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ARIZONA ADVISORY COMMITTEE
UNITED STATES COMMISSION ON CIVIL RIGHTS

TRANSCRIPT OF PROCEEDINGS

FORUM ON IMMIGRATION REFORM

November 3, 1988

Tucson, Arizona

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1 And Mr. Dan Gebhart, with the Arizona Restaurant
2 Association.

3 So we will be calling on Mr. Thacker, first.

4 And welcome you to the meeting, sir.

5 And you may proceed.

6 MR. THACKER: Thank you.

7 When this whole law went into effect, you look at
8 it with a certain bit of trepidation, realizing that you
9 are not fully going to understand, at least from the
10 inception.

11 In my business that could dig in the information
12 and find out what is going on.

13 We began applying on November 6, in our particular
14 business, and I called the board of the Southern Arizona
15 Innkeepers Association this morning and basically so
16 nobody had any problems. The members of the association
17 such as ours, perhaps had some type of trance.

18 We had some speaker come in and speak with the
19 people as to what was required. The information was
20 available in our newsletter as to what was required.

21 I find that as I read the newspaper, for example,
22 today that the people that have been having difficulties
23 are not members of our organization. They are people who,
24 basically, have not taken the trouble to find out what is
25 going on.

1 Obviously, the thing is a pain in the butt. You
2 have to require or keep records that we didn't have to
3 keep in the past.

4 It cost me xeroxing money, but, we basically did
5 for the same information in our hotel environment as they
6 are asking now.

7 It's just a question in the past we used to verify
8 and now we have to keep copies and have documents that we
9 keep in records, that's basically the difference from our
10 standpoint.

11 A few things are troublesome, and perhaps, I'm
12 clear from my standpoint dealing with independent
13 contractors is a little bit difficult when they are
14 working on their own or have a license they are employers
15 themselves. And what our responsibilities from that
16 standpoint hiring an individual person such as a
17 contractor, for example, to a layman in your
18 establishment. For one, it's our responsibility to get
19 the documentation for that worker who is doing the job for
20 that independent contractor, even though, we are paying
21 him as another worker, which is a little bit independent
22 and doesn't make a lot of sense.

23 I can see the point for having the law, it's
24 unfortunate, that businesses are in a position of having
25 to basically be the watchdog in order to implement this.

1 And it's a burden, but, I think once you get the
2 system down you start doing -- it's certainly not any
3 worse than the rest of the bureaucracy we have to deal
4 with the government.

5 DR. WHITE: Any questions?

6 SENATOR PENA: Yes.

7 DR. WHITE: Senator Pena.

8 SENATOR PENA: The application for employment, I
9 guess you have a standard application for all your
10 members?

11 MR. THACKER: Yes, sir.

12 SENATOR PENA: How do you determine who may or may
13 not be an illegal alien?

14 MR. THACKER: You ask for the same documentation
15 from everyone across the board.

16 Anybody who applies for the job you ask for
17 the same documentation before we let them go through
18 orientation, they have to provide the documentation and
19 that's the standard documentation that's set forth by the
20 law.

21 SENATOR PENA: Someone who may have been born in
22 Tucson, what kind of documentation would you require from
23 that person?

24 MR. THACKER: Well, I haven't dealt with this since
25 November the 6th of last year.

1 SENATOR PENA: What does the application say on it?

2 MR. THACKER: Well, the application says on it that
3 you need to have proof of citizenship and proof of
4 identity.

5 And, then there is specific criteria that are set
6 out as subsections of that. And that's what we require.

7 And then we have to keep copies of that we actually
8 make xerox copies of driver's licenses and things like
9 that passports, whatever.

10 The documentation is that we are receiving from the
11 employee, Social Security card, we take xerox copies of
12 that. There is cost inherent in that.

13 But anybody who comes on board, we require that
14 before they set foot on the property.

15 We used to actually, you know, before November
16 the 6th last year, we would hire people and get the
17 documentation a week a day after they were hired
18 and complete their file.

19 Now, they don't step foot on the property until
20 they have the information and we've xeroxed it.

21 As far as knowing whether or not that is
22 counterfeit information or if that's information that is
23 not them, we use our best judgement possible. That's why
24 we use the xerox copies.

25 DR. WHITE: Anything further?

1 If not, thank you, Mr. Thacker.

2 Now, I'd like to call Mr. Dan Gebhart of the
3 Arizona Restaurant Association.

4 MR. GEBHART: Thank you for inviting us to be here
5 this afternoon.

6 I'm the owner of Hardy's Restaurants here in
7 Tucson.

8 President of the Tucson Chapter of the State of
9 Arizona Restaurant Association.

10 And I pretty much go along with what John is saying
11 there, but, I'd like to get maybe just a little more
12 specific on a few instances.

13 Initially, when the law came out there was that
14 feeling of here we go again, more government, once they
15 get their foot in the door more bureaucracy, more
16 paperwork, more storage, more cost associated with
17 it, et cetera.

18 We understand the intent and the purpose of the law
19 and are certainly willing to comply with that.

20 I think, what I would like to propose would be for
21 you to look at it through the eyes of a businessman.

22 And look at the cost that is really associated with
23 that. Because, needless to say, it impacts us, who in
24 turn, is going to impact our customers, you, and everybody
25 else out there.

1 So, those cost, needless to say, have to be passed
2 on and they will be born eventually by the customer.

3 Businesses cannot continue to finance the
4 government by incurring all of those costs.

5 Some of the situations that are probably pretty
6 unique to the fast food industry, and particularly to
7 the restaurant industry, but, I say fast foods, because
8 that's where I deal with.

9 The restaurant industry is not a 9:00 to 5:00 job,
10 it's an ongoing situation. Particularly people that are
11 involved in the fast food industry, the assistant managers
12 that come in at the change of shifts at 5:00 o'clock at
13 night, in most restaurants, are young individuals.

14 And, as we know, I don't think there is anybody in
15 this room here that is totally knowledgeable and at
16 sometime or other has not forgot certain things.

