if there is some unemploy-
3 ment among citizens or legal permanent residents, and I think
4 that a voluntary -- I admire employers who would voluntarily
5 do their very best not to involve anybody in any wrongdoing
6 with regard to civil rights, but to hire people who they can
7 properly hire, and who are either citizens, or as I say,
8 permanent residents.

9 MR. DIMAS: Mr. Sureck?

10 MR. SURECK: Well, you know, I am kind of surprised
11 at the question, because after all, we started with the premise
12 that it is national policy, or Congressional policy that our
13 job be preserved for those people who are authorized to work,
14 so I would hope that this Commission here.--

15 MR. DIMAS: To mention some of the issues that were
16 raised before, Mr. Sureck.

17 MR. SURECK: Yeah. So I would hope that this Commiss-
18 ion here would also kind of respect that policy as well as
19 our employers and as well as all the various agencies, and also
20 understand that in so doing, we are turning out the will and
21 mandate of Congress in removing those aliens who are not
22 authorized to work or remain in the United States, except when
23 they have certain applications pending and certain benefits
24 that may be available to them under the law, and if so, we may
25 allow them to remain. Also, we may even authorize them to work

1 while we let them remain.

2 MR. DIMAS: At this time, I would like to turn the
3 questioning over to the State Advisory Committee and to reserve
4 some time toward the end, if I may.

5 CHAIRPERSON HATA: That is a promise. Ms. Fonda?

6 MS. FONDA: I had a number of questions. Just to
7 start off with, Mr. Sureck, how do you justify the letter that
8 you sent to Mr. Piano (phonetic) with Technibuilt Corporation
9 in Burbank, California, telling him that under Section 2805 of
10 the State of California Labor Code, employers hiring -- knowing-
11 ly hiring -- illegal aliens can be penalized, when in fact I
12 believe this is not enforceable. This is under litigation?

13 MR. SURECK: Would you be good enough to read the
14 date on that letter, please?

15 MS. FONDA: November 23rd, 1976.

16 MR. SURECK: Well, first of all, that particular
17 letter is not being sent any more. We changed the language of
18 our letter to the one that we turned over this morning. I don't
19 know the exact time, but probably a year and a half ago, but at
20 the time we put that particular language in that letter, I
21 talked to the county attorney.

22 My recollection is, I talked to Mr. Van De Camp, and
23 he turned me over to someone else, because my question was
24 whether or not Section 2805 was a viable law. Everyone agreed
25 it is still on the books. The question was whether or not the

1 injunction or restraining order of the suit that was here was
2 still viable, notwithstanding that the Supreme Court in the
3 Decanas vs. Beca case had indicated that the court here was
4 wrong, you see, and this was in another case in Sacramento, and
5 said that California could pass its own laws, which is some-
6 thing that the court here in Los Angeles said it could not do,
7 but left open the question as to whether or not there was pre-
8 emptation by the Federal Government, and that was turned back to
9 the Sacramento court sometime in February.

10 I have forgotten which year it was now, and to this
11 date, the people responsible for handling that case have not
12 seen fit to reopen it. Now, I talked to the County Attorney's
13 office, although they were not absolutely certain, they did
14 think that it was still an enforceable law. It was on the
15 books, and on the basis of that we included it in our letter,
16 but after there were complaints about it -- and I must agree
17 that there is some uncertainty about it -- we did change our
18 letter, and we have not written that letter now for a year,
19 year-and-a-half.

20 MS. FONDA: I see. You mentioned earlier that in
21 some instances, in fact you indicated that it was not infre-
22 quent, union organizers or union officials were the ones who
23 would call you with the names of deportable aliens. Could you
24 name those unions?

25 MR. SURECK: No, I would not, but they did not give

1 me names of individuals. They merely came to me and said that
2 there are illegal aliens working at this particular plant and
3 factory.

4 MS. FONDA: But you cannot tell us which unions.

5 MR. SURECK: No, I feel that that information is one
6 that I should hold in confidence.

7 MS. FONDA: We have heard that --

8 MR. SURECK: But let me point out something I think
9 that we can talk about. It is common knowledge, and that was
10 when the Farm Workers Union was organizing some several years
11 back, I can tell you that they were after the Immigration
12 Service almost every days to go onto the farms of the growers
13 up around Delano, telling us that there are illegal aliens
14 there.

15 MS. FONDA: We have heard that suspected deportable
16 aliens are questioned in factories without being advised that
17 their statements can be used against them. Is there any INS
18 law on this question, and if so, what is your understanding of
19 the law?

20 MR. SURECK: I am awfully sorry. I didn't hear your
21 complete question.

22 MS. FONDA: Suspected deportable aliens in factories
23 are being questioned without being told that their statements
24 may be used against them. What is the INS law pertaining to
25 this? What is your understanding of the law?

1 MR. SURECK: We operate, of course, under the court
2 decisions, and when we go into a plant and factory to question
3 individuals, when we begin to question them, we do not know
4 that they are deportable aliens, so we do not have to under any
5 court decision to give them any warning as to right to counsel.

6 Now, after our questioning, if a determination is
7 made that they are aliens illegally in the United States, even
8 at that time under every decision by a court of appeals, there
9 is no requirement that the Immigration Service give them the
10 Miranda warning.

11 However, we do it under our own policy, so when we
12 take that person down to the Immigration office, before we
13 begin to question him to fill out the report, the form I-213
14 investigative report, we do give him the warning as to his
15 right to counsel, and -- but it is merely as a matter of policy
16 that we do that.

17 CHAIRPERSON HATA: Is this done in Spanish?

18 MR. SURECK: It is done in Spanish of the person if
19 the person cannot understand English, yes, and it is on a
20 printed form also, in both English and in Spanish.

21 CHAIRPERSON HATA: Just English and Spanish? No other
22 foreign languages?

23 MR. SURECK: No. I know your point. It is well
24 taken, but we don't.

25 MS. FONDA: From the things that we have heard the

1 last few days and from a lot of the things that I have read
2 outside of these hearings, it seems clear, and people who are
3 expert in this area seem to feel that there is an almost total
4 lack of hard factual information on the impact of undocumented
5 workers in the United States.

6 You have mentioned -- or you appear to base the
7 policies of the INS on the fact that undocumented workers take
8 jobs from American citizens. There are much statistical evi-
9 dence to disprove that, that undocumented workers drain tax-
10 supported services. There is an extensive amount of documented
11 information to disprove that, but the bottom line is, it seems
12 to me, that there is a lack of good hard facts on almost every
13 area relating to the impact of undocumented aliens.

14 Don't you feel -- and this is really to the three of
15 you -- that it would be better before a Presidential program
16 regarding immigration be enforced, implemented, made law, that
17 time be taken to do the necessary investigation so that these
18 questions are based on some scientific facts, rather than pre-
19 judice or bias or myth?

20 MR. SURECK: Well, first of all, I want to say that I
21 think there have been too many impact studies, but I think I
22 can respond to your assertion or belief that the undocumented
23 alien does not displace workers by my own personal experience,
24 by the fact that we have had dozens of employers come to us and
25 with our assistance have replaced their undocumented workers

1 with legal workers. Now that is a fact.

2 Although I am going to say that I would not dispute
3 an assertion from certain employers that they may have diffi-
4 culty getting workers to work in certain plants, and it is
5 because the illegal alien is a source of cheap labor, and as I
6 indicated before, if the prevailing wage, or living wage which
7 would be paid, we could find many of our legal workers who are
8 today receiving welfare, are receiving unemployment insurance,
9 taking those jobs -- and by the way, some of the employers who
10 are replacing their legal (sic) aliens are paying a higher
11 wage now to get the legal worker.

12 So I am not satisfied, Ms. Fonda, that the illegal
13 alien is not displacing the American worker. I think the illé-
14 gal alien is displacing many American workers, but in that re-
15 gard, I think there is a remedy, and the remedy can be by Con-
16 gress writing the proper law that will permit an employer who
17 needs temporary workers to bring them in more easily than they
18 do now.

19 If the Commission is interested, we can discuss that
20 later, but I won't go into any details for the particular plan.
21 Now, with regard to taxation, we talk about the undocumented
22 alien working here, but we don't accept the fact that there are
23 many thousands, tens of thousands of undocumented aliens who do
24 not work or work intermittently. They don't pay taxes when they
25 don't work. We forget about that, but even assuming that they

1 do pay taxes, is that going to be a substitute for the proper
2 and the legal procedure to enter the United States?

3 Are we going to say that all a person has to do to
4 acquire residence in the United States is to come in illegally
5 in violation of our laws, sometimes being smuggled in, some-
6 times by buying fraudulent documents, and if he can find a job
7 and pay taxes, that he is going to be excused from fulfilling
8 the provisions of our laws, the well-planned provisions that
9 Congress has made?

10 This is a big problem, and what do you say to the
11 tens of thousands of people in Africa, India, the Phillipines,
12 Taiwan, Mexico, Central and South America, who are trying to
13 come in legally and are waiting, and many of them eventually
14 denied entry?

15 And keep this in mind, the reason why most of the
16 illegal aliens came in from south of the border is because they
17 were not eligible for documents. They couldn't get the docu-
18 ments, so they come in violation of the law.

19 Now, in my opinion we have had too many impact studies.
20 They are not worth the paper they are written on. The organi-
21 zations that want them want inactivity. They want no action.
22 You heard for two days the groups saying we are against the
23 President's proposals because they want everything. They want
24 all or nothing at all.

25 If they get nothing at all, it means delay. This is

1 what they want. They want the inactivity, and when I say that
2 the impact studies are not worth the paper they are written on,
3 I am also referring to the Santa Ana report, and I ask you to
4 read it, where it concerns 177 aliens, and reports there, these
5 are friends of people who made the report. These are church-
6 goers. These were selected individuals, and if you are talk-
7 ing about data gathering, I think that is the worst example of
8 data gathering.

9 And in that regard, I would like to read into the
10 record the statement of the Comptroller General on impact
11 studies, which indicates that it is time to stop impact studies
12 and let us do something about the undocumented alien problem.

13 CHAIRPERSON HATA: Mr. Sureck, I hate to interrupt
14 you, but in the interests of time, could you just submit a copy
15 of that statement to us? You, I think very neatly summarized in
16 one sentence, and --

17 MR. SURECK: I can summarize it in two sentences.

18 CHAIRPERSON HATA: Okay.

19 MR. SURECK: Let me give you the date. It is Decem-
20 ber 1st, 1977. The Comptroller General of the United States in
21 a report to the Senate. "Most studies are limited to local
22 and regional areas, deal with only certain segments of the
23 illegal alien population, are based on assumption, unsupported
24 by hard data. Where illegal aliens were interviewed, the poss-
25 ibility of untruthful answers exists. Where samples were taken,

1 they were often too small to produce statistically sound re-
2 sults. This also applies to our studies and interviews."

3 In my opinion, something must be done now, not two
4 or three or four years from now, when impact studies would be
5 completed.

6 MR. O'CONNOR: Ms. Fonda, we are not racist. We just
7 don't pick up Mexicans and return them to Mexico. We return
8 people who are here illegally to every country in the world.
9 We are the only organization under the Constitution that can
10 pick up people for immigration violations. We are Immigration
11 officers.

12 MS. FONDA: Yes, excuse me, my question was really,
13 as experts, I am saying to you, to go beyond subjectivity, your
14 opinion, my opinion, it seems that there is so much difference
15 of opinion, difference in factual data that is very pertinent
16 to the whole question of what a successful immigration policy
17 should be, and since this is going to be sent to Washington as
18 a recommendation of the U.S. Commission on Civil Rights, which
19 is going to have hearings before Congress, don't you feel that
20 it is difficult to establish a successful policy until a more
21 clear and objective and scientific set of data can be compiled,
22 so that it is not simply subjective?

23 MR. KARMIEL: May I get in this? I think Congress
24 was aware of this when it amended the immigration law back in
25 1965, in connection with the matter of getting a labor

1 certification. At that time, Section 212(a)(14) of the Immigra-
2 tion and Nationality Act, with reference to obtaining labor
3 certifications to immigrate to this country, provided that a
4 person would be ineligible for a visa if the Secretary of Labor
5 issued a negative certificate, that his coming into this coun-
6 try would be detrimental to American labor.

7 When the immigration law was amended in a wide-sweep-
8 ing amendment back in October of 1965, Section 212(a)(14) was
9 turned around completely, and it is required now that anyone
10 who seeks to immigrate to this country must obtain a labor
11 certification showing that his particular coming here would not
12 be detrimental.

13 So, there was a study at that time, presumably Con-
14 gress didn't act in a vacuum. This was a very important change
15 and I think it was a change that was made at the behest of
16 American labor 13 years ago.

17 I don't think that conditions have changed since then.
18 In fact, we have been in one recession after another. There is
19 definitely a high rate of employment, a very high rate of em-
20 ployment, particularly in California which is higher than the
21 national average, and I don't think you need another impact
22 study to say that there are unemployed people in the United
23 States who would be available for jobs, and that people who are
24 abroad who are seeking to come in here or who have come in here
25 illegally and are seeking to legalize their stay, should be

1 given preference for these jobs.

2 CHAIRPERSON HATA: Ms. Fonda has obviously opened a
3 door that needs further exploration.

4 MS. FONDA: I just have --

5 MR. KARMIEL: Yes.

6 MS. FONDA: -- one more question, please. Given the
7 rationale for the policy that you have all stated, the problem
8 of protecting the American economy and the need to keep undoc-
9 umented workers in Mexico, don't you feel that there is a very
10 bizarre contradiction between the stated immigration policy and
11 the internal governmental policy, as was stated, for example,
12 in the April 27th, 1977 memorandum to the President, written by
13 the Secretary of Labor, Secretary of State, Secretary of HEW,
14 and the Attorney General, who said, and I quote, "We must recog-
15 nize that the imposition of effective immigration restrictions
16 will shut off an important escape valve for our latin American
17 neighbors, and could lead to destabilizing social, economic,
18 and political pressures there," unquote, and Henry Kissinger,
19 the former Secretary of States, concern to quote, "preserve
20 Western Hemispheric stability," end quote.

21 In other words, there is a problem.

22 MR. KARMIEL: And you also have a problem here. Do
23 you want to bring more here and have more instability in the
24 United States?