17 And we do the best job we certainly can within our
18 industry to train our people so that they're
19 knowledgeable, and that they get all the paperwork filled
20 out, et cetera.

21 I, as an owner, have to go into my restaurants from
22 time to time and check and make sure that the managers and
23 the assistant managers are following up on their work.

24 Again, we are talking -- some of these people that
25 are in the capacity age wise maybe 17, 18, 19 years old

1 that are in charge from time to time.

2 I see as a hindrance to the business, the ability
3 for government to come in and fine me personally or
4 civally if we in fact, don't have those forms totally
5 complied with.

6 Now, we're doing everything we possibly can and we
7 have not ever been cited nor have we ever been audited.

8 But, I'm sure there is going to come a time when
9 some businessman out there, in fact, is going to be
10 audited.

11 And again, he's going to do the best job he
12 possibly can, and again the chains are really great about
13 this, the chains are really informed about the whole
14 process, the restaurant chains, about how the whole
15 process was going to work when it was going to be
16 implemented, et cetera.

17 But, realistically, if you got an individual in
18 there that's young, and let's assume that the manager is
19 on vacation and the assistant manager is doing the
20 paperwork and he forgets, he forgets one form. Well,
21 there is a possibility there that I can be fined, I can be
22 assessed through really not negligence on my behalf, okay,
23 but, on the negligence of somebody that we've trained,
24 but, because of pure human err, pure human err, not trying
25 to falsify that, I could be cited. And I think there are

1 some inequities in that system.

2 It has, in fact, created more paperwork for us,
3 which in turn causes more storage problems that are
4 associated with the job.

5 It also, as John said, cost of business, the cost
6 of going out there and getting xerox copies of all these
7 forms.

8 In the restaurant industry there is a high
9 turnover, particularly, fast foods. And those cost can
10 and do mount up, and they mount up rather significantly.

11 That cost again is got to be born by whom? We all
12 know the answer to that question.

13 What it also entails is that the manager, manager,
14 supposed to manage is in fact spending more and more time
15 doing paperwork and administrative work instead of doing
16 the job out there managing, managing his people.

17 So that we can get better products out for our
18 customers, we can get faster service, we can have better
19 cleanliness.

20 More and more time is being spent with the
21 administration of paperwork, and I'm afraid that's
22 unfortunate. Because our customers really aren't
23 concerned about that piece of paper that's in a file.
24 They are concerned about fast food, quality service,
25 cleanliness, atmosphere, hospitality, and all the things

1 that are associated with it.

2 I have heard from some of the restaurant tourist
3 within the industry that there may be, and again, maybe
4 it's just because our proximity to Mexico, but, there's a
5 feeling among some restaurant tourist that this is really
6 designed, basically, to go after the Hispanic. And I'm
7 not saying that that is the case. Maybe, if we were up
8 in Canada maybe the people that border Minnosota felt that
9 maybe it's specifically for the Canadians, I don't know.
10 But, there is some resentment out there that this law is
11 pretty much targeted at Hispanics.

12 And that is something that I'm sure if you haven't
13 heard you will be hearing, and it's a fact of life out
14 there.

15 And there is some bad feeling about that. And,
16 again, with our proximity to Mexico being only 60 miles
17 away, we employ a lot of people of Hispanic, Mexicans,
18 Spanish, whatever.

19 But there is that feeling, that there is some
20 discrimination going on towards that particular cultural
21 group.

22 As far as the audits are concerned. I talked to
23 one businessman here in Tucson that went through an audit.
24 It was a situation that he -- needless to say, no one
25 likes to take the time to go through audits -- he was not

1 cited at all, he owns a number of restaurants. He was
2 asked to bring in all the material into one local place
3 for his different businesses, although, they were all
4 under one umbrella roof of a title. The audit took place
5 over a two-day period. Everything was fine, he had no
6 negative comments at all about the way he was treated. It
7 was a very very good and smooth operation. So there's
8 been no problems from that aspect of it at all.

9 Again, we know what the intent of the law is, we
10 certainly intend to comply with the law. I just want to
11 point out to you some of the handicaps and restrictions
12 that you are placing upon the businessman to some extent.

13 Thank you.

14 DR. WHITE: Any questions from the committee?

15 Senator Pena.

16 SENATOR PENA: Is there any recourse when a human
17 err occurs, an automatic fine or --

18 MR. GEBHART: Again, I don't know the
19 interpretation of the law. I don't know how they are
20 going -- if that in fact does happen, I can't tell you.

21 Because, as far as I know, I have not heard of any
22 interpretation coming down that that in fact could occur.

23 Needless to say, because of a human err, that's
24 going to occur. Someplace, sometime, someone is going to
25 get cited, it's going to happen.

1 And I think, you know, if we can make a provision
2 in there, as long as it's not somebody out there
3 deliberately trying to accept falsified records or try to
4 deliberately hire people that are not legal, as long as
5 they do the job of instructing their people.

6 In my case, for example, we have manager's meetings
7 once a week. We bring everybody in we convey what
8 the policies are, the procedures, the rewards, the
9 goals, et cetera, so everybody is instructed.

10 But, I know there will come a time -- and hopefully
11 not in our business, and hopefully not within our
12 industry, but, somebody is going to go on vacation and
13 some young person is going to be left in charge -- and
14 maybe it's only for a week -- but there is probably going
15 to be one or two applicants that that person thought, gee,
16 I forgot to get that, and then all of sudden he comes
17 along and gets audited. And we can be in a bunch of
18 problems, in a bunch of trouble.

19 I hope there is a provision. I don't know the
20 answer to your question.

21 DR. WHITE: Mrs. Whitlock.

22 MRS. WHITLOCK: Mr. Gebhart, with these
23 restrictions and problems, could you see down the road, if
24 not now, a possibility of discrimination against Hispanics
25 in hiring based on the fact that it's such a pain in the

1 neck, and based on the fact that there are all of these
2 requirements, do you suppose -- could you see your company
3 not wanting to hire Hispanics, documented workers?