25 MS. FONDA: No, I am just asking you, how do you

1 explain this contradiction between a government policy which
2 seems to feel that it is important to keep a flexible, open
3 border, and your problem of trying to cut off the flow --

4 MR. KARMIEL: The government policy that you are
5 referring to is policy by individuals who are proposing some-
6 thing to Congress, but Congress has the final say in connection
7 with the national will, and has the final say by enacting
8 legislation. This is something that I believe some of our
9 government leaders feel is necessary in connection with
10 international relations, but we still have the problem here in
11 the United States, and you must remember that American immigra-
12 tion law, for many decades has as one of its primary functions
13 the protection of American labor.

14 MS. FONDA: Do you feel that you can operate an
15 effective immigration policy when it would appear that the
16 governmental policy differs? Do you feel that you can effect-
17 ively --

18 MR. KARMIEL: It all depends --

19 MS. FONDA: -- take care of a border when --

20 MR. KARMIEL: -- well, it all depends, with reference
21 to our own -- to our own integrity, are we going to take direc-
22 tion from individuals, whether it is the President of the United
23 States who is, of course, in the final analysis, our boss, or
24 are we going to take direction from the law, and I think in the
25 exercise of integrity, that we are going to be regarded as a

1 country of law and not of man, then we must take direction from
2 the law, and as long as the law specifies certain things, the
3 law being in our case the Immigration and Nationality Act, then
4 even regardless of what the President or what the Commission of
5 Immigration might feel, I think we have a duty to obey the law,
6 and to implement the law.

7 MR. O'CONNOR: These statements that you alluded to
8 were made by the administration, by the President, at the time
9 then the government in Mexico was also changing, in hopes that
10 the Mexican Government would itself attest to some of this
11 problem, and I think in that light, you can understand why they
12 would say what they would. They wanted to put a policy forth
13 for Mexico, help your own nationals some way. They are a prob-
14 lem to us.

15 We don't want to build a wall. We don't want to have
16 a Checkpoint Charlie. Can we get together? Let us talk about
17 this, and the administration is doing that now. They have made
18 several trips down there. Our own Commissioner has gone down
19 there many times, and they are continuing on this.

20 CHAIRPERSON HATA: Okay. Another great area of fur-
21 ther exploration, but Ms. Gomez has been itching to ask a
22 question.

23 MS. GOMEZ: Not right now.

24 CHAIRPERSON HATA: Not right now. Then I promised
25 Mr. Stern here.

1 MR. STERN: Mr. O'Connor, I want to clarify something
2 if I could. I believe you testified that there presently
3 exists legal authorization for the INS to make sweeps of areas
4 such as East Los Angeles, I believe you said East Los Angeles,
5 as part of assistance rendered to local law enforcement offic-
6 als in the apprehension of illegal aliens if the INS were
7 called in.

8 Assuming that was your testimony, I believe it was,
9 could you cite the legal authority upon which such sweeps of
10 an area such as East Los Angeles would be based?

11 MR. O'CONNOR: Mr. Stern, I said this was possible.
12 I did not say we were doing it. What we would do would be
13 assist a police department when they needed us, possibly for
14 our language ability. We are not today in this climate going
15 out and sweeping neighborhoods anywhere in this country.

16 We have enough work to do. There are enough people
17 in industry that are here illegally. There are enough illegal
18 aliens on farms and ranches and attempting to cross our borders,
19 but we are not going into neighborhoods.

20 MR. STERN: Well, assuming it is possible, if it were
21 to be undertaken, on what legal authority would it be based?

22 MR. KARMIEL: It is Section 287 of the Immigration and
23 Nationality Act.

24 MR. O'CONNOR: Basically that Section.

25 MR. STERN: Would this be also 8 U.S.C. 1325, illegal

1 entry?

2 MR. KARMIEL: Let me get the number.

3 MR. SURECK: It is the same authority under which we
4 would go to the plant or factory.

5 MR. O'CONNOR: Yes.

6 MR. KARMIEL: 1357.

7 MR. O'CONNOR: 1357.

8 MR. SURECK: Same authority.

9 CHAIRPERSON HATA: Mr. O'Connor, you seem to be very
10 proud of your language ability of your people. Would you very
11 briefly sketch in for us the hierarchy that we are dealing with
12 in this Region? You are the Regional Commissioner, is that
13 correct?

14 MR. O'CONNOR: That is correct.

15 CHAIRPERSON HATA: Directly underneath you is Mr.
16 Sureck?

17 MR. O'CONNOR: Mr. Sureck is a District Director.
18 There are five Districts in my Region.

19 CHAIRPERSON HATA: All right, and there are five
20 Districts, five District Directors. Underneath the District
21 Directors, there are --

22 MR. O'CONNOR: The full staff of deputies and right
23 on down.

24 CHAIRPERSON HATA: Fine. Now, of this complement of
25 officials, how many are bilingual?

1 MR. O'CONNOR: Ms. Hata, I would say that over 95
2 percent of all Immigration employees speak another language.

3 CHAIRPERSON HATA: What about members of this higher
4 administrative staff that we are talking about? Are you, for
5 example, bilingual?

6 MR. O'CONNOR: Yes, I am.

7 CHAIRPERSON HATA: In what?

8 MR. O'CONNOR: Spanish.

9 CHAIRPERSON HATA: Spanish. Is Mr. Sureck bilingual?

10 MR. SURECK: At one time I was. I started on the
11 Border Patrol, so I learned to speak Spanish. I haven't had
12 occasion to speak it as much any more.

13 CHAIRPERSON HATA: You haven't used you Spanish as
14 Regional Director?

15 MR. SURECK: Not as District Director, I haven't
16 had occasion to use that much, no.

17 CHAIRPERSON HATA: Is Mr. Karmiel bilingual?

18 MR. KARMIEL: Courtesy of Berlitz, I took a course
19 many, many years ago when I was doing journeyman work, and I
20 found it to my advantage to know Spanish. During the years,
21 I also worked with an Immigration judge riding a circuit in the
22 Rocky Mountain area, with headquarters at El Paso, and I knew
23 enough Spanish to know when my expert Spanish interpreter was
24 straying, and would correct my Spanish interpreter. I can't
25 hold a conversation in Spanish now.

1 CHAIRPERSON HATA: Okay. Ms. Hilborn, you had a
2 question.

3 MS. HILBORN: Just to backtrack for clarification
4 purposes. Earlier, we had a witness, Mr. Isner. You may have
5 been here when he testified, the restaurant owner, that in fact
6 a sweep was made of his premises, his business premises, when
7 was not there, and I was wondering, what are the legal boundar-
8 ies -- maybe Mr. Karmiel could answer this -- regarding who
9 allows people to enter property without legal sanction? There
10 was no permit --

11 MR. KARMIEL: That is a hard one to answer, but it
12 wasn't a sweep. Remember, Mr. Isner talked about three people.
13 I remember the background.

14 MS. HILBORN: Well, visitation.

15 MR. KARMIEL: He stated that a couple of these Border
16 patrolmen in plain clothes had encountered one of his employees
17 who had gone to the market for some lemons, I believe. These
18 two Border Patrol officers evidently stopped this man on the
19 street.

20 Now, if they did their job properly, they had some
21 articulable facts to stop him and determine that he was an
22 alien, and question him, and once they found out that he was
23 an alien, they could then determine further as to his right to
24 be in the United States.

25 Now, it might have been just an innocent question, or

1 it might have been a question he could have refused to answer,
2 but of course he didn't know his rights that he couldn't refuse
3 to answer, but let us take it in the worst light.

4 They may have stopped him and called him over in
5 Spanish, our Border Patrol officers are quite fluent in Span-
6 ish, and they say, where are you from, and he would say, from
7 Mexico. What are you doing here, you got papers? No, senor,
8 and then they take it out on -- where are you working? I am
9 working down at this restaurant. Anybody else there from
10 Mexico with you? Yeah, there are two others. Well, let us
11 go down there and check them out.

12 So, they walk -- they went down there with him. You
13 could almost say this is --

14 MS. HILBORN: But who is to say whether or not this
15 man actually informed upon his fellow workers? Anybody could
16 walk in any establishment and say, your brother just squealed
17 on you. I am with the State --

18 MR. KARMIEL: Yes, but they would have no occasion to
19 go in there if they were satisfied from what he said that there
20 was no one else; they might have just taken him along, or they
21 might say, let us go down to where you are working and get your
22 paycheck and whatever belongings you have and come along with
23 us.

24 MS. HILBORN: And there is no attempt then to obtain
25 a written statement from this person or --

1 MR. KARMIEL: It was enough on the basis of what they
2 may have learned. It is all conjecture. I don't know what
3 they said.

4 MS. HILBORN: I was thinking in terms of invading a
5 private residence, or --

6 MR. KARMIEL: A private residence, they wouldn't have
7 done that.

8 MS. HILBORN: -- a small business where in fact the
9 INS came to the door and implied that they wanted to come in,
10 maybe a small child was present or able to the question at
11 the time. Would they --

12 MR. KARMIEL: Back off. If it is a small child, they
13 will back off.

14 MS. HILBORN: They would leave the premises.

15 MR. KARMIEL: They know that a small child, a child
16 of ten --

17 MS. HILBORN: Well, I was talking about a 12-year-
18 old child.

19 MR. KARMIEL: A 12-year-old. Any child. A child
20 would be regarded as a child, not an 18-year-old, but a child,
21 say, 12 years old, cannot give consent to enter a residence.
22 They would back off. It is policy.

23 MS. HILBORN: Even though there was the thought in
24 mind --

25 MR. KARMIEL: Yes.

1 MS. HILBORN: -- that there was something --

2 MR. KARMIEL: They would wait. They would say mama
3 was coming home.

4 MS. HILBORN: Well, I would the same event would apply
5 then, on a restaurant when the owner is not there and only the
6 kitchen people are there. What right do they have to give
7 permission for an official to enter the property when it is not
8 theirs to say, any more than a child --

9 MR. KARMIEL: Well, the owner says he is seeking his
10 recourse under the fourth amendment, and he probably --

11 MS. HILBORN: Is this a prominent practice then, or --

12 MR. KARMIEL: I can't say. I don't believe so, be-
13 cause I don't believe our people would put themselves in the
14 position of lawsuits.

15 MS. HILBORN: Because I know owners are not always
16 present on the property they are --

17 MR. KARMIEL: Well, either an owner or someone in
18 charge is usually present in a place of business, and ordinarily
19 they would ask for permission of someone in charge, but in this
20 particular situation, I think it was sort of borderline myself.

21 MS. HILBORN: I would question the fact that they are
22 not required to discuss it with the owner or with someone --

23 MR. KARMIEL: But wait a moment now. As far as the
24 owner is concerned, if any of his civil rights, namely a viola-
25 tion of the fourth amendment, a search of his premises without

1 a warrant is involved, he has his right to legal recourse, but
2 the three employees are not covered by this fourth amendment
3 right. It is not their premises.

4 CHAIRPERSON HATA: Let us not get carried away with
5 that one specific example. Mr. Stern, you had a follow-up
6 question?

7 MR. STERN: When an agent or agents go into a factory
8 or a place of business, must they have articulable facts as to
9 each individual whom they will question before they conduct
10 such questions?

11 MR. KARMIEL: Under the rules of Brignoni Ponce, I
12 would say yes.

13 MR. STERN: Would this include a non-border situation?

14 MR. KARMIEL: Yes.

15 MR. STERN: Now, can you cite any --

16 MR. KARMIEL: On a border situation, there is no
17 problem. They can question anybody.

18 MR. STERN: Well, the cases are pretty clear that
19 border situations are only up to within a fairly short distance
20 of the border. The courts have clarified --

21 MR. KARMIEL: Have ruled that way.

22 MR. STERN: In fact, can you point to any non-border
23 case that has been decided that would support the situation that
24 you posit? For example, Los Angeles has been held by several
25 District Court judges here not to be a border location.

1 MR. KARMIEL: No, I can't right offhand. I am sorry.

2 CHAIRPERSON HATA: I would like to go back to some
3 basic definitions, and ask Mr. O'Connor for his definition, and
4 then perhaps proceed to Mr. Sureck. INS stands for Immigration
5 and Naturalization Service, correct?

6 MR. O'CONNOR: That is correct.

7 CHAIRPERSON HATA: We have heard a number of indivi-
8 duals raising questions about the service, and I would like to
9 know how you define the word "service."

10 MR. O'CONNOR: Being able to respond in any way, in
11 an immigration way to the general public, the citizenry, or the
12 immigrant, or any alien.

13 CHAIRPERSON HATA: Mr. Sureck?

14 MR. SURECK: Well, I think, in connection with the
15 title Immigration and Naturalization Service, I don't think
16 whoever thought of that title, they are not thinking of a ser-
17 vice as we would get in a department store. They are talking
18 about an agency. They could have called in the Immigration
19 and Naturalization Bureau.

20 They are talking about an organization, because after
21 all, it is an organization that not only handles petitions and
22 applications, but has an enforcement responsibility, so if the
23 import of your question is to try to find out if service means
24 that we render service to the public, in my opinion -- of course
25 I have no reason. I can't give you any authority for it -- I

1 don't think the designation was intended to mean that we are
2 really a public service organization like the Department of
3 Public Welfare and so on. We are just an agency that has
4 certain jobs that are assigned to us that we do.

5 CHAIRPERSON HATA: You don't see service as a major
6 function or a priority function of your agency?

7 MR. SURECK: I see the service as one of the functions,
8 along with enforcement. I realize that it is an important
9 function. I would like to see it given the same priority as
10 enforcement, but it is not. Right now it is given the higher
11 priority, while we are letting the enforcement responsibilities
12 lie fallow because of pressures placed upon the Service, but
13 somehow we have got to realize that the so-called public service
14 aspect of our organization is increasing because we are not
15 taking care of the enforcement aspects of it, and we have got
16 to have a balance.

17 CHAIRPERSON HATA: Mr. O'Connor?

18 MR. O'CONNOR: Let me say that Mr. Sureck has approxi-
19 mately 539 employees, when up to full authorized force. How-
20 ever, he has 1,071,000 active cases in this Los Angeles District
21 and he is doing one hell of a job. Here today in the last two
22 days, they only mentioned about a dozen cases, and if that is
23 all the complaints that the general public and the attorneys and
24 everyone else has, I think he is doing an outstanding job.