4 MR. GEBHART: You specifically, said my company,
5 the answer to that is, no.

6 MRS. WHITLOCK: Well, other companies, say other
7 companies?

8 In other words, could this be -- cause another form
9 of discrimination, employment discrimination, because
10 people don't want to bother with all of what you are
11 describing?

12 MR. GEBHART: I think that's a real possibility.

13 MRS. WHITLOCK: We've heard horror stories --

14 MR. GEBHART: I'm sure you have.

15 MRS. WHITLOCK: -- today -- here about other types
16 of employers exploiting these kind of people, not paying
17 them, hiring them under conditions that are less, way
18 less, than desirable. And then feeling that they had a
19 right not to pay them, and that sort of thing.

20 But, at the same time, I'm wondering if companies
21 will just say, I'd rather not have the hassle, or I just
22 won't hire Hispanics.

23 MR. GEBHART: You know, obviously, I would like to
24 tell you that that does not exist but, probably in the
25 real world out there that probably does.

1 We know that there are some people that are just
2 prejudice and no matter what the color of their skin is,
3 whether it's black, white or brown, whatever, there will
4 be people out there in this country, that will just not
5 hire them because of that, so, to some degree, yes.

6 MRS. WHITLOCK: Well, I'm not saying because they
7 are Hispanics for that reason, but, because of this law
8 being as restrictive as it is requiring all this
9 paperwork, if they will try to stay clear of those people?

10 MR. GEBHART: There will be some that will
11 probably do that.

12 DR. WHITE: It made me think of the recent hearing
13 that this committee had in Phoenix. Where we did have a
14 witness who was an owner and operator of a restaurant,
15 it's a small business. And he told a horror story about
16 how his record keeping was simplified or had been in the
17 past by simply throwing away papers on people who were no
18 longer employed by him, that's how he kept his files up to
19 date.

20 So, the day came, when they came down on him and
21 apparently it's going to cost him quite a bit of money,
22 because he was supposed to keep that.

23 Now, the point of this is that I wonder if you
24 gentlemen perceive that there is a difference in the
25 problem whereas between fairly large enterprises such as

1 some people have personnel directors, and others --
2 restaurants have -- you have an owner operator who is the
3 personnel manager, the chief cook, and bottle washer and
4 everything, and on top of all that, now, he has to be the
5 record keeper for the Federal Government.

6 It would seem like that would be a more severe
7 problem for these small businesses than it would be for
8 the larger?

9 MR. GEBHART: No question about it and I think
10 probably realistically the chains are, I think, in good
11 shape.

12 But, I'm sure that there are small operators out
13 there, some basically mom and pop operators out there that
14 maybe are not even aware of this particular law.

15 If they just went into business, they didn't get
16 any information, they just said, well, I'm just going to
17 change vocations -- there's probably people -- I mean
18 that's a reality of life.

19 DR. WHITE: They are in danger of some fairly heavy
20 penalties?

21 MR. GEBHART: Exactly.

22 MR. THACKER: As I mentioned, if you are not a
23 member of our association, of Dan's or of mine, if you are
24 not a member of a chain or something like that, it's very
25 possible that you know nothing about this, if you don't

1 read the newspaper, and if you are just a mom or pop
2 operation.

3 And I think that's where you are running into
4 problems, and you are running into problems not because
5 people are willfully violating the law, they just don't
6 understand what their requirements are, and it's an
7 educational process.

8 If you read the newspaper today you have some small
9 hotels and some small restaurants that have been fined
10 \$500 to \$600, today, for improper record keeping.

11 And \$500 or \$600 to a small restaurant can
12 mean a lot of money.

13 I mean, that can be a question of survival in
14 some of these smaller operations.

15 And, unfortunately, the newspaper article -- and
16 I have no direct knowledge -- doesn't really detail to
17 what extent or whether there was some willful wrong doing
18 there, or if these people just made innocent mistakes and
19 we could have just said, listen, this is the way that you
20 do it. We are going to come back and check you in
21 another six months and hopefully you will be doing
22 it correctly -- if you haven't been doing it
23 correctly -- at that point in time, we are going to fine
24 you, which would seem to me to be a more compassionate
25 way to do things.

1 As far as not hiring Hispanics based on this, I
2 think, again, it's a question of education, in my case,
3 that would be, I think, the last thing that would
4 happen. Because it's no more difficult to get the
5 documentation from a Hispanic than it is from a Wasp
6 and we require the same thing no matter what the
7 nationality or perceived nationality of that person
8 might be or ethnic background.

9 If you walked in we would ask for the same
10 documentation from you that we ask from Dan or from
11 anybody else who we hire.

12 So, it's not any more difficult to hire a Hispanic
13 than it is to hire anyone.

14 MRS. FAUST: Mr. Chairman.

15 DR. WHITE: Yes.

16 MRS. FAUST: Mr. Gebhart.

17 MR. GEBHART: Yes, ma'am.

18 MRS. FAUST: Have you ever estimated the number of
19 hours or the cost for all employees, and if that's the
20 case, do you think it's easier to hold on to an
21 employee rather than to -- you know.

22 MR. GEBHART: I called each one of our managers
23 this afternoon, and I said, give me an approximate cost
24 as to what it's taking. Because, needless to say, it's
25 taking time out of his schedule.

1 MRS. FAUST: Aren't you glad I asked?

2 MR. GEBHART: I'm glad you asked. It takes -- to
3 do the job properly, to verify the ID, to take the time
4 to xerox it out, to go ahead and screen the people
5 properly, what we are estimating, it's taking the manager
6 an average of 10 to 15 minutes per employee to do the job
7 properly. That 10 to 15 minutes for the managers will
8 be in a salary anywhere from a range from 24 to \$36,000
9 a year.

10 So, as you can see we employ an average, in the
11 restaurants right now, of about -- the average fast
12 food chain -- probably 50 to 65 employees is on that
13 payroll.

14 So you can see that that can add up to quite a bit
15 of the managers time being spent.

16 In terms of actual dollars, no, I did not break it
17 down, specifically in terms of dollars, but, I
18 certainly planned to do that, but, I just ran out of
19 time.

20 DR. WHITE: Thank you.

21 MR. GEBHART: You're welcome.

22 DR. WHITE: Any other questions?

23 If not, Mr. Thacker, Mr. Gebhart, we thank you very
24 much for your testimony.

25 MR. GEBHART: Thank you.

1 DR. WHITE: Our final panel is on enforcement.

2 We have a number of people scheduled.

3 We'll find out who is here.

4 Is Mr. Bill Johnston, here?

5 Would you take a seat here, sir.

6 Mr. O'Leary. Mr. Barron. Mr. Ronstadt. And

7 finally, we have Mr. Dupnik.

8 Of course, we'll proceed as we have, and that is to
9 take the names as they appear on the agenda.

10 So, first, Mr. Bill Johnston of the Immigration
11 Service.

12 MR. JOHNSTON: Excuse me, Mr. Chairman, our counsel
13 is here and I prefer that Mr. O'Leary go first. And I'll
14 follow him if that's okay with you.

15 DR. WHITE: That's quite all right.

16 Mr. O'Leary.

17 MR. O'LEARY: Thank you members of the panel.

18 My name is Thomas Michael O'Leary, I'm the sector
19 counsel for the Tucson Sector of the United States Border
20 Patrol.

21 I'm not exactly sure as to what direction you wish
22 us to go into, but in terms of enforcement, obviously, an
23 article appeared in the paper today that said that the
24 Tucson sector had since the inception of the Immigration
25 Reform and Control Act fined 15 employers, that's in the

1 Tucson area and the Phoenix area, as well, our sector
2 covers both those areas.

3 Perhaps, I should address some of the problems that
4 were recently addressed that the employers had that may be
5 of help to you in making your decisions.

6 One, and I think the key thing that we should
7 address first is discrimination.

8 There was an implication or a possibility raised
9 that discrimination could occur especially against
10 Hispanics and especially in this area.

11 I think that's kind of what Congress had in mind to
12 prevent when they included the anti-discrimination
13 provisions of the Immigration Reform and Control Act,
14 which basically tells employers that you got to comply
15 with the law, but, if you comply with it by
16 discriminating against anybody because of their
17 citizenship which is a new category of discrimination,
18 if you do that you are going to be subject to civil
19 penalties and civil suits.

20 And they broadened the jurisdiction, if you will,
21 for lowering the number of employees that an employer
22 needs to employ to three or more.

23 So, I think Congress had this in mind and put in
24 provisions to prevent this by ensuring that the Justice
25 Department would have an enforcement agency. And that's

1 the office of the special counsel located in
2 Washington to enforce that provision, if that would
3 occur.

4 That was expected to be raised, I think, when IRCA
5 was contemplated and, I think that's what Congress
6 intended to put in there to prevent that.

7 Some of the less perhaps serious problems,
8 obviously, that's the most serious. But, less serious
9 problems. Small businessmen, as opposed to large
10 national corporations with personnel directors.

11 True, that they are probably more of a
12 disadvantage to that employer but they are disadvantaged
13 and competing against that employer at any respect.
14 But that's part of the effort that the Immigration
15 Naturalization Service has undertaken since June 1,
16 1987.

17 And coupled that with the idea of minor infraction
18 the young manager or the young assistant manager 17 years
19 old who in his haste to accomplish his mission
20 processes an employee without filling out an I-9 and
21 later on down the line that I-9 is missing at an
22 audit, let's say. Well, Commissioner Nelson of the
23 Immigration Services does have a policy regarding
24 enforcement.

25 One is education: No employer, no employer in the

1 United States will be fined unless that employer
2 received an educational visit, and has been educated
3 in the law.

4 And every employer that has been fined in the
5 United States today, well, let me just lower that and
6 say that every employer that has been fined by the
7 Tucson sector has had an educational visit, in many
8 cases, more than one.

9 Forty-seven citations, during the citation period,
10 the warning period, were issued. Several employers
11 received fines because they had already received the
12 citation.

13 So that's the commission's policy there of
14 education is designed to help the small businessmen, well,
15 it's the large businessman.

16 And the second thing to that is enforcement. We
17 are not looking for minor infractions, we are not
18 looking, you did not date your form, boy, you put that
19 on the wrong line or something like that.

20 What we are looking for is the employment of
21 unauthorized workers, not necessarily illegal aliens.

22 You see illegal aliens can be employed.

23 First of all, any illegal alien employed prior to
24 November 6th, is what we call grandfathered. And they
25 can remain employed by that employer without any

1 sanctions whatsoever occurring, possibly occurring.

2 Second, illegal aliens who may be facing a
3 deportation hearing or in the process of resolving
4 their difficulties with the Immigration Service may
5 have work authorization has been granted to them if
6 they are asylum applicants or something, and that
7 enables them to work in the United States.

8 So, it's the unauthorized worker, the illegal alien
9 who is not known perhaps to the Immigration Service and
10 has not received any type of work authorization and has
11 no authority to work in the United States by the order
12 of Congress. And that's the individuals we are looking
13 for.

14 And, it's only when an employer has employed an
15 unauthorized worker that a fine will ensue. Whether
16 that fine may be for a paperwork violation -- but
17 there is the predicate, the absolute prerequisite, of
18 employing an unauthorized worker before it will trigger
19 a fine.

20 The only exception to that is when the paperwork is
21 absolutely a greivous. And we can define a greivous by
22 looking in Webster and it's serious, it's absolute
23 disregard for IRCA.

24 But, again, coupled with the educational
25 provision the citation period and the commission's policy

1 on enforcement, I think that you can see that those
2 fears may be allay to the businessmen that nobody is
3 going to hit you over the head if you didn't dot an "I"
4 and cross a "T".

5 It's only if you are engaging in the employment
6 of unauthorized workers, knowingly, that this will
7 occur.

8 So, some of that fear we hope will be dissipated
9 if it exist.

10 Most employers who have had contact with the
11 Immigration Service know that.

12 And we've had contact with the Chambers of
13 Commerce and the various Innkeepers Association and
14 they've learned that, and I think that's a guiding
15 principal.