25 CHAIRPERSON HATA: I would like to go back, however,

1 to my question. We are not here to determine at this point
2 in time whether he is doing a hell of a job. In one way or
3 another, we are here to find that out through the discussion
4 that has been conducted for the past two days, and our report,
5 I think, will come up with a conclusion one way or the other.

6 I would like to know what your priorities are in
7 terms of the agency's responsibility. Do you see service as a
8 priority --

9 MR. O'CONNOR: Absolutely.

10 CHAIRPERSON HATA: -- or enforcement as a priority?

11 MR. O'CONNOR: I see service and enforcement, both in
12 one. There is no question about it. One is intertwined with
13 the other because of the nature of our immigration business,
14 but I think service has to be within our capability, and I can
15 assure you that our people are working at top speed constantly
16 to keep up this service aspect.

17 CHAIRPERSON HATA: There seems to be some sort of
18 contradiction there between --

19 MR. O'CONNOR: No, there is no contradiction at all.

20 MR. SURECK: None whatsoever. None whatsoever. I
21 am telling you what my personal point of views are, and I told
22 you then what the facts are, and the facts are that the public
23 service aspect of it has priority.

24 CHAIRPERSON HATA: You don't personally agree with --

25 MR. SURECK: No, I feel, no -- let me say this, and

1 in order there will not be any misunderstanding, I think it is
2 very, very important, and Mr. O'Connor will vouch for the fact
3 for that at the very beginning I was asking for more and more
4 and more people to perform public service, and we are getting
5 it.

6 Now, we have put on, in our office, 70 CETA people.
7 We have had 30 or 40 temporary employees. We have just had
8 40 over-hires. Now, we are talking about well over 100 people.
9 Every one of them performing what you would designate as being
10 public service.

11 CHAIRPERSON HATA: All of this means, then, that this
12 has resulted in your being able to tell us that those long
13 waiting lines that everyone has talked about for the past two
14 days are no longer a reality, that indeed those who do come in,
15 as you said, normally are served within two or three hours.

16 MR. SURECK: That is still too long a time, in my
17 opinion.

18 CHAIRPERSON HATA: I had the impression, though, that
19 those who would be served within this two or three-hour period
20 were those who came in who had appointments, because you said --

21 MR. SURECK: No, no, no.

22 CHAIRPERSON HATA: -- this does not include walk-ins.

23 MR. SURECK: No.

24 CHAIRPERSON HATA: Those who walk in result in these
25 long lines.

1 MR. SURECK: I mentioned this was at the Information
2 Center, where people come in to get information or to file
3 applications.

4 CHAIRPERSON HATA: I am sorry. I missed that.

5 MR. SURECK: I said the one or two-hour service is at
6 the Information Center, where people come in to get information
7 or to file applications.

8 CHAIRPERSON HATA: I see.

9 MR. SURECK: That is on the main floor of our building.

10 CHAIRPERSON HATA: Right, right. All right.

11 MR. STERN: Mr. Sureck, do your employees receive
12 any training designed to improve their understanding of the
13 people with whom they are dealing in their day-to-day operations?

14 MR. SURECK: Well, first of all, every one of our
15 officers goes to a school. Now it is in Glencoe. We are put-
16 ting out some new investigators, and eventually all of them
17 will go off to get training at the -- at our academy in Glencoe.
18 When they come back, in the investigation section we have a
19 continuing education program, where they are continuously
20 trained, and every division we have, we have training programs
21 that go on.

22 We have correspondence courses which we urge and we
23 convince all of the employees that they should participate in.
24 Right now we have people who are on their own, staying after
25 work and studying Spanish, so --

1 MR. STERN: Excuse me. Can you point to any specific
2 courses of which you have any personal knowledge in the train-
3 ing academy or in the educational program you have that deal
4 with human relations training?

5 MR. SURECK: There are no courses that deal with that
6 per se. However, I am certain, although I can't document it
7 now, that in all of our courses we deal with the personal
8 relationship or how a person should conduct themselves, especially
9 investigators and especially the Border Patrol, especially our
10 contact representatives, our immigrant inspectors, because they
11 are all dealing with people.

12 MR. STERN: The reason I ask you that question, in
13 some of the preparation for these hearings, although we didn't
14 hear specific testimony about it, at least while I was present,
15 the segments I handled, there have been numerous statements,
16 some of which we have heard, maybe a dozen here, whatever num-
17 ber, about the insensitivity of the officers, and I think you
18 have responded to that.

19 But beyond that, not in these hearings, but other in-
20 formation that we have received from persons who were inter-
21 viewed for these hearings, and in the consultation that we had
22 several months ago, at which there was testimony, there have
23 been statements about derogatory remarks and racial remarks,
24 and even sexual aversions made by officers, and again, no spe-
25 cifics, I grant that, in certain operations relating to

1 voluntary departure deportation type proceedings.

2 Do you have any training that deals with particularly
3 the racial aspects, which this Commission is concerned with?

4 MR. SURECK: Well, I think such training, too, is
5 built in in our EEO program. Every one of our officers, two or
6 three months ago was given a booklet to study and complete in
7 connection with that, and we have an officer at our Regional
8 Office who is concerned with that.

9 He comes to our office from time to time and meets
10 with our supervisors and other people in that particular regard.

11 MR. STERN: Would it be possible for the record for
12 us to receive some of these materials since this is an area
13 that has been of particular concern --

14 MR. O'CONNOR: Mr. Stern, the Region has also been
15 requested by our central office, and we are in correspondence
16 with the University of Honolulu, in Hawaii, for a complete sen-
17 sitive study of the Asian people, to come up with a proper
18 study so that we can implement it in our school, a proper course
19 and instructors for this course, so -- and I know this is also
20 being done out of the Dallas office for the Mexican and central
21 South America, and being done in the European and African
22 areas out of Miami and New York City.

23 MR. STERN: Are these materials that are going to be
24 brought together and be part of a course of instruction --

25 MR. O'CONNOR: Yes, they are.

1 MR. STERN: -- for officers --

2 MR. O'CONNOR: Yes, they are, for all employees, yes.

3 MR. STERN: Do you have any projection when this is
4 going to be completed?

5 MR. O'CONNOR: I have been given a 90-day deadline.
6 We have already written our first letters, and I am just wait-
7 ing for a response from Honolulu in my own area.

8 MR. STERN: Since these hearings are part of an on-
9 going effort that is going to be culminated in Washington
10 hearings, could we receive these materials --

11 MR. O'CONNOR: Certainly.

12 MR. STERN: -- and whatever other instructional data
13 you have available when this is completed --

14 MR. O'CONNOR: Absolutely.

15 MR. STERN: -- so we have it available at completion?
16 Thank you.

17 MR. MONTEZ: Commissioner, there has been through our
18 consultation, we had a professor from UCLA talk about facts and
19 figures of undocumented workers throughout the United States.
20 We haven't seen the culmination of his report other than his
21 testimony. I was concerned yesterday, and I am sure you heard
22 my question as relates to the undocumented from Europe as well
23 as from Canada, and I think one of the real concerns of the
24 Civil Rights Commission is protecting the civil rights of all
25 citizens as well as legal aliens, and in this particular area

1 you are well aware that there has been many allegations, and
2 we receive complaints in our Regional office all the time,
3 related to the Immigration and Naturalization Service, that
4 there is an all-out effort against Mexicans' immigration to the
5 United States.

6 Could you comment on that? Do you have white raids
7 like you have Mexican raids, or surveys? I am really very
8 curious about it, because I think it is vitally important. What
9 do you do with tourists who come from Europe with a six months
10 card and disappear? What happens to them?

11 MR. O'CONNOR: Yes, we have raids in other areas,
12 in other parts of the country, One that flashed out of my mind
13 immediately was a raid in the Sears Tower in Chicago where we
14 picked up something like 40 Polish people who had come over,
15 and just the incident that you quoted, came over as tourists,
16 and ended up in our new building that we are under construction
17 in San Francisco, we picked up a group of non-Mexican people.

18 There were Asian people that had been working in
19 there that have been illegally. It was alluded to this
20 morning that there is some type of a secret agreement made by
21 the hierarchy in Immigration against the Mexican border cross-
22 ing, and I know of nothing such as that, Mr. Montez, and I
23 think I would know.

24 MR. MONTEZ: Well, I am sure you understand that this
25 is the debate -- the national debate --

1 MR. O'CONNOR: Yes.

2 MR. MONTEZ: -- that relates to change of laws, or
3 policies of the Carter administration, and we are also very
4 much concerned, primarily, and this was -- Mr. Sureck and I
5 discussed it some time back in his office as to what do you see
6 as the possibility of protecting Mexican Americans if, in the
7 area of employment, if the Carter proposals are passed, you
8 know, employers are going to become very reluctant to hire any-
9 body who even looks like a latin.

10 MR. SURECK: Let me answer this way. First of all,
11 I think our experience has been that the American businessman,
12 the American employer, if he is told by law that he must do
13 something, most of them will try to do it in good faith. I am
14 satisfied that most employers will try to do the right thing.

15 Now, throughout these two days, we have heard several
16 people who testified that they can't get along without the
17 undocumented alien. I don't see where there is going to be
18 discrimination against the Mexican American if what they say is
19 true.

20 These people are going to have to survive, and conse-
21 quently, I think they will be very happy to employ the Mexican
22 American. You must also understand that most of the business
23 world in the United States today is complying with national
24 policy. When you talk about the big companies, like ITT,
25 General Motor Bank of America, and so on,

1 out people that they hire.

2 We are only concerned with the independents, the
3 smaller person. I think that these are the people that cannot
4 afford a heavy fine. The fine is going to be up to \$1,000 per
5 undocumented alien. These are individuals that could not
6 afford the attorney's fees, because any law is going to have
7 built into it the U.S. Attorney getting injunctions or mandamus
8 against employers that will seek to continue to hire illegal
9 aliens.

10 These are the people that is going to try to do the
11 right thing, and I just do not believe, I do not prescribe (sic)
12 to the concept that there is going to be any wholesale pattern
13 of discrimination. There may be some, but I think this some we
14 can deal with.

15 CHAIRPERSON HATA: I would like to go back again to
16 some basic definitions and some points of clarification. Why
17 did you see any contradiction between providing a service to
18 people and yet at the same time acting as enforcers of that
19 law under which you are also servicing people?

20 MR. O'CONNOR: No, absolutely not, no. I see no
21 problem with this. This is the immigration law. If in interro-
22 gating a person, we find out that this person has a legacy or
23 has an advantage that can be given to him so that this person
24 could -- in a sense of stay here rather than be deported, we
25 would go to the Nth to see that this is carried out. There

1 isn't an officer that I know that wouldn't do that.

2 Correspondingly, there isn't an officer that I know
3 that wouldn't, if he felt the person was here illegally, and had
4 no way of any help, would see that he were deported, so I see
5 no conflict in wearing both hats. I really don't.

6 MR. SURECK: I think we are like any other agency.
7 There are many, whether it is the labor department, whether it
8 is public welfare, whether it is FAA, that are regulatory
9 agencies that render public service, but commingled with that
10 is enforcement. Every time a person presents an application,
11 they have to establish eligibility, and that eligibility some-
12 times indicates hanky panky which requires investigation. All
13 of these agencies, like ours, have an investigation section,
14 where we turn these things over to investigate.

15 All I could see would be inefficiency, I won't say
16 chaos, but inefficiency if you divided it into separate agencies
17 where you have to transfer the file over and the investigation
18 section handles the case separately from the person who is do-
19 ing the adjudication.

20 CHAIRPERSON HATA: In effect, then, you gentlemen are
21 simply following the law and obeying the law irrespective of
22 whether you believe in the law or not.

23 MR. MR. KARMIEL: I think that is so. I think we di-
24 vorce our professional selves from our individual selves. I
25 have individual opinions with reference to portions of the law,

1 but professionally I carry it out. I used to say, perhaps
2 jokingly, when I was working as an Immigration Judge that my
3 brother came before me and the case was against him, I would
4 cry, but I would order him deported from the United States. I
5 would try to be that objective. I have always tried to be
6 objective.

7 CHAIRPERSON HATA: That is not the kind of point I
8 had supposed I was making. I was making the point that if you
9 thought the law was immoral, you would simply obey the law,
10 whether you thought it was immoral or not.

11 MR. KARMIEL: Well, I don't think the law is immoral,
12 and if the fact that we are called a service --

13 CHAIRPERSON HATA: I am not saying the law is immoral.

14 MR. KARMIEL: No.

15 CHAIRPERSON HATA: I am just simply saying that as
16 individuals who claim that you are out there to enforce the law
17 or obey the law, you are not passing judgment on --

18 MR. KARMIEL: If I felt strongly enough about it, I
19 would quit.

20 MR. SURECK: I would say the same thing, that if there
21 was any portions of the law that I could not live with, I would
22 leave the Immigration Service.

23 MR. KARMIEL: And incidentally, if you are worried
24 about the term "service," Internal Revenue is also called a
25 service, and the only service they render is to collect money

1 for the government.

2 CHAIRPERSON HATA: They serve somebody at least.

3 MR. KARMIEL: Well, we do, too.

4 CHAIRPERSON HATA: I am concerned about, again, going
5 back through some procedures, we have been talking about the
6 search and the investigative procedures above, but the search
7 warrant that you have been talking about, as I understand it,
8 is a criminal proceeding, right?

9 MR. KARMIEL: No, it is not -- the search warrant that
10 we use is not a criminal proceeding. We just -- unfortunately,
11 we -- for convenience we use a form, a printed form that is
12 used, or copied out of a form book, a form that is stereotyped
13 for a criminal proceeding, and we change it for our own purposes.
14 But in other types of our proceedings, we adapt forms. It is
15 just to save time. The fact that the search warrant is basically
16 used under Rule 41 of the Rules of Criminal Procedure, this
17 is one use for a search warrant, and this is the one that is
18 set out in the rules, but --

19 CHAIRPERSON HATA: But my whole point is this; these
20 are rules for criminal -- this is a search warrant that is
21 under the criminal law --

22 MR. KARMIEL: Not as used by us. We don't use the
23 search warrant for criminal purposes. We use the search warrant
24 for a civil purpose, which is the apprehension of individuals
25 who are purportedly unlawfully in the United States as

1 aliens.