16 If you don't employ an unauthorized worker, if
17 you are just careful enough to ensure that you don't
18 have an unauthorized worker.

19 And the last thing on that. Fraud was mentioned,
20 counterfeit documents. The employer is not the enforcer
21 of IRCA.

22 If the documents are what we call reasonable on
23 their face and nobody expects an employer to run
24 checks with Social Security or the Immigration Service
25 for numbers or anything like that.

1 If the documents are reasonable on their face,
2 but, they turn out to be counterfeit fraudulent and
3 that person is actually an unauthorized worker, the
4 employer, will not be the recipient of the fine, rather
5 the individual will probably be the recipient of a
6 trip to court for prosecution.

7 And, again, that's part of IRCA. Which allows
8 that type of prosecution.

9 So, I think, sometimes, I don't give as much
10 credit to Congress as perhaps they deserve. But, in
11 this case they did look at the complete picture here
12 and try to cover all aspects of it, to try to cover
13 any kind of retrenching to discrimination by the
14 anti-discrimination provision and try to ensure that
15 minor infractions, the undot "I" the uncrossed "T" will
16 not be punishable to stand the tie of illegal
17 immigration by preventing the attraction, the magnet,
18 the employment.

19 That's about all I have, right now. I've taken a
20 lot of time. I apologize for that, but, I'll turn it
21 over to Bill.

22 DR. WHITE: Well, let's see if any member of the
23 committee has any questions before we move on.

24 SENATOR PENA: Mr. Chairman.

25 DR. WHITE: Yes, Senator Pena.

1 SENATOR PENA: Do I understand that the Immigration
2 Services is the only agency that is authorized to enforce
3 the Act, is that correct?

4 MR. O'LEARY: The employer sanctions provisions,
5 that's correct.

6 The Justice Department through the Immigration
7 Service. The Immigration Service includes both the
8 Immigration Naturalization Service and the United States
9 Border Patrol.

10 SENATOR PENA: You stated that you folks are not
11 looking for minor violations.

12 We had testimony today, as a matter of fact, many
13 of the folks that testified today stated that the local
14 police are stopping and questioning Hispanic-looking
15 individuals, and after they are satisfied that they have
16 not broken a local law they are referred to you folks
17 for prosecution and deportation.

18 Is there any truth to that?

19 MR. O'LEARY: Is there any truth to the fact
20 that sometimes we get calls from other law enforcement
21 agencies that there might be a possible undocumented
22 alien. Yes, there is truth to that.

23 SENATOR PENA: Are you authorized to do that under
24 the Immigration Act?

25 MR. O'LEARY: They would not necessarily stop

1 an alien because he's an alien. They may stop him for
2 another reason and, I think, these gentlemen may be
3 better able to address that.

4 There may be various reasons why an individual is
5 stopped, but, if during the course of that stop they
6 become aware or suspicious that he is an undocumented
7 alien they would turn them over to us, they would
8 call us in to do questioning.

9 And we may question them and find out that they
10 have a hearing scheduled in Phoenix, and they are
11 released.

12 Or if they are actually undocumented or unlawfully
13 in this country, they may be apprehended.

14 So, there seems to be an implication that the
15 initial stop is somehow or other improper. I don't
16 know if that's the case. I trust that it's not.

17 The law enforcement agents that we normally deal
18 with have integrity and they don't engage in that.
19 But, once they are turned over to us to question about
20 their immigration status.

21 SENATOR PENA: In one case and there was several.
22 The one about an individual Hispanic-looking -- that met
23 some kind of profile -- was standing at a Circle K
24 and a local officer questioned him, standing there, and
25 determined that there -- I guess standing there was not

1 a violation of the local ordinances, but, referred him
2 to the Immigration Services and they came and picked him
3 up.

4 MR. JOHNSTON: Excuse me, Senator.

5 Is this question -- is this in the context of the
6 Immigration Reform and Control Act, or just overall
7 policy?

8 There is nothing in the -- the Reform and Control
9 Act -- was a multifaceted piece of legislation. It
10 attacked, you know, many issues regarding illegal
11 immigration, but, it didn't address what we are talking
12 about.

13 SENATOR PENA: What I'm trying to determine is --

14 MR. JOHNSTON: There is no police power granted in
15 the employer sanctions, in section 274 of IRCA.

16 In other words, the police and the Sheriff were
17 not given powers to enforce I-9 requirements or employees
18 at a worksite.

19 DR. WHITE: Well, Senator, I wonder if this
20 question might properly be addressed to -- we do have
21 two local law enforcement people with us, perhaps
22 either or both of them would like to address what the
23 relationship is between local law enforcement and the
24 federal enforcement of the Immigration statutes.

25 Would either of you gentlemen like to do that?

1 MR. DUPNIK: I'm Clarence Dupnik, Pima County
2 Sheriff.

3 As Mr. Johnston was saying the 1986 Act really has
4 no impact on local law enforcement, it doesn't change
5 anything.

6 We don't have any authority, we don't have any
7 responsibility.

8 If you're question is: What is our general policy
9 reference to the issue of illegal aliens, generally, I
10 could response to that.

11 SENATOR PENA: Would you, please.

12 MR. DUPNIK: Sure.

13 Our policy is not to deliberately get involved
14 in instances of enforcing the Immigration Act.

15 There are circumstances where police officers
16 routinely in the course of their duties come across
17 people who are considered to be suspicious for one
18 reason or another.

19 Ethnicity is not an issue. People of all races,
20 national origins, get involved in circumstances which
21 are either reported to us by citizens, merchants, or
22 merely observed by officers on patrol to be in
23 circumstances that are suspicious, and in those
24 situations they routinely stop and interview people,
25 ask for identification and so forth. And I would

1 imagine that in most instances if it turns
2 out during the course of that interview the
3 person is determined to be an illegal alien, in some
4 instances, and I would think most, the border patrol
5 is notified.

6 In the jail, when prisoners are brought in who are
7 determined to be illegal aliens, the border patrol is
8 routinely notified.