2 MS. HILBORN: Do you have to file the search warrant
3 with a court before it is served,--

4 MR. KARMIEL: It is obtained from either a Federal
5 Judge or from a magistrate. The U.S. District Court judges
6 have relegated this to the magistrates.

7 MS. HILBORN: It just seems a little odd -- maybe
8 this is what I am picking up from the rest -- that a legal
9 document which is really putting forth rights and legalities
10 that can be cross out and filled in at random --

11 MR. KARMIEL: It is not done at random. It is done
12 deliberately.

13 MS. HILBORN: I know. That seems very Mickey Mouse
14 to me if I might say so, that people can cross out certain
15 things on legal documents and change them --

16 MR. KARMIEL: There is nothing sacrosanct --

17 CHAIRPERSON HATA: It does seem that under the crim-
18 inal proceedings, the accused has more rights than under the
19 civil proceedings.

20 MR. KARMIEL: Well, let me explain. This brings up
21 a very --

22 CHAIRPERSON HATA: That is what I am trying to get.

23 MR. KARMIEL: Fine. Let us go into that, if you want
24 to take a moment to. The first ten amendments of the Constitu-
25 tion have to do with civil rights. We are concerned with, in

1 our operations, primarily the fourth, the fifth, and the sixth.
2 The fifth and the sixth amendments have to do with criminal
3 proceedings only, but the Immigration and Nationality Act,
4 the immigration law of this country, is not a criminal pro-
5 ceeding, except for certain sections, which do have criminal
6 sanctions.

7 But Congress, in enacting the immigration law of the
8 United States, does not act under any particular provision of
9 the Constitution, other than an inherent -- as the courts have
10 put it -- an inherent right of sovereignty. The Congress
11 represents the people of the United States, the sovereignty
12 of the people, and in the exercise of that sovereignty, Congress
13 has passed the Immigration and Nationality Act, and whatever
14 rights Congress gives to individuals, to aliens, under the
15 Immigration and Nationality Act, is not governed by the Consti-
16 tution.

17 It is an act of sovereignty. The courts have ruled
18 that the Congress -- that aliens have due process such as
19 Congress has wanted to give them in the Immigration and Nation-
20 ality Act. The right to counsel --

21 CHAIRPERSON HATA: -- will have a good reason to
22 remember that kind of definition, because we were ruled at one
23 point aliens ineligible --

24 MR. KARMIEL: Right.

25 CHAIRPERSON HATA: -- for citizenship.

1 MR. KARMIEL: Right.

2 CHAIRPERSON HATA: So I could proceed then from that
3 history lesson to another question --

4 MR. KARMIEL: But let us --

5 CHAIRPERSON HATA: -- of Mr. Sureck here.

6 MR. KARMIEL: All right.

7 CHAIRPERSON HATA: Mr. Sureck, Mr. Garcia from the
8 DPSS talked about referrals that were sent to INS, 3,800 I
9 think he quoted. He said that 1,100 were returned as negative
10 declarations. I was wondering what INS did with these refer-
11 rals that came to your office.

12 MR. SURECK: Well, some may have been sent out of
13 the United States. Others, who may have had applications pen-
14 ding before us, we may have let them stay here to await the
15 adjudication of the applications. Actually, what happened to
16 them, I could not tell you, but keep in mind, if I remember
17 his testimony correctly, a number of those did not report in.

18 CHAIRPERSON HATA: Right.

19 MR. SURECK: New here, I have some better figures
20 for you which would cover the figures for two years from Novem-
21 ber, 1975, to October, 1977. During that period, we called in
22 15,710. 6,700 failed to appear. 4,600 were found to be ille-
23 gals, and 4,200 were local permanent residents. Now back in
24 June of 1976, I personally contacted the DPSS, and at that time
25 I informed them that -- or they informed me, that 2,600 of the

1 aliens that we reported to them had had their public assistance
2 terminated, and I said, well, what does that mean to you in
3 savings? So they said, annually, that meant a savings to them
4 of \$2,750,000. Now, this contradicts what Mr. Garcia said.

5 CHAIRPERSON HATA: It certainly does.

6 MR. SURECK: And consequently, based upon the report
7 that I made November 23rd, '77, I will give you the copy, I
8 made an extension of that, and I calculated that for the two-
9 year period, based upon the numbers who failed to appear, and
10 those who were illegals and they were supposed to terminate,
11 that this saved the taxpayers something like \$11 million to
12 \$12 million.

13 CHAIRPERSON HATA: Well, I am sure our staff would be
14 interested in getting report. Ms. Gomez, did you have any
15 questions you wanted to ask?

16 MS. GOMEZ: I wanted to ask Mr. Sureck, with relation
17 to -- where is Glencoe?

18 MR. SURECK: In Georgia.

19 MS. GOMEZ: In Georgia. Does your recruitment come
20 from Georgia mostly? What part of the country do you recruit,
21 mostly?

22 MR. SURECK: Well actually, our clerical staff is
23 primarily right here in California.

24 MS. GOMEZ: I am talking about your agents and your
25 immigration officers.

1 MR. SURECK: All right. When it comes to promotions,
2 they may come from various places in the United States, you
3 know, they bid or apply for the jobs, and if selected, they may
4 come from various parts of the United States, but a number will
5 be selected off a Civil Service list, so they come right from
6 the Civil Service Office here, off of their Civil Service list.

7 MS. GOMEZ: In view of the fact that most of you feel
8 that the immigration problem will continue, the illegal alien
9 so-called problem will continue for several years, has there
10 been any type of effort to recruit people of hispanic descent,
11 of hispanic background?

12 MR. O'CONNOR: I think I can better answer that from
13 a regional point of view. Yes, there is an extended effort.
14 We have a whole unit in our Regional office, to hire as many
15 hispanics as we possibly can. At the present time, of our
16 2,576 employees, 27 percent of them are hispanics, and it is
17 particularly -- as natural in this area of San Francisco, Los
18 Angeles, San Diego, Phoenix, Tucson, and that area, the great
19 majority of the people are hispanics.

20 CHAIRPERSON HATA: I would like to turn it back to
21 staff, if there are no more questions from the Committee.

22 MR. DIMAS: Thank you. I have some questions I would
23 like to finish up with briefly. First of all, Mr. O'Connor.
24 You mentioned, Mr. O'Connor, earlier, that neighborhood surveys
25 were no longer being conducted. Is this as a matter of policy

1 or --

2 MR. O'CONNOR: Yes.

3 MR. DIMAS: -- is it a conflict with legal authoriza-
4 tion?

5 MR. O'CONNOR: No, it is policy.

6 MR. DIMAS: Okay, but legal authority does exist --

7 MR. O'CONNOR: Yes, it does.

8 MR. DIMAS: -- to conduct those. All right. Thank
9 you. Mr. Karmiel, you mentioned refusal to answer, I believe,
10 in connection with another question, that an individual could
11 refuse to answer a question. Under what circumstances can an
12 individual refuse to answer?

13 MR. KARMIEL: The same way you can refuse to answer,
14 if some policeman stopped you on the street and says, what is
15 your name, give me some I.D., you could refuse to answer.

16 MR. DIMAS: So a person can do that with an Immigration
17 agent.

18 MR. KARMIEL: Definitely.

19 MR. DIMAS: Could an employee in a factory do the
20 same thing?

21 MR. KARMIEL: Yes.

22 MR. DIMAS: Does the fact that the employee can not --
23 can an employee walk away? Let me put it that way, without --

24 MR. KARMIEL: He can.

25 MR. DIMAS: Is this in any way impaired by the

1 blocking of the exits in a factory?

2 MR. KARMIEL: Well, he may not be able to get out if
3 the exits are blocked, but he can still refuse to answer, and
4 actually, if he were smart, or if he had been coached properly
5 by some organization, he would insist on his civil rights that
6 he doesn't have to right to answer. He can just turn away.

7 MR. DIMAS: Okay, and you mentioned earlier the
8 standards for interrogation with the Brignoni Ponce case, I
9 believe?

10 MR. KARMIEL: Right.

11 MR. DIMAS: Right, are those same standards applica-
12 ble to the factory survey situation?

13 MR. KARMIEL: They are.

14 MR. DIMAS: I see..

15 MR. KARMIEL: As a result of Brignoni Ponce, a survey
16 was made throughout the Immigration Service, for suggestions as
17 to articulable facts, and I recall that suggestions were sent
18 in to our central office in Washington, and I believe a memo-
19 randum came out, or an instructional memorandum came out signed
20 by the then-Deputy Commissioner Mr. Green, setting out a com-
21 plete exposition of what would constitute articulable facts.

22 MR. DIMAS: There has been some interest expressed,
23 I believe, throughout the day, of letters going out from the
24 District Office to the employers, listing the number of people
25 and the names of the people who were apprehended as being

1 undocumented workers. There was also some testimony that there
2 are repeated instances of employers having this happen. Could
3 this letter in fact be used at a later time to prove a pattern
4 and practice of employment of undocumented workers?

5 MR. KARMIEL: It wouldn't serve any purpose to prove
6 anything. There are no sanctions to employers for using undoc-
7 umented workers at the present time.

8 MR. DIMAS: What if such sanctions did exist?

9 MR. KARMIEL: If sanctions such as these letters were
10 ever enacted into law, then this would be the first bite that
11 the employer would get without getting the possibility of any
12 proceedings against him. After that, he would only have one
13 bite, like the dog, and then he could be proceeded against,
14 with reference to the way the law would provide.

15 MR. DIMAS: Mr. Sureck, there was also some testimony
16 earlier about contractual provisions providing for INS checks
17 for undocumented workers. How does INS find out about these
18 contractual provisions?

19 MR. SURECK: Now, when you refer to contractual pro-
20 visions, what are you referring to?

21 MR. DIMAS: There were some statements about HUD, for
22 example, in some of its contractual agreements with employers,
23 I believe --

24 MR. KARMIEL: Department of Commerce.

25 MR. DIMAS: Department of Commerce, I beg your pardon.

1 MR. SURECK: Well, you may be referring to small
2 business making loans to a small business, and it may have a
3 provision in it that they will not hire the undocumented alien.

4 MR. DIMAS: Yes. Are you provided with a copy of
5 this so that you may enforce that?

6 MR. SURECK: I am not certain about that. I know that
7 in one instance, we were made aware of it, but I am not sure
8 that we are provided the contract in every instance or not.

9 MR. DIMAS: If such a contract is in existence, I
10 believe what it provides for is the employer's consent to your
11 checking of the premises. Do you need any further consent be-
12 fore the raid, or would this in itself be sufficient?

13 MR. SURECK: No, we would contact the employer first,
14 talk to him, and first of all, make a determination, perhaps
15 from him, as to whether he believes he has undocumented aliens,
16 and determine what his procedures are to check them out before
17 we would go into his plant.

18 MR. DIMAS: I see. You had also mentioned the back-
19 log problem being cleared up, if I may turn to something that is
20 slightly --

21 MR. SURECK: I didn't say it was cleared up.

22 MR. DIMAS: No, being, in the process of being --

23 MR. SURECK: Okay.

24 MR. DIMAS: -- cleared up, substantial progress made
25 towards that. Was there not a task force established to help

1 with this?

2 MR. SURECK: Well, we have had about three task for-
3 ces that come to our offices and another instance, that we would
4 have additional people come in to assist, and what the task
5 force means, as far as our office was concerned, that in each
6 instance, a certain number of employees were brought in from
7 other stations, and we applied a like number, and for a concen-
8 trated period, say, in one month, they did nothing but process
9 and handle cases.

10 Although in the last task force we had, we assigned
11 our own investigators to adjudicating forms I-130s, that is the
12 family visa petitions, and they were all very effective. We
13 handled thousands and thousands of cases.

14 MR. DIMAS: Is this type of assignment on a tempor-
15 ary basis?

16 MR. SURECK: It is a temporary basis, yes. Keeping
17 in mind that when officers are brought in from other places
18 throughout the United States, their work remains undone from
19 whence they come, and when we take the officers away from other
20 work in our office, their normal work remains undone, so they
21 have to return to it.

22 MR. DIMAS: So you are just choosing where the back-
23 log is going to be.

24 MR. SURECK: But you see, the task forces create ano-
25 ther problem, because when we had the task force, we just did

1 not have the clerical personnel to keep up with it, so although
2 the adjudications were completed, it took us quite some time
3 to catch up the clerical work in connection with the adjudica-
4 tions.

5 MR. DIMAS: If such task forces are disbanded or
6 discontinued, would you project a further backlogging of your
7 service functions?

8 MR. SURECK: Well, we have not had a task force now
9 for a couple of months. I don't know if any task forces are
10 in the offing. I don't know whether Mr. O'Connor can elaborate
11 on that, but of course we have gotten quite a bit of clerical
12 help. That has helped us a great deal, and our combined pro-
13 cess is helping us in connection with getting more applications
14 out.

15 MR. DIMAS: One final question, Mr. Sureck. You
16 were an observer at the time that we heard some testimony
17 about union organizing activities and possible conflicts between
18 your activities with theirs. Would you elaborate on that, what
19 policies do you have with respect to that?

20 MR. SURECK: Well, I heard the testimony about the
21 union member here from -- with regard to the NLRB election.
22 First of all, our policy, and this is a national policy, is
23 that if we are notified that a union election is in an offing,
24 we will not visit that manufacturer, but we want the notifica-
25 tion to come from an NLRB official. I have been informed a

1 time or two by someone from the union that there is going to be
2 an election, but I don't accept that because sometimes when I
3 have checked, it is not true. I tell them to have an NLRB
4 official call me.

5 Now, in connection with the testimony given here, I
6 have forgotten the name of the gentleman, that we went to a
7 plant or factory a day or two before the election, in that
8 particular instance, we were not notified by NLRB.

9 When the incident happened, I was called, and I did
10 find out that one of our officers had gone to the plant and
11 factory in a routine visitation to determine if the factory
12 owner would permit us to survey the plant, and as I found out
13 after I received the call from the union, the employee told me
14 that as soon as he found out that there was an election immin-
15 ent, he walked out and he left the place.

16 Now, I can't tell you exactly when we did visit that
17 particular plant, nor if the NLRB hearing that he related had
18 to do with the same plant, but I do recall the incident in
19 connection with the NLRB hearing, where he said that our
20 Immigration officers visited a hearing.

21 It so happened that these 12 individuals had been
22 picked up at a plant, had been returned to Mexico under volun-
23 tary departure, and came back two or three days later to the
24 same plant, and they refused to hire them, saying now they are
25 going to hire only legal workers, and this is when the hearing

1 arose about pay and so on.

2 I was called by the referee, and I said we would let
3 the people stay until the hearing was completed. Now, unbeknownst
4 to me, the officers went to the hearing to be there to pick up
5 these undocumented aliens as soon as the hearing was over, and
6 this is when they lodged a complaint.

7 When I was called by the referee about it, at that
8 time I said, all right, we will -- reluctantly, I said, I will
9 have the men leave the premises, but before that happened, the
10 union officials had spirited the 12 undocumented aliens out.
11 They had reached an agreement as to their testimony as the man
12 indicated here today, and the hearing was resolved based upon
13 their testimony.

14 According to the referee, there was no problem as to
15 the stipulation as to what was going to be testified, and --

16 MR. DIMAS: Your policy would be that your employees
17 would not show up at such a hearing.

18 MR. SURECK: Well, I am not certain what my policy
19 would be. I feel that under the circumstances where these
20 individuals flaunted our hospitality here, they were removed
21 and they came back two or three days -- if they did come there
22 with handcuffs, I would want to make sure that there wasn't any
23 display of handcuffs, but I am not going to say at this time
24 that I would announce any particular policy about the matter.

25 MR. DIMAS: Thank you.

1 MR. KARMIEL: Might I add on this, Mr. Dimas?

2 MR. DIMAS: Certainly.

3 MR. KARMIEL: The Border Patrol up in the Stockton
4 area is doing the same thing with reference to the California
5 Agricultural Labor Relations Board, and the union elections for
6 with reference to the farms up there.

7 MR. DIMAS: Very good.

8 MR. KARMIEL: They have done the same thing the past
9 two years, I believe, now.

10 CHAIRPERSON HATA: Mr. Sureck, is it common practice
11 as that individual indicated to have INS officers with brown
12 paper sacks holding handcuffs and waist chains?

13 MR. SURECK: Well, I am certain that he dramatized.
14 I mean, all of our men when they go out on the survey will have
15 handcuffs with them, just like any enforcement officer who may
16 take a person in custody. After all, we have had our people
17 assaulted. We have had some hurt in connection with seeking
18 to take into custody undocumented aliens, so I really feel that
19 I can't respond to what he said, but it is not unlikely that
20 they may have had handcuffs on their person in that case.

21 CHAIRPERSON HATA: We have also heard testimony that
22 the surveys occur right before a payday, and what is the policy
23 of the service?

24 MR. SURECK: And I think you also have testimony here
25 of all the businessmen, saying that that did not happen.

1 CHAIRPERSON HATA: I would like to have again, the
2 Service's testimony.

3 MR. SURECK: All right. Let me answer it to say
4 that our surveys are not and cannot be conducted solely before
5 payday. Certainly some do happen, because we go out every day
6 in the week, with the possible exception on Monday, when we
7 have a busy day at the police departments, so we don't gauge
8 our surveys merely on paydays, because we are out every day,
9 every work day.

10 CHAIRPERSON HATA: And the number of surveys that
11 are done, are conducted, are about equally spaced on Tuesday,
12 Wednesday, Thursday, and Friday? They don't all occur on
13 Friday?

14 MR. SURECK: That is right. That is right, as I
15 mentioned, we are out every day if we have enough people to
16 send out, you see.

17 CHAIRPERSON HATA: Ms. Campbell?

18 MS. CAMPBELL: Mr. Sureck, I would like to ask you a
19 question. We have heard some testimony regarding the use of
20 the voluntary departure form during detention of persons by
21 the Immigration Service. What, if any, guidelines have been
22 established for officers regarding the use of that form by your
23 office?

24 MR. SURECK: Well, it is not a necessarily a guide-
25 line. After the person is taken to the office and the

1 apprehension report is written, based upon the testimony, if
2 this is an individual who has no bad immigration record, or we
3 don't know anything about him that would want us to go ahead
4 with the deportation hearing, we will tell him that he may
5 apply for voluntary departure, and we have a form, an I-274,
6 and I have a facsimile of one right here.

7 It is written in English and in Spanish, and which
8 it advises him that he may apply for voluntary departure, and
9 that we would send him out, this is generally to the people
10 to Mexico, under safeguards, but that at any time before he
11 gets to Mexico, if he wants a deportation hearing, he may have
12 a deportation hearing, that any time he wants to see a lawyer
13 he may see a lawyer, and there has been constantly the state-
14 ment by lawyers saying that we tell them, if you don't take it
15 you are going to go to jail. Now, that is not what happens.

16 Let me go ahead. Frequently, the alien will say,
17 well, what will happen if I don't accept voluntary departure,
18 and then they will explain to them that you are entitled to a
19 deportation hearing. You will go before an Immigration judge.
20 But will I be let out? In the instant case, that is, they
21 know, there is a bond set for you for \$1,000 or \$2,000, and if
22 you can't put up the bond, then you will be kept in custody.
23 You will probably be sent to El Centro where an Immigration
24 judge will conduct a hearing.

25 So we don't blatantly say, you either sign this or go

1 to jail. The matter is explained to him, and of course, fre-
2 quently when he realizes that he is going to be held in custody
3 and he may have the money or he doesn't want to spend the money
4 that he has for an attorney, he says, all right. I will accept
5 voluntary departure to go back to Mexico, and generally, it is
6 a person that has gone through this procedure two or three or
7 four times before, so he knows what it is, and he is back in the
8 United States a week later.

9 MS. CAMPBELL: Well, do you try to communicate to a
10 person that leaving voluntarily is more desirable than going
11 through a deportation hearing?

12 MR. SURECK: Yes, we do tell -- we may explain to
13 him, and I can't tell you if this comes up every time, but it
14 is quite likely that when we tell him about going to deporta-
15 tion hearing, that if the Immigration judge finds him deporta-
16 ble, although he can grant him voluntary departure again, but
17 if he doesn't, that he needs permission from the Attorney
18 General to reapply before he can come back again, and if he
19 comes back again under a deportation order, then it could sub-
20 ject him to a criminal penalty.

21 MS. CAMPBELL: Thank you. I would like to ask Mr.
22 O'Connor a question. Could you explain the relationship be-
23 tween the Immigration Service and local law enforcement here in
24 Western Region?

25 MR. O'CONNOR: Relationship? Good, bad or better, it
is excellent.

1 MS. CAMPBELL: In terms of arrest of undocumented
2 aliens.

3 MR. O'CONNOR: No, they have no authority, and we
4 emphatically impress this on them at all times, that they can-
5 not arrest for immigration matters. Only Immigration officers
6 can do that. We have no problem with that. I have not seen
7 a problem in my two-and-a-half years here, I haven't seen any
8 problem at all with it.

9 MS. CAMPBELL: What type of assistance do you receive
10 from local law enforcement?

11 MR. O'CONNOR: Assistance, well in that --

12 MS. CAMPBELL: We heard from the Los Angeles Police
13 Department that they do provide assistance to you, and I was
14 wondering what type of assistance that would be.

15 MR. O'CONNOR: Well, in that they notify us if there
16 are people there that are undocumented or illegal aliens, they
17 notify us of that. Most all the departments do do that, as they
18 would with any other federal agency. The assistance is in a
19 camaraderie type of assistance. There is nothing that they do
20 that would be called improper or irregular. It is just -- they
21 know that, as Joe said, on their weekends, their jails are full
22 of people in this area, many of the people are illegal aliens.

23 They call us. We come down and interview these peo-
24 ple, and that is the assistance that they give us.

25 MS. CAMPBELL: Mr. Karmiel, did you --

1 MR. KARMIEL: In connection with that, I want to com-
2 ment on two of the speakers. We had the officer from the
3 Police Department state that there was an Attorney General of
4 California's opinion advising that the local policy had no
5 authority to arrest aliens solely on the basis of their having
6 entered the United States illegally, and then I believe there
7 was an attorney here, I forget which one, testified that as he
8 understood it, the opinion of the Attorney General of California
9 was that the local police did have the authority.

10 I think the police officer was correct in his view.
11 I read that opinion, and I think it was not, from my own per-
12 sonal expertise, I don't think it was correct. It was very
13 extensively researched and was a very extensive opinion. It had
14 to do with the application of a particular Section of the Cali-
15 fornia penal statutes, that states that a peace officer may
16 arrest for any violation of law, not only local law, but the
17 implication is federal law, and for many years, the Immigration
18 Service has been getting the cooperation of various police
19 departments in connection with this, where they would arrest for
20 us aliens who had entered the United States illegally, and of
21 course they would have entered, say, in Texas, and then they
22 would be caught here in California.

23 The opinion turned on the fact that on a technical
24 ground as to whether this was a continuing offense or not a
25 continuing offense, in other words, venue, and the Attorney

1 General found that this was not a continuing offense, the
2 Attorney General of California, and ruled that the arrest of an
3 individual who is found to be an alien who illegally entered
4 the United States, where it occurred outside the jurisdiction
5 of this particular state, as a result of this, there was no
6 authority for the local police to arrest..

7 However, there is a particular portion of the Immigra-
8 tion statute that indicates that this is a continuing offense,
9 and then again, the application of the first ten amendments,
10 that venue only lie for a prosecution in the area where the
11 offense was committed, if it is a continuing offense, then
12 consequently venue would lie here in California and the local
13 police could arrest.

14 The Attorney General, however, was of the opinion
15 that this was not a continuing offense, that venue would only
16 lie at the immediate border, and once the illegal entry had been
17 accomplish, which would be, say, 10, 15 feet past the political
18 line of the border, the individual was home free as far as
19 being arrested on that basis.

20 On a further reconsideration or further inquiry by
21 another police --

22 CHAIRPERSON HATA: If we could ask for that clarifi-
23 cation in writing, we are short on time.

24 MR. KARMIEL: All right, I will be glad to supply it,
25 surely.

1 CHAIRPERSON HATA: Ms. Campbell, are there any other
2 questions? One of our Committee persons asked that you respond
3 to his initial question, Mr. Dymally, I think you were here,
4 about federal hold policy. He raised that --

5 MR. O'CONNOR: Absolutely not. I don't know what he
6 was alluding to. There is no such thing. There is no way that
7 any local police agency can put down that they are holding any-
8 body for the Immigration Service.

9 MR. KARMIOL: This is particularly so now with refer-
10 ence to the California Attorney General's opinion.

11 MR. SURECK: Let me say this. He may have informa-
12 tion that there are some police officers bringing aliens to the
13 County Sheriff's office here and placing a hold against them
14 for the Immigration Service. We are having that particular
15 problem now. We have told the Sheriff's office we are not
16 going to pay for these. They are not our holds. We didn't put
17 them in, so just merely to amplify what was said, we are the
18 only ones that after we go down to the Sheriff's office, if we
19 determine that the person is here illegally and we want him
20 detained there, we place a hold that whenever the Sheriff's
21 office is through with him -- sometimes he is serving a sentence,
22 sometimes they may need him for some other purpose -- we place
23 our hold upon that individual.

24 No other police agency is authorized to place a hold
25 against that person for us.

1 MR. STERN: So in fact what Lieutenant Governor
2 Dymally stated does occur on occasion. You have had some
3 occasions.

4 MR. SURECK: Yes, it has occurred, and this is a
5 problem right now. The Sheriff's office is billing us for some
6 of those, and we are telling them we are not going to pay, and
7 we are trying to tell them that make sure it is our own people
8 who placed the hold against the person.

9 CHAIRPERSON HATA: Mr. Sureck, in the same way that
10 we have asked other individuals to provide documentation to
11 support their statements, I am sure that when the staff does
12 ask you for a copy of your memo, or your --

13 MR. SURECK: Well, I haven't had a memo, but I can
14 probably provide you with a copy of their bills to us.

15 MR. O'CONNOR: I can. I have that documentation.

16 CHAIRPERSON HATA: And hopefully, other documentation
17 to substantiate some of the statements you have made this after-
18 noon with respect, for example, to raids that occur in equal
19 time periods from Tuesday through Friday, et cetera. Ms.
20 Gomez?

21 MS. GOMEZ: I had one last question of Mr. O'Connor.
22 You stated that the local police department notifies you when
23 they have a suspected illegal alien. In the event that the INS
24 do not get there right away, what is the longest length of time
25 that they hold them for you? If they can hold them?

1 MR. O'CONNOR: Well, they have authority, I believe,
2 for 72 hours. At the end of that period, they let them go.

3 MS. GOMEZ: Seventy-two hours?

4 MR. O'CONNOR: I believe they have an authority for
5 that, yes.

6 MS. GOMEZ: Have there been cases that you know of
7 where they are held 72 hours?

8 MR. O'CONNOR: No. I would not know. I would not
9 have any knowledge of that. I believe, though, that they can
10 hold a person --

11 MS. GOMEZ: But that is your understanding, that they
12 can hold them 72 hours?

13 MR. O'CONNOR: Yes.

14 MR. SURECK: But normally, if you are talking about
15 the police station calling us, they will call us in the morning
16 and we may get there sometime during the day, or if they call
17 us in the afternoon, we will be there, normally, if we have the
18 personnel, the following work morning.

19 MS. GOMEZ: In other words, they spend the night in
20 the local jail.

21 MR. SURECK: Right.

22 MS. GOMEZ: Even though it has been determined that
23 there is nothing criminally -- there has been no determination
24 made that he has been arrested for any criminal action.

25 MR. SURECK: Well, you understand, we don't know

1 anything about that. All we do is that we get the notification.

2 MS. GOMEZ: But you go in the morning. They do spend
3 the night there as far as you are concerned, as far as you know.

4 MR. SURECK: My statement is, if we get the notifica-
5 tion early in the morning, then we can -- may go there during
6 the day some time. See, we have men in the field and we have
7 a radio, and we will tell them, you go to a particular station.
8 They have somebody.