9 But, the 1986 Act to us is a non-issue.

10 MR. ZAZUETA: May I follow up on that?

11 DR. WHITE: Yes.

12 MR. ZAZUETA: Is there problems with the
13 jurisdiction of the federal and local Sheriff's
14 Office?

15 MR. DUPNIK: No. There is no problems at all
16 because we don't have any jurisdiction. We have
17 neither any jurisdiction nor any responsibility.

18 To us the issue of illegal aliens is a non-issue in
19 local law enforcement, in my opinion.

20 I can understand -- and we do get complaints not
21 only from Hispanics, but we get complaints from
22 people of all ethnic backgrounds, that they were
23 stopped and interviewed under circumstances that they
24 didn't feel warranted.

25 DR. WHITE: Sheriff, would this be like the

1 classic case of the motorist who is stopped because
2 his tail light is off and then they find a body in
3 the trunk?

4 In other words, the question, because an officer
5 felt there might be a certain violation, and then he
6 finds that there is no such violation, but, there is
7 another one.

8 Some of the witnesses that we have heard seem to
9 feel that local law enforcement officers when they are
10 unable to make a case for violation of any local laws,
11 but, they say, well, this guy looks like an illegal
12 alien, so, we'll turn them in. And their feeling is
13 that this is somehow improper. So, that's, I suppose,
14 the issue we are dealing with.

15 MR. DUPNIK: As I said, when it is determined that
16 the person is an illegal alien, I would think that in
17 most of the cases the border patrol is notified.

18 MRS. FAUST: Mr. Chairman.

19 DR. WHITE: Yes.

20 MRS. FAUST: Sheriff Dupnik, and also Chief
21 Ronstadt, do you have specific guidelines or
22 criterias by which you quote, unquote, pick up and
23 arrest these suspicious Mexicans?

24 MR. DUPNIK: We do not pick up and arrest
25 suspicious people, period. It's against the law. We

1 don't do that.

2 MRS. FAUST: Well, you just stated that there are
3 certain circumstances?

4 MR. DUPNIK: Under in which we interview people.
5 It might be during the course of that interview
6 that a person admits that they are in the country
7 illegally.

8 MRS. FAUST: Today we seem to find contradictions
9 to what you are saying about picking up, unless it is
10 hearsay.

11 And it was mentioned earlier we asked if you had
12 guidelines and criterias. That's why I bring it up now.

13 MR. DUPNIK: We do.

14 MRS. FAUST: Would it be to much to ask --

15 MS. DUPNIK: No, I'd be happy to furnish the
16 commission with whatever we have on the subject.

17 DR. WHITE: We'd appreciate any documents that you
18 may have.

19 MR. DUPNIK: But, I'm only speaking for the Pima
20 County Sheriff's Department.

21 Leonard Deech who is the Deputy Chief from the
22 Tucson Police Department is here to speak for his own
23 agency.

24 And I certainly don't presume to speak for him.

25 MRS. FAUST: Oh, that's why I addressed it to both

1 of you gentlemen. I didn't realize -- I'm sorry.

2 MR. RONSTADT: In response to your question.

3 I think there is a bit of confusion when an
4 officer contacts a citizen. By our definition an
5 officer can contact a citizen at any time. We can
6 walk up to anybody and say, "Hi, good afternoon, how's
7 it going?"

8 That individual can, if they so desire, can say,
9 "Get lost," and tries to walk away from us. So be it.
10 They say it and then they walk away from us and
11 that's the end of it.

12 If, on the other hand, we walk up to an individual
13 and we say, "Hi, good morning or good afternoon, how are
14 you?" but we have probable cause to believe that that
15 individual either has or is committing a crime and
16 the individual says, "Get lost" and tries to walk away,
17 that individual will be allowed to walk away.

18 Now, that is an arrest. The distinction being you
19 must have some "PC" probable cause to hold an
20 individual. But, as far as making contact with an
21 individual, we strongly believe that we, like anybody
22 else, can contact anyone. We can walk up to the door and
23 knock on the door and if they say, "I don't want to
24 talk to you and if we do not have any PC, we turn around
25 and walk away.

15
1 So there is a distinction there between a contact
2 and a situation where we are going to have an arrest.

3 And the key there again, is the probable cause.

4 In the Tucson Police Department our policy is
5 almost identical to what Sheriff Dupnik indicated.

6 Our policy states that if in the course of normal
7 police business we come across someone who cannot
8 identify themselves and we believe to be an undocumented
9 alien, we will contact the border patrol and turn the
10 individual over to the border patrol.

11 Our rule and reg goes on to state that if the
12 border patrol can respond in a reasonable length of
13 time we will hold the individual for the border patrol.

14 We specifically identify that reasonable length of
15 time as twenty minutes. If in contacting the border
16 patrol they indicate that they cannot arrive within
17 twenty minutes, we then gather the information from the
18 individual, it's called an FI card, field interview card,
19 and put the information on the card and forward it to the
20 border patrol.

21 We use these information cards not just for this
22 purpose but for any field interview. And we try to get
23 the individual's name, address, place of business,
24 et cetera. If the individual has no identification
25 they can give us any name that they desire to. We

1 have no way of cross-checking at that point.

2 We put on the card whatever they give us.

3 What I'm saying in essence is, I'm sure in many
4 contacts when we do an FI card the individual does not
5 tell us their name, their correct address, their business
6 address, et cetera, and, therefore, the card cannot be
7 followed up on by the border patrol nor can it be
8 followed-up by our detectives later if they believe
9 that individual was in a location where a crime had
10 occurred and may possibly be a suspect relative to
11 that crime.

12 DR. WHITE: I believe Mrs. Whitlock has a question.

13 MRS. WHITLOCK: Chief Ronstadt, looking at my notes
14 from an earlier person who was testifying before us. An
15 attorney with ACLU mentioned specifically a raid by the
16 local police of a trailer court where they picked up
17 and turned over to the INS about 15 individuals and
18 according to this ACLU attorney she said that there is a
19 police memo saying that they would be starting to
20 pick up undocumented workers when they stop people to
21 check to see if they were here illegally.