9 MS. GOMEZ: But there are times when they are de-
10 tained overnight.

11 MR. SURECK: Right, and there are times when the
12 police department delivers the person right to us, and they
13 do that.

14 CHAIRPERSON HATA: The actually deliver the person to
15 you?

16 MR. SURECK: Right.

17 MS. HILBORN: Mexican.

18 MR. SURECK: Right.

19 CHAIRPERSON HATA: Upon your request, or is this some-
20 thing that they do on their own initiative?

21 MR. SURECK: I think they do it on their own initia-
22 tive, I think.

23 CHAIRPERSON HATA: Delivery service. How interesting.
24 Any final questions from the staff? If not, we thank you three
25 gentlemen. I am sure that our staff will be getting back to you

1 in the very near future. Thank you.

2 MS. CAMPBELL: Robert L. Miller, would you please
3 step up to the witness table?

4 MR. MILLER: Good afternoon, ladies and gentlemen.

5 CHAIRPERSON HATA: We apologize for the delay, Mr.
6 Miller.

7 MR. MILLER: I appreciate your forbearance late on a
8 Friday afternoon.

9 MS. CAMPBELL: Would you state your name and occupa-
10 tion?

11 MR. MILLER: I am Robert L. Miller, and I guess in
12 terms of affiliation, I might mention that I am the past Chair-
13 man of the Immigration Section of the Los Angeles County Bar
14 Association. I am presently the President of One-Stop Immigra-
15 tion Center, Inc., or President of the Board of Directors of
16 that organization, and I am one of the authors of the Los
17 Angeles County Bar study, the report that we did here a couple
18 of years ago, making several recommendations for improvement,
19 some of which I think touch very importantly on the issues which
20 the Civil Rights Commission is concerned with here today.

21 I was asked to come, with this late afternoon, such
22 as it is, and somewhat in the form of a rebuttal, which is
23 awfully tough to follow three gentlemen with perhaps 60 or 70
24 years of combined Immigration experience, all of whom I hold in
25 some considerable personal esteem, but I think it is

1 important regardless of how little time we have, it is very
2 important that we have a perspective here of what it is that
3 this Commission can do vis-a-vis the Immigration and National-
4 ity enforcement.

5 Now, I don't think in the time allotted I can really
6 respond point by point to each of the points that have been
7 made, certainly, through the two previous days, and certainly
8 not even for the last hour and a half of the information that
9 we have heard from the gentlemen.

10 CHAIRPERSON HATA: Excuse me. I think for the record
11 you should know that the three gentlemen have just departed.

12 MR. MILLER: Oh, thank you. I wasn't looking behind
13 me and I probably would have said the same things anyway. We
14 have spent many an hour sharing podiums, and about the only
15 thing we have ever been able to agree upon is that there is a
16 problem. We have never been able to agree what the problem is.

17 CHAIRPERSON HATA: I was not implying anything. This
18 was just for the record.

19 MR. MILLER: Thank you. I do want to point out,
20 though, that maybe part of the problem is the personnel of the
21 Immigration and Naturalization Service, including the three
22 gentlemen who just left. There have been improvements, and I
23 must point out, there have been improvements. You have heard
24 some of them; the reduction of backlogs, for example; the
25 means by which neighborhood surveys have been suspended; in

1 fact, the suspension of the use of the warrants just in the
2 last couple of months since a couple of lawsuits were filed
3 here in this area.

4 There have been a number of improvements, and these
5 improvements have taken place since the new administration took
6 place. When the gentlemen, Leonel Castillo, was appointed as
7 Commissioner, there have been a great number of changes which
8 have commenced at that date. The improvements that we have
9 heard just within the last couple of hours this afternoon, for
10 the most part are those which have occurred since his appoint-
11 ment, and as a result of litigation, not as a result of any
12 internal improvements, any process within the Immigration and
13 Naturalization Service, within the entrenched establishment,
14 that would lead to any of these improvements, and I can be a
15 little bit more specific because some of them have been imple-
16 mented even within the last 60 or 90 days, and much to my
17 surprise.

18 CHAIRPERSON HATA: The improvements, then, are not
19 voluntary, they are involuntary.

20 MR. MILLER: They have been in spite of the person-
21 nel and the long standing practices of those who have implement-
22 ed the policies over a number years, and I think that that is
23 very important to point out. It took, in essence, new blood,
24 which has overcome the inertia and the resistance of the
25 people at the present time who are called upon to enforce the

1 Immigration and Nationality Act.

2 I think we have heard some piercing questions here
3 about the mixing and the merging of the enforcement and service
4 functions of the Immigration and Naturalization Service. They
5 are a unique agency. They are the judge, the jury, and the
6 executioner all in one. I can't think of any other agency that
7 has that kind of power combined within one particular agency.
8 It is one which combined with, as you have heard here, a con-
9 cept that the concept of sovereignty is one which gives plenary
10 power over aliens, somewhat apart from Constitutional standards.

11 You combine a sense of that sovereignty, and you have
12 in essence what you have today, and that is a sense of arro-
13 gance which has grown up within the organization itself. That
14 arrogance has manifested itself in part of the problems that
15 we are now called upon to clear up, and we are clearing them
16 up.

17 We are clearing it up with a little bit of sunshine
18 coming in, which is what I think this group does. I think new
19 blood coming in in Washington, that is what brings sunshine and
20 that is what will clear up part of the mildew within the organ-
21 ization itself, a paramilitary organization, at times secretive.

22 I have sitting in my office right now boxes of mater-
23 ials which were pried loose from the Immigration and Naturaliza-
24 tion Service within the last year, basically, which still have
25 top secret stamps on them, materials which constituted

1 guidelines which were made unavailable to practitioners to
2 those who were attempting to figure out where the rocky shoals
3 were so that we could steer around them, were made available
4 through a combination of the Freedom of Information Act, and in
5 essence again, the spirit of the new administration coming in.

6 There are some things that to the extent possible
7 within the limited and patience of those remaining Committee
8 members here on this Friday afternoon, I would like to rebut,
9 if possible.

10 CHAIRPERSON HATA: Please.

11 MR. MILLER: One is the word "survey." This is a
12 horrible euphemism, one which had replaced the concept of area
13 control.. Mr. O'Connor, at least sitting here, was more frank
14 with each of us by using the word "raid." A raid by any name,
15 any other name, is a raid, and I think to try to use a concept
16 such as survey is terribly misleading.

17 A survey, can you imagine a prohibition survey? A
18 survey breaking into a bar looking for contraband. It is a
19 raid and I think we must call it by its proper name. That is
20 misleading just as the concept of consent is. We have heard
21 some discussion about the attempt to obtain the consent of an
22 employer to go in and survey an organization. The consent is,
23 the way I have always understood it, I think, in the constitu-
24 tional sense, is a knowing consent, a consent being fully ad-
25 vised of one's opportunities, the alternatives, and there is a

1 certain sense of coercive power, combined with a oftentimes
2 uniformed personnel in paramilitary or military looking uni-
3 forms, in vehicles which bear emblazoned with the United States
4 Government, something under that, motor pool, or something of
5 that sort, appearing flashing a badge and says, I am from the
6 Immigration and Naturalization Service. We have these reports.
7 Now, are you going to give us your consent, because you know
8 what we can do, or words to that effect.

9 And this is soft sold. We have some individuals, the
10 liason, they are referred to by the Immigration and Naturaliza-
11 tion Service. They are Investigators who are going out to ob-
12 tain the consent, very well-spoken gentlemen who have been
13 trained basically to try and persuade this consent out of these
14 employers to permit access to the next step, which is really a
15 very important step, to what is an employer going to consent
16 to?

17 Can he consent to coming in his premises? That is one
18 set of consent. Does that include the consent to go in and
19 interrogate all of the employees? I think not, but that is the
20 way it is currently read, but the consent is never fully infor-
21 med. Never is there -- there is always the implied threat. You
22 know what we can do. Anybody who reads in the newspapers, any-
23 body who is in the industry, they think they know that the
24 Immigration Service will follow with an interruption.

25 It will follow with a raid, and indeed, just as night

1 has followed day, where consent has been denied, raids have
2 followed, and so the consent is very rarely a knowing and an
3 informed consent. It is with the kind of coercive power be-
4 hind it that most employers have been afraid.

5 They are a little bit afraid of the Federal Govern-
6 ment. They really believe, as indeed it appears the Immigra-
7 tion Service believes, that they do have the power to go into
8 plants and interrogate and conduct these surveys.

9 The warrants themselves, we focussed some attention
10 upon, Everybody have been talking about it. Has anybody here
11 seen one? It is a charming document. When this is presented,
12 again, it is, you know, the United States District Court.
13 There is something terribly august about a warrant being pre-
14 sented to an employer.

15 Here is a guy, he makes chairs, all right? He is
16 sewing dresses. That is all he is really concerned about doing,
17 making shoes, and he is handed a document that looks like this.
18 "You are commanded by the United States Government." Now, you
19 are asking an awful lot of this manufacturer to look at this
20 document, risking, conceivably, contempt, with all of these
21 green vans and uniformed military personnel standing around to
22 stand and look at this and say it is a piece of garbage, and
23 indeed it is.

24 You have heard talk about referring to aliens as
25 property. Rule 41 is the only authority that the Immigration

1 Service has. There is no other authority, notwithstanding Mr.
2 Karmioli's learned wishful thinking as to the applicability of
3 the fourth amendment of the United States.

4 The Immigration Service needs specific authority.
5 The specific authority at the present time is delegated through
6 the Attorney General to the Immigration Service. The Attorney
7 General has implemented this only through Rule 41. Rule 41 is
8 the sole and exclusive authority at the present time being used
9 by the Immigration Service, and that is why, perhaps, they
10 haven't issued any in the last two months since these two law-
11 suits were filed.

12 Read it. Here is what they have been saying. You
13 refer to them generally, referring to an employer, and then
14 referring to the particular premises, it goes on to say, "there
15 is now being concealed certain individuals," quote, and this
16 time they didn't even scratch out "here described property."
17 The here described property is still emblazoned here. "Namely,
18 a large number of aliens illegally within the United States, who
19 are working and hiding at said premises, which are the fruits,
20 instrumentalities and evidence of violation of Title 8, U.S.
21 Code, Section 1325." Property, property, property. I counted
22 it one time. I think there is something like at least 15
23 references to the word property, none to people anywhere on
24 this.

25 Fruits and instrumentalities. They have been called
a lot of things, but hopefully that is not one of them.

1 CHAIRPERSON HATA: That is the standard form that --

2 MR. MILLER: It is. Well, Mr. Karmioli kept referring
3 to it as just a form, just a form. It is the sole authority.

4 It is the only way which they have been issued. They have been
5 issued in a rubber-stamp fashion. He was asked, can you point
6 to any authority whereby this concept of this has been upheld,
7 Mr. Karmioli? No, he can't. I can point to one where it has
8 been in essence pointed out as being totally improper, and that
9 is the Karapanos (phonetic) case back on the east coast.

10 It cannot withstand scrutiny. It will not withstand
11 scrutiny, so at the present time, the Immigration Service is
12 back to consent.

13 MR. STERN: He cited 1357 as his statutory authority.

14 MR. MILLER: 1357 contains no authority to search or
15 enter premises, period. In fact, there is nowhere in the
16 Immigration and Nationality Act which authorizes a warrant, at
17 all. Quite different from, for example, OHSAs and a number of
18 other acts to which we might refer for agency authority to enter
19 search and arrest.

20 CHAIRPERSON HATA: But how long have these warrants
21 been issued?

22 MR. MILLER: I would say for years.

23 CHAIRPERSON HATA: For years?

24 MR. MILLER: Yes.

25 CHAIRPERSON HATA: Before World War II?

1 MR. MILLER: I have only been around for ten years.

2 CHAIRPERSON HATA: As long as you have been around,
3 they have been issued?

4 MR. MILLER: Yes, they have been, because the warrant --
5 you have got the carrot and the stick, the carrot and the stick
6 and this has been a self-perpetuating dream. The consent, the
7 warrant, the consent and the warrant, and by the time anybody
8 ever finds out about it, by the time I find out about it, every-
9 body is gone. The raid has hit. I have manufacturers who have
10 figured out for every hour that the Immigration Service was
11 within their premises, it cost them \$20,000, for each of the
12 three hours, using one particular factory, for example.

13 To this point in time, that factory owner did no
14 illegal act, based on one of these. Now, I don't want to dwell
15 on that. I think you have heard plenty, but I just thought may-
16 be somebody might like to really see a warrant, we have talked
17 about it so much, and here is the property, the inventory of
18 property is described, and it lists all these names, all these
19 wonderful people here.

20 1357, which is the basis for a warrant; supposedly
21 for criminal prosecution, yet nobody ever is or has been. In
22 fact, everybody is dumped on the bus and taken out. In inven-
23 tory of property, there is a means by which under property
24 warrants -- I don't want to dwell on that. There is a couple
25 other points. I don't know what the patience of the panel is

1 at this time, and it is a little bit hard.

2 It always reminds me of a little statement. Let me
3 see if I have it here -- when I listen to these folks from the
4 INS talking, it is wonderful, nice as they are, the statement
5 of Mr. Sureck's immediate predecessor that was reported on
6 KNX radio here a few years ago, and that is District Director
7 Williams at that time. He says, he is convinced that those who
8 complain about the Immigration Service are, as he puts it,
9 "attempting to destroy the entire American system."

10 Well, I don't think that we are here, or I am certain-
11 ly not here to destroy the entire American system. Maybe I
12 have a different concept of what the American system is, and
13 I think this Commission does, too. Just by the questions that
14 have been asked, for example. The advice to a person, as to
15 whether or not he may have rights.

16 Going back, to for example, Mr. Jay Segal, the current
17 immigration judge, Chief Immigration Judge here in Los Angeles,
18 the question was asked about the mass hearings, the ones which
19 somebody saw on television, and we were informed there is no
20 such thing, and I almost leapt out of my seat. Mass hearings
21 have been going on for years here in Los Angeles, mass hearings,
22 and I had to run out in the aisle here and speak to one of them,
23 and I found out they had been suspended 60 days before.

24 I found that a little bit surprising. Is that a
25 national standard? There never was a national standard. What

1 does that mean on a national standard, I have no idea. The
2 fact that I was not personally aware of a mass hearing in the
3 last 60 or 70 or how many days that has been, just, as I say,
4 that has been a practice, the fact that it was just suspended,
5 and a new procedure now has been substituted, which is the
6 second part of my jump. We now have arraignments. I have
7 never heard of an arraignment.

8 I have been in this business daily on a day-in day-
9 out basis. There is nowhere in the regulations, nowhere in
10 the law for such a thing. Again, I had to walk out here and
11 ask the Immigration Judge what it was he was talking about,
12 and I have been down there as late as the day before yesterday.
13 Guidelines and standards.

14 CHAIRPERSON HATA: Was that Immigration judge invol-
15 ved in a mass hearing?

16 MR. MILLER: Constantly. Constantly. I have got,
17 if you will, transcripts of them, which is another problem. We
18 talked about interpreters and translators, interpreters and
19 transcripts. I have had to throw interpreters out of hearings
20 because I fortunately have the facility to be able to monitor
21 at least the Spanish speaking ones.

22 I have had Persians come out to me afterwards and
23 tell me that, do you know what the interpreter was saying?
24 Well, obviously I didn't. My Farsi is pretty poor. And he
25 said well, there is this big conversation between a question

1 and an answer. He says, well, what the interpreter was telling
2 me was, go ahead and say yes. Everybody does.

3 The questions in a way beg the result because there
4 is one interpreter, one translator full time and the rest are
5 part time, and many of them are just frankly horrible. What
6 do we need? What might the -- and I have seen some very serious
7 prejudicial kinds of results come from poor translations. Any-
8 body with any kind of familiarity with bilingual kinds of court
9 proceedings, just a shift of emphasis, a shift of a word, can
10 charge a result, can prejudice an application, prejudice a
11 right.

12 Is it important enough to put a little more emphasis
13 on this? Obviously, at least in my opinion. What should we
14 have? Well, I think we might try maybe an independent, or if
15 you will, an appointed interpreter, if you will, someone to
16 watch their interpreter.

17 Again, rights -- can we count upon a fair advisement
18 of rights to a person coming before an immigration judge, and
19 we hear the immigration judge say, yes, we and the trial
20 attorneys advise the alien. Well, can we fairly then believe
21 that the alien sitting there is going to get just exactly that,
22 an objective and fair advice from the Immigration judge and
23 the Immigration and Naturalization Service trial attorney, that
24 everything which could conceivably be of any value to him will
25 be advised him prior to his making any decision? I think that

1 just boggles the imagination. It defies credibility, in my
2 opinion.

3 At least we had a concession, there should be two
4 things. One is appointed counsel of some kind, from the private
5 or the governmental sector who is on duty, if you will, an
6 appointed defender to provide that kind of advice. At least we
7 seem to be in agreement on that. As to whether it would make
8 any difference in the long run, I must assume it would. The
9 County Bar did a study as to the effectiveness, and the time
10 we made this report, where counsel had appeared, and had taken
11 an appeal, we tracked cases right from the original hearing
12 level right through the Appellate procedure, and found out that
13 where counsel had been present, in at least 70 percent of the
14 cases, either beyond the appeal through the District Courts,
15 or subsequent benefits found, the alien was still here years
16 later, and in some kind of a legal status.

17 We are also agreed that the symbiotic relationship,
18 it seems, between the Immigration Judge and the Immigration and
19 Naturalization Service, how can he beholden to the District
20 Director for his typewriter, his chair, and his room, and yet
21 still expect that degree of objectivity which we would at least
22 hope for. We agree, we must have a total separation, and I
23 would hopefully think that the Commission could make a recomm-
24 endation in that regard.

25 You have heard that there is no priorities in terms of

1 factory surveys. I have got documentation sitting in my office
2 right now, including publications, Open Line, the internal
3 memorandums from the Immigration -- from the central office,
4 saying that emphasis, arrest emphasis will be in factories.
5 To hear someone say that that is not an emphasis, either some-
6 one must have misunderstood the question. Maybe it was me, but
7 I have got it in writing. It is back at the office.

8 Maybe I should -- I must comment on one thing, and
9 that is, have there been enough studies. We got into a ques-
10 tion about, you know, have there been enough studies. This is
11 perhaps another study. I have always been somewhat upset -- not
12 upset. Just curious about one of the first remarks I heard
13 from Griffin Bell at the time that he took office, and that was
14 that there have been enough studies, the studies are inconclu-
15 sive. Therefore, it is time to act.

16 And I heard it again today. To me, I am sorry, that
17 is a total nonsequitur, and that comment I think speaks for
18 itself, and that is exactly where we are today. Again, it is
19 part of the problem.

20 What is it we are trying to do? Are we attacking the
21 American system? What are the immigration laws here for? Do
22 they have a mechanism by which the various needs of protecting
23 American labor and the -- at the same time providing a steady
24 source of labor in those areas which are in short supply? Hop-
25 efully the Immigration and Nationality Act in its original

1 design was set up to do just exactly that, and we have been
2 told here that the protectors are doing just exactly that, but
3 in fact, the system does not work at all. We have such a
4 bureaucracy, which becomes virtually impossible to move.

5 In order for an employer to fill a position by follow-
6 ing the law today in the Los Angeles District, he may count on
7 one to one and one half years, assuming that he breaks not one
8 single administrative rule or regulation, it will take him one
9 and one half years to fill that position.

10 The bureaucracy, three, at least four levels of
11 government must be gone through, of which the Immigration and
12 Naturalization is one significant obstacle and roadblock, pro-
13 cedural or otherwise. How on earth do you expect people to
14 comply with the law if to comply with the law itself becomes
15 so burdensome that people are going to be unwilling to do so
16 and they cannot, and just won't.

17 It is late, approaching the six o'clock hour. These
18 are basically, again, criminal type proceedings. We have had
19 some references made about bringing in the prisoners, the
20 immigration detainees in shackles, and here is a place where I
21 think that again, civil rights is extremely important.

22 I as an attorney go down to the courts, the county
23 jails, to the state and federal jails at times to speak to some
24 of my clients who have erred, and it is, for those anybody who
25 has been down there, it is usually kind of an open sort of a

1 surrounding. Sometimes we are divided by a small little piece
2 of glass about this high, or at least we can go off into a
3 booth and sit and talk, and exchange information privately, and
4 so forth, and yet at the Immigration and Naturalization Service
5 they are separated by glass, at this time new sort of tele-
6 phone booth kinds of arrangements where each party is left
7 standing, speaking through a little tiny hole which has a mesh
8 so no representation notice, for example, the fact that you are
9 his attorney, can be passed to him, or he can't give you the
10 order to show cause, or whatever it is he may have been
11 arrested with or served, or any of that sort of thing, much,
12 I suppose, like maximum security would be, if you had any
13 maximum security kinds of clients.

14 These people are, again, handcuffs, and in terms of
15 for example -- all right, let me shift that a little bit.

16 Deportation hearings. Deportation hearings are held
17 in jails in the Immigration and Naturalization Service. We
18 are constantly told that the Immigration and Nationality laws
19 are civil rather than criminal in nature, and yet deportation
20 hearings are held in what must certainly be the most coercive
21 environment that I could conceivably imagine of.

22 I don't know of any criminal who was ever actually
23 tried in jail, with maybe the exception of the Soledad brothers
24 up there because of the incredible security problems, and yet
25 as a regular matter an immigration detainee, some fellow who

1 entered without inspection and may be in there for, who knows,
2 a false claim to U.S. citizenship, or something, will have his
3 deportation hearing conducted within the confines of the feder-
4 al prison.

5 People who were picked up in Los Angeles, these dan-
6 gerous folks who may have entered without inspection or over-
7 stayed their tourist visas, are regularly processed, if you
8 will, in Los Angeles, and whizzed 200 miles south into the
9 friendly skies of El Centro 200 miles away, where reaching
10 their family, reaching their attorneys, or their attorneys
11 getting down and reaching them, is again a tremendous logisti-
12 cal problem, where deportation hearings are held, something of
13 the mass nature. I assume they are still being held like that,
14 again, within the confines of the barbed wire, to which then
15 the next step is south.

16 Again, no criminal I know of, and certainly no civil
17 case, is the responding party hauled 200 miles away as far as
18 he can possibly get from his family and attorney, and then
19 tried and then taken out.

20 Advice? Can you really believe that the advice is
21 given? It defies credibility. To a person who is detained, say
22 now, you have a right to take voluntary departure. If you take
23 voluntary departure, then we will not prejudice further appli-
24 cations you might have. In the event you do not wish, you may
25 have your attorney present. There may be other potential

1 benefits before the Immigration and Naturalization Service.
2 We may let you out on your own recognizance. You will be per-
3 mitted to return home this evening or tomorrow, in which event
4 you may speak to your attorney, and there will be an order to
5 show cause within seven days.

6 You may present your claim to an Immigration and
7 Naturalization Judge. If the decision is made adverse to you,
8 you may appeal. It may take two years for that appeal to be
9 reversed, in which event you may continue to work and not be
10 interfered with. Is that really being said? No.

11 CHAIRPERSON HATA: Is that being said, and if it is
12 being said --

13 MR. MILLER: No, of course it isn't. That would be
14 the suggestion we would be led to believe here. In fact, my
15 clients come back to me, because I rarely am there. Obviously,
16 when I am there, of course, it is a little different. Of course,
17 they won't let me talk to my client. They will keep me waiting
18 while they are interrogating him, and that is a fact of life.

19 The call processing rather than interrogating. Pro-
20 cessing means getting all the facts they can possibly use
21 against this person, and they will prohibit, virtually prohibit
22 an attorney who is sitting out in the waiting room, who they
23 know has an attorney sitting in the waiting room, from speaking
24 to that client prior to his "processing" and that is a fact of
25 life.

1 CHAIRPERSON HATA: Is the material obtained in pro-
2 cessing used in criminal proceedings or proceedings --

3 MR. MILLER: Well, invariably it is used in the depor-
4 tation proceeding. If it can be used in a criminal proceeding
5 it will be. As a practical matter, and despite 1325 and the
6 purport of Rule 41 and the warrants, nobody is looking for
7 criminal prosecutions. That is the farthest thing from their
8 mind. Every so often they will stumble onto somebody and they
9 will do it.

10 As a practical matter, it is strictly administrative.
11 It is a matter of numbers. It is a matter of statistics.
12 Basically they get the largest numbers, get them to go volun-
13 tary departure and get them out, even if they do come back in
14 next week, because we find out we are recirculating the same
15 100,000.

16 Well, if you recirculate the same 100,000, you can
17 go to Congress, and say we deported a million, which is exactly
18 what is happening.

19 MS. JAMES: Mr. Miller, can I just ask you one
20 question on that, on that hearing. Are you at all familiar
21 with any of the ones going to El Centro, are they other than
22 Mexican nationals?

23 MR. MILLER: Oh, the answer is yes. The Immigration
24 and Naturalization Service -- in a way I am not really answer-
25 ing your question directly. The answer is yes. The South

1 Americans to a large extent will be taken to that same proce-
2 dure, but there is a harsher penalty, usually, interestingly
3 enough, for a Latin American or Central American, and I have
4 had this explained to me by the District Director, long ago,
5 I have known him since he was Regional Counsel, just before he
6 became a lightning rod here in Los Angeles, and that is the
7 Central American and the South American are dealt with more
8 harshly.

9 They are invariably given deportation hearings as
10 opposed to the option of voluntary departure, invariably put on
11 a higher bond as opposed to a lesser bond for a Mexican, and
12 the theory behind that is that the Latin American and the Cent-
13 ral American scheme scheme more to get here.

14 It took a greater degree of determination to come
15 further, and therefore he is a basically a baser person, as
16 opposed to a Mexican who just kind of strolled across the border.

17 MS. JAMES: The other question was that we have had
18 other allegations that there is an insensitivity to place of
19 origin. It doesn't matter where we send you as long as we get
20 you out of our country, and I just wondered if you had come
21 across that.

22 MR. MILLER: Well, insensitivity was a question that
23 was raised a little bit earlier about the sensitivity training,
24 again, that they have implemented this wonderful program, Hono-
25 lulu University, or something like that. Again, it is within

1 the last couple of months, and there have been great movements,
2 and I point out to the Committee, as a result of Mr. Castillo's
3 efforts, and not certainly from any kind of internal spirit.

4 Now, as to whether or not we have any degree of
5 selectivity as to between various kinds of groups, if that is
6 the question, I am not really entirely certain how to respond
7 to it, except to the extent that when you have one, it will be
8 dealt with a little bit more harshly if it is a South American
9 or Central American or -- there seems to be some sort of a core
10 relation as to distance travelled.

11 MR. STERN: What do you suggest be done?

12 MR. MILLER: Well, I would like to see standards. I
13 like to believe in standards and guidelines, and for example
14 unwritten standards bother me terribly, such as the one who
15 insists upon a deportation hearing as opposed to voluntary
16 departure, now, this afternoon, immediately is a \$2,000 bond.
17 Presence of an attorney is a \$5,000 bond. I don't think that
18 is the kind of standard that we should be talking about, all
19 right?

20 I would like to see that place of origin might be a
21 factor, but the factor should lead to one particular conclu-
22 sion, and that is likelihood to abscond, and that is something
23 where we are terribly sorely lacking in the Immigration and
24 Naturalization Service, and then again, here we have a breach
25 between an Immigration Judge that is sitting sort of up here on

1 the eighth floor, who as you heard, at least one testify here
2 today, has no idea of what is going on out in the field, at
3 least that is what he would lead us to believe. I am sure he
4 had never been on a raid. As a matter of fact, I have never
5 been on a raid. I always get there about, you know, half an
6 hour later, but I kind of get just the way it happened there.

7 But there is a Board of Immigration Appeals opinion
8 that says that people will be bonded according to a likelihood
9 to abscond, and that in the vast majority of cases, there will
10 be no such bond, absent some characteristic that will indicate,
11 sort of like under the Federal Bail Reform Act, an indication
12 that this person is likely to flee, and yet -- so that if some-
13 how, if this person down at that ground floor basement level
14 where he is being "processed" if he really knew that he could
15 kind of wend his way up there to the eighth floor, he would
16 probably be released on his own recognizance in most cases,
17 but he never really knows that, and that rule, the BIA somehow
18 is never communicated by the guys down there doing the pro-
19 cessing.