22 MR. RONSTADT: No. We do not stop people to find
23 out whether they are here illegally, that's not our
24 job.

25 I've never heard of such a memo. I'd like to

1 know what the raid is about because -- I would take a
2 wild guess on what went on there.

3 We had information about a dope situation. We
4 probably -- because that's about the only time we have
5 quote, unquote, raids. We probably hit the trailer park
6 relative to the dope situation. And I don't know
7 whether we arrested anybody because they had dope
8 there or because they were trying to sale dope to us,
9 et cetera, et cetera, et cetera.

10 But, it would not surprise me that in the course of
11 that investigation we may have come across some
12 people who did not have any identification and may have
13 called the border patrol.

14 Again, that's a situation that I just described
15 that is in the normal course of police business.

16 But, simply because somebody appears to be of
17 Hispanic origin, our officers do not stop them on the
18 street and say show me your green card, show me some
19 ID, if you can't show me some ID, I'm going to call the
20 border patrol.

21 That's not our job. That's not our function.

22 DR. WHITE: Mr. Johnston, we haven't heard from you
23 yet. Do you wish to speak?

24 MR. JOHNSTON: Yes, I'd like to return to the topic
25 we were invited for today, the IRCA.

1 I'm going to be very brief, and if you have any
2 questions.

3 I'm with the Immigration Service in Tucson.

4 That does not belong to border patrol. We have the
5 investigations, examinations, inspections, and deportation
6 unit.

7 But, we do much of the same work, as a matter of
8 fact, in some cases duplicate the same work at a much
9 smaller scale. We are a small office.

10 When IRCA was passed in November of 1986. I was
11 one of the sceptics, I was probably the only one in the
12 Immigration Service that didn't like sanctions and
13 thought they wouldn't work and thought they'd be
14 difficult, and I have since become a convert with the
15 emphasis on education with a staff of between two and
16 three in my investigations unit.

17 We managed to contact 6,713 people since November
18 of 1986. And my observations in dealing with the
19 employers and employer groups was that they did not
20 find it burdensome, which is one of the predictions,
21 it would be a burdensome test. We had a very good
22 booklet presented to the employer with a personal
23 presentation.

24 Most employers seemed to feel that it was an
25 extremely easy form to fill out, because as luck

1 would have it we followed very close behind the
2 W-4, and I guess by comparison it was easy.

3 We have found only one case in all the 6,713 that
4 we did where somebody said, "Get out, we don't want
5 to talk to you, get out of my door, we just don't want
6 anything to do with it." All the rest were receptive
7 they gave us time, some came down to our office. Many
8 requested extra booklets and many requested us to go back
9 and talk with various groups that were in a similar
10 business.

11 So, the first thing I was surprised at is that the
12 fact that most employers said, if it's the law, we'll do
13 it, maybe we're not crazy about it, but we're glad to
14 do it and it isn't as bad as we thought.

15 The second thing I noticed was that -- and I was
16 concerned about discrimination, I'm sure we all are --
17 -- once we emphasized -- the policy was to emphasize
18 that this law applied to everybody, you know, with the
19 exception of contract and casual labor, that it didn't
20 matter whether you were Anglo, Hispanic, Oriental or Black
21 or anything else, it did apply to whatever employee came
22 into your employment. And once that was understood and
23 the employer realized that he was not an immigration
24 enforcement officer, I think that did a lot to ease the
25 way.

1 And, so, I myself am a convert. And I talk to a
2 lot of employers almost daily and when we went back and
3 enforced under a program and did randomly went to
4 employers for no other reason other than a random
5 selection was made, we found almost all in compliance and,
6 we found minor technical violations and we dealt with
7 those minor technical violations the same way we do if
8 someone makes an inquiry. We told them how to correct it
9 and didn't take any enforcement action whatsoever.

10 As far as the new law, the commission did mention
11 in their invitation for us to speak today they did discuss
12 the legalization sections, which, of course, is a vital
13 part of it.

14 And here in Tucson where we don't have a huge
15 illegal population, we did get 7,740 applications from
16 aliens who have lived here in illegal status since 1982.

17 In addition, we received 7,648 applications from
18 the seasonal agricultural workers. Those who worked in
19 the fields for 90 days in any one of the years specified
20 in the act.

21 So we think that the educational effort and the
22 work with the designated agencies that were certified to
23 help out in that effort led to a pretty good turn out.

24 We feel confident that every single person that was
25 eligible to apply knew about the law and could make a

1 choice whether to come and apply for it.

2 Although, I don't work with the legalization office
3 and by law our operation is segregated from that
4 operation, I'm a little bit familiar with it. And I think
5 we made a very good effort in this area towards education
6 in both of those areas. So with that, I don't know
7 anything but border patrol.

8 DR. WHITE: Any questions?

9 MR. ZAZUETA: Yes, sir.

10 On the legalization, most of the testimony this
11 morning was opposite of your understanding. They said
12 that there was a lot of confusion, misunderstanding, a lot
13 of information did not get out and it was too late and too
14 little from the QDE and from the legal lawyers that
15 talked to us this morning, that testified this morning.

16 Why was that, do you know why there was all that
17 confusion and misinformation?

18 MR. JOHNSTON: I don't agree with the premise. Of
19 course, there is always confusion, not only confusion, but
20 there is also development and regulations evolve as a
21 result of the legislation. But, I don't think it was,
22 considering the short amount of time that we had to
23 implement that, you know, six months before our first
24 application could be accepted -- I think that the
25 efforts through the QDEs, through the communities,

1 through the spot commercials, through the media, and
2 just getting the word out in the communities -- I
3 thought it went out rather well. I don't agree with
4 the premise. So, I can't answer why there was
5 confusion.

6 And as I said, here we are in a city where -- this
7 city is not a magnet for the undocumented because
8 of the nature of the employment in this city.