20 Guidelines. Guidelines which should be known. Bail
21 standards. I would like to see them put -- when I was in the
22 Army we used have the ten general orders, and they were posted
23 on all the panels all the way around the room, so that we would
24 memorize them. Well, I would like to see something like in the
25 Immigration and Naturalization Service, you know, legal aid,

1 call this number now, and you know, have a supply of dimes or
2 tokens or something like that.

3 You have the following rights to bail, bail, and such-
4 and such on these following standards, so everybody knows it
5 right off, because if a person does insist, again this is per-
6 sonal experience, a person insists on bail, insists on a hear-
7 ing, assists on an attorney, he will be segregated and ridi-
8 culed. He is a troublemaker. There is a herd effect. There
9 is a herd effect in the mass hearings. There is a herd effect
10 downstairs when everybody is being VD'd, as we say, and moved
11 out, and if one person should be just a little obstreperous,
12 no, I am not going to answer your questions, no. Yes, excuse
13 me.

14 CHAIRPERSON HATA: It has occurred to me, a lot of
15 individuals today have used "he" in their discussions, yester-
16 day and today, and my question is this. Is there or has there
17 been, in your perception, any difference in treatment on the
18 part of INS officials between women and males?

19 MR. MILLER: No. No, I would say that what you hear
20 is applied pretty much across the board. I have had women get
21 pretty much the same kind of treatment. I guess the only
22 difference between the women and the men and is the women get
23 to go to Sybil Brand.

24 CHAIRPERSON HATA: Okay. Are there any other comments
25 you would like to make?

1 MR. MILLER: Oh, I could probably go all night, and
2 in all fairness to the panel, maybe I should -- one last one,
3 and that is the cooperation, the INS soliciting and obtaining,
4 and we had some reference to the cooperation of manufacturers,
5 plant, factory, and so forth, to come in and survey the
6 employees voluntarily and teach the employer on how to screen
7 his employees, and it even had a name, but it wasn't mentioned
8 here.

9 It was called Operation Cooperation. Operation Coop-
10 eration was just exactly that, and employers were provided
11 with a stack of little forms to fill out, and it had little
12 kinds of questions that Immigration officers would ask, and
13 the theory was, in Operation Cooperation, that in addition to
14 the employer doing the screening, in cases which were other
15 than crystal clear, meaning non-U.S. citizens walking around
16 with a birth certificate with his photo on it, would be -- fill
17 out this form and send it to the Immigration and Naturalization
18 Service.

19 You say to the employee, sit right here please, be-
20 cause I am going to send this form over to the Immigration and
21 Naturalization Service, we will complete it right here, and
22 will you please tell me basically, or the Immigration and
23 Naturalization Service will tell us as to whether or not you
24 are a good guy or a bad guy, and as soon as we get that, you
25 can continue on employment, or if I put you on employment, I

1 will leave you there until I terminate you, and I have got
2 employers who are still waiting for the responses from the
3 Immigration and Naturalization Service. They try. They tried
4 to cooperate, and it just didn't work. You can't run a rail-
5 road that way.

6 CHAIRPERSON HATA: Well, we appreciate your comments,
7 Mr. Miller, and I am sure if you have any other information
8 you would like to give to our staff, you will do so in writing
9 so that that may be included in our record.

10 MR. MILLER: Thank you very much.

11 CHAIRPERSON HATA: There are no further questions,
12 and we thank you for your indulgence and for staying until this
13 late hour.

14 I understand that there are two individuals who would
15 like to make a statement during the open session that follows,
16 Mr. Pedro Vasquez and Mr., perhaps, Patricio Gonzales. Are you
17 Mr. Gonzales, okay, is Mr. Vasquez here?

18 MR. RUTH: I am here to speak for Pedro. I am Pastor
19 Bill Ruth.

20 CHAIRPERSON HATA: Would you come forward then, please?
21 For the record, would you identify yourself?

22 MR. RUTH: Sure. My name is Pastor Bill Ruth, and I
23 am working right now with Lutheran Social Services. Lutheran
24 Social Services, by the way, is made up of the three major
25 Lutheran bodies, and we came up with a statement that I would

1 like to read right now.

2 CHAIRPERSON HATA: I would like to inform you that
3 the Committee has set a time requirement, or time limit on
4 the open session, and that will be five minutes.

5 MR. RUTH: Okay. It will be less than that.

6 CHAIRPERSON HATA: Thank you.

7 MR. RUTH: Okay. The Lutherans in Los Angeles, the
8 city with the largest immigrant population in the United States,
9 welcome these hearings being conducted by the California
10 Advisory Committee on the matter of the undocumented immi-
11 grants.

12 Through our agency, Lutheran Social Services, of
13 which an important concern is helping people help themselves,
14 we have come to witness the suffering that so-called illegal
15 aliens must face in our society.

16 Not a day passes when strangers knock at our doors.
17 There are human beings reaching out for help. We must accept
18 them. It is part of our religious convictions, and we are part
19 of the worldwide effort to resettle thousands of refugees. The
20 undocumented come to us confident that the church will not deny
21 them.

22 What they tell us amounts to violations of rights,
23 and so many of us as citizens take for granted. There is no
24 doubt that in the course of these hearings, testimony will be
25 presented to substantiate this, but what must be expressed

1 clearly is that these assaults on basic civil liberties which
2 make up the very fabric of American democracy must cease. The
3 undocumented must receive some kind of protection. They deserve
4 it. Possibly what might be concluded from these hearings will
5 be the understanding of the immense need for a charter of
6 rights for the undocumented immigrants.

7 The doors must be open to all in need.

8 CHAIRPERSON HATA: Thank you. I believe the Commi-
9 ttee does share your concern.

10 MR. RUTH: Thank you.

11 CHAIRPERSON HATA: Mr. Gonzales? Would you identify
12 yourself to the record, please?

13 MR. GONZALES: My name is Patricio Gonzales, and I
14 am here as a representative from the Organization of Latino
15 Rights.

16 CHAIRPERSON HATA: As you heard earlier, Mr. Gonzales,
17 the Committee has set a five-minute time limit on oral
18 communications.

19 MR. GONZALES: Okay, I think I --

20 CHAIRPERSON HATA: Thank you.

21 MR. GONZALES: It is obvious -- I am going to read a
22 statement that was formalized by the organization.

23 CHAIRPERSON HATA: Certainly.

24 MR. GONZALES: It is obvious that the U.S. Government
25 is holding these hearings to cover up the fact that it is the

1 greatest abuser of the Latino people's rights. The government
2 and big business go hand in hand to abuse the civil rights of
3 immigrants and to maximize profits of big business.

4 A good example of this is in Maricopa County, Arizona
5 on October 3rd, 1977, the Immigration and Naturalization Service
6 attempted to stop agricultural workers from organizing. They
7 were demanding such things as worksite bathrooms and drinking
8 water, and by telling the workers to go back to work or be
9 deported, it was clear that they were taking a stand in working
10 with the owners of the ranches.

11 Right here in Los Angeles, the INS just happened to
12 carry out its first raid at the Davis Pleating Company, a
13 garment factory. This factory had never been raided before in
14 its history in Los Angeles, and this raid was pulled just as
15 the workers were getting organized to improve conditions in
16 the plant.

17 CHAIRPERSON HATA: Mr. Gonzales, I will have to
18 interrupt you to ask our legal counsel for advice with respect
19 to defame and degrade. We have rules and regulations about
20 that.

21 MS. CAMPBELL: I am sorry. We ask that you not
22 mention any individual names, as a starter.

23 MR. GONZALES: You mean the names of companies?

24 MS. CAMPBELL: Or not refer by implication to some-
25 body, either alleging discrimination or alleging an illegal act.

1 MR. GONZALES: I am afraid I am not clear.

2 MS. CAMPBELL: When you make a statement, we ask that
3 you not make any statements against individuals or make a
4 statement that refers to an individual by implication, either
5 alleging discrimination or alleging an illegal act.

6 MR. GONZALES: Did I violate it? At what point?

7 CHAIRPERSON HATA: No, you haven't yet. I was --

8 MR. GONZALES: Okay.

9 CHAIRPERSON HATA: -- just concerned that you be
10 aware of this, all right?

11 MR. GONZALES: Oh, I see.

12 CHAIRPERSON HATA: Please proceed.

13 MR. GONZALES: And I think it was pointed out earlier
14 that in Los Angeles it is common knowledge amongst immigrant
15 workers that the mela most likely comes on the day before pay-
16 day.

17 These hearings have brought to light individual
18 violations of latino rights, and that is good. Recent revela-
19 tions of the involvement of Border Patrol employees in taking
20 bribes from coyotes, and in kidnapping of immigrant children
21 by coyotes indicate serious problems, but the U.S. Government
22 cannot hide behind these examples, telling us they are just
23 isolated incidents, and ignore its responsibility for the
24 wholesale violation of rights which it engages in.

25 Immigrants, documented and undocumented, make billions

1 of dollars of profit for business in this country.

2 For example, right here in California, agribusiness
3 made \$9 billion in profit last year, more than 65 percent of
4 the workers in agriculture are immigrants, and these workers
5 pay millions of dollars in federal, state, and local taxes
6 every year.

7 And then President Carter has come along with his
8 so-called amnesty plan, and he poses as a protector of human
9 rights, but what is this plan really going to do? What is the
10 Carter plan really going to do? It will provide cheap labor
11 to big business with no social responsibility.

12 Immigrants will be denied such benefits as unemploy-
13 ment, welfare, Social Security, and health care, despite the
14 fact that their taxes pay for these services. The result will
15 be the splitting up of immigrants' families. When work is
16 scarce and immigrants have no jobs, their families will have to
17 starve or leave.

18 Carter's plan is already going into effect. As people
19 probably heard in Houston, Texas, there is a plan to charge
20 undocumented students for public schooling, and the L.A. County
21 Hospital has begun to refuse medical care to people who cannot
22 show a legal document.

23 Meanwhile, names and whereabouts of immigrants are
24 being gathered for the Federal Government. In Compton, the
25 local school district is collecting information about the

1 immigrant status of its students for the purpose of getting
2 federal aid. What the government is doing is offering money
3 to turn in people who are undocumented.

4 And throughout these examples we can see that they
5 are aimed at driving the families out of the U.S., leaving only
6 those who can work, and for those who have not yet been able to
7 bring their families here, Carter's amnesty plan denies them
8 the right to be united in this country.

9 We can see that Carter and big business are trying
10 to blame the economic crisis in this country on the immigrant
11 workers, but immigrant workers were forced out of Mexico and
12 their homelands into the United States by big business from
13 the U.S., U.S. corporations.

14 For instance, in Mexico, many agricultural businesses
15 have bought up millions of acres of land, forcing farmers off
16 of small plots where they are driving them into cities where
17 there are no jobs. The choice for many Mexicanos is starve or
18 come to the U.S. The real cause of the crises here and abroad
19 is the big business, which utilizes the thing, "speed-up and
20 layoffs, which maximize their profits at the expense of workers.

21 The right to a job is a basic civil right. This
22 country is full of people who want to work, but cannot find a
23 job, because it is not profitable for the corporation.

24 I have a list of demands here from the organization.

25 We demand jobs or income for all.

1 We demand food and social benefits for all immigrant
2 people.

3 We demand an immediate end to deportation.

4 We demand that the U.S. Government cease interference
5 with the rights of all immigrants and workers to organize into
6 unions.

7 We call on all people and organizations to join with
8 us in the fight against deportation and for jobs and income
9 now. We can achieve victory through unity.

10 I just want to briefly sum up the main point, and
11 that is that this statement shows that the immigration author-
12 ities work hand in hand with the companies to hold down the
13 wages of immigrant workers in order to achieve maximum profit
14 from these people, exploit their labor, and whenever these
15 people attempt to organize, it shows, history shows that this
16 is when the Immigration comes in. They are only pulling raids
17 in factories.

18 And it is important that these hearings also point
19 out, as I think have been mentioned, the abuses against indi-
20 viduals. That is very important, but I think the main thing is
21 to show the implication of the government from Carter all the
22 way down to Immigration authorities. Thank you for the time
23 to make this statement.

24 CHAIRPERSON HATA: Thank you for presenting your
25 concerns to us, Mr. Gonzales. Quite a few of the issues you

1 have raised already have been brought to the attention of the
2 Committee, and just one final point of clarification. The
3 Committee is not employed by the United States Government. We
4 are a citizens advisory body who are interested in civil rights
5 and justice for all, just as you are. Thank you.

6 MR. GONZALES: Thank you.

7 CHAIRPERSON HATA: Are there any other final house-
8 keeping tasks that staff would like to take care of?

9 I have a closing statement to read.

10 The policies and practices of the Immigration and
11 Naturalization Service and the civil rights effects of the
12 Carter administration's proposed immigration legislation have
13 been the focus of these proceedings.

14 The Advisory Committee has heard from individuals
15 and agencies who have been active in the immigration issues.
16 We have collected this information as part of our responsibili-
17 ty to investigate civil rights concerns.

18 We will report our findings and recommendations to
19 the United States Commission on Civil Rights, as well as to
20 those in our state concerned with these issues. The Advisory
21 Committee would like to thank all of those who have participa-
22 ted in this endeavor.

23 I would like to personally commend the staff who
24 worked so very hard to put the hearings together. They did a
25 splendid job, and also to extend a personal vote of thanks to

1 members of the State Advisory Committee who spent two days out
2 of their lives to sit up here getting numerous callouses. We
3 have three days out of our lives.

4 We will be reconvening again in San Diego. This
5 meeting hereby stands adjourned.

6 (Whereupon, at 6:25 p.m., the open meeting in the
7 above-entitled matter was adjourned, to reconvene in San
8 Diego, California.)

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This statement serves as a certification that George D. Girtor
was present at the time and the place of the aforementioned
Los Angeles, California, and that this transcript is a
complete, true, and accurate record of the aural portion of
those proceedings.

George D. Girtor
REPORTER

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