9 We don't have the -- you know, we don't have the
10 big agricultural operations, we don't have the clothing
11 factories, we don't have the turkey farms, and chicken
12 ranches and stuff like that where traditionally there
13 is lots and lots of undocumented working. And to
14 have 15,000 people come forward and apply, doesn't
15 sound like there is very much confusion. I'm sure it
16 could happen, but, it certainly wasn't through any lack of
17 effort to get the word out.

18 DR. WHITE: Mr. Barron, we haven't heard from you
19 yet.

20 MR. BARRON: Well, my name is Benny Barron, and I'm
21 Assistant Chief of the Border Patrol, Tucson Sector.

22 The Tucson sector includes almost all the State of
23 Arizona. And we have some ten border patrol stations
24 under our management with the headquarters being here in
25 Tucson.

1 And I have management responsibility for this area,
2 for IRCA, for the enforcement of the Immigration Reform
3 and Control Act.

4 However, our counsel, Mr. O'Leary, has pretty well
5 stated our case. He has pretty well answered some of the
6 questions and fears that we heard as we walked in to
7 the session here.

8 I don't know what I could add to that. I can
9 certainly answer questions if you like.

10 Mr. Bill Johnston of the Immigration our
11 counterpart here has added a great deal as far as
12 legalization goes.

13 I would like to reiterate if I might.

14 That the border patrol in the past year has
15 educated, has made more than 30,000 educational
16 visits to employers in this area of responsibility, in
17 the State of Arizona excluding two counties to the
18 far west that belong to the Yuma sector.

19 And we continue to educate employers on a daily
20 basis now at the rate of about 150 to 200 per week.

21 So, educational visits to employers is done every
22 day. We make contact sheets on those places of
23 employment and they are kept on file.

24 Any time we apprehend an illegal alien who is
25 employed we first check for a contact sheet as to

1 whether that employer has been educated or not. And if
2 he hasn't we do that educational visit at that time and
3 no further action.

4 If he has been educated then we do an
5 inspection of the I-9s and consider whether the violation
6 is grievous enough to warrant an administrative fine.

7 Quite often it results in a warning letter only.
8 It is way down the road and usually after multiple
9 violations before any employers are ever fined
10 administratively.

11 So the commissioner's policy, just to
12 reiterate Mr. O'Leary words, the commissioner's
13 policy to enforce the employer sanctions portion of
14 IRCA in a fair and impartial manner is being done at
15 least in this sector. And I can only speak for this
16 sector.

17 I think unless you have some questions. I think --
18 I just wanted to reiterate that part.

19 One other point I wanted to make and that is:

20 As far as discrimination goes on the employers
21 visit, on the educational visit to the employer, we not
22 only advice them of the anti-discrimination section of
23 the act, but, we also give them posters to post on
24 their bulletin board in their business office or their
25 coffee room or whatever they may have where employees

1 congregate.

2 And the poster very clearly lists the name and
3 address and phone number of our special counsel who
4 prosecutes for that violation, discrimination and the
5 hiring.

6 And apart from that -- and we too will take the
7 complaint for the employee if they feel like they have
8 been refused employment based on discriminatory
9 reasons we will take the complaint and report it to
10 the special counsel.

11 So, that's pretty well covered and I think very
12 fairly.

13 Unless you have questions of the border patrol.

14 DR. WHITE: Any questions?

15 SENATOR PENA: Does the border patrol issue
16 voluntary departure documents?

17 MR. BARRON: Yes, sir.

18 SENATOR PENA: Now, we heard testimony today
19 that often folks are not given total and complete
20 information and are coerced into signing a voluntary
21 departure document. Would you enlighten us on that?

22 MR. BARRON: That is a common complaint,
23 however, it's not true.

24 At least in this sector the Tucson sector.
25 We have some very strict guidelines on how -- first

1 of all voluntary departure is a two-way street.

2 First of all, the service has to agree to allow
3 an alien to return to his or her home country
4 voluntarily in lieu of deportation.

5 Secondly, the alien has to agree to returning
6 to his or her home country in lieu of deportation.

7 So it requires, that number one, we are an
8 officer of service agree and sign a document that
9 that's being agreed to and the alien has to agree and sign
10 the same document.

11 We have some very strict guidelines as to how that
12 is presented. It's presented in Spanish and in
13 English, it's written in Spanish and in English. It's
14 presented verbally, it's presented in written form,
15 it's signed.

16 There are numerous safeguards on any type of
17 coercion or force being used. Not only that, we have
18 disciplinary measures in place and an officer subject
19 to disciplinary action, if it can be shown that he or
20 she forced or coerced an alien to accept voluntary
21 departure.

22 Now, after having said that, I'd like to also say
23 that it behooves an alien unless they have long
24 standing residence in the country, unless they have
25 a substantial amount of equity in the country, it

1 behooves them to take the voluntary departure, because
2 there is no formal deportation. A formal deportation
3 and entry, an illegal entry, into this country after a
4 formal deportation is a criminal violation.

5 An illegal entry into this country after a
6 voluntary departure is not, it is a misdemeanor as
7 opposed to a felony. Let me put it that way. They are
8 both criminal violations. But, the misdemeanor hardly
9 ever is prosecuted. The felony is almost always
10 prosecuted.

11 So, you know, there are safeguards in place. And
12 there are some very strict guidelines, and there are
13 disciplinary measures for violation of it on the part of
14 the officer.

15 MR. O'LEARY: May I add something to that?

16 DR. WHITE: Go ahead.

17 MR. O'LEARY: Our officers are also instructed and
18 it's part of the requirement of the interview that
19 they question the alien as to whether that alien
20 has a prima facie case for legalization.

21 Well, legalization is over now, but during the
22 period of legalization, for legalization or whether
23 they have a prima facie case for SAW status, the
24 special agriculture worker status. And if they do,
25 that would prevent voluntarily departure.

1 We would basically tell them where to go to
2 file their claim. So, that is also covered in detail
3 buy the officer.

4 And I think that's pretty critical because part of
5 complaints may revolve around I was eligible to stay
6 in this country and I got forced to take voluntarily
7 departure.

8 Again, all the safeguards that we can put into
9 place are there. The form is written, the individual
10 has a right to have a deportation hearing, or in case if
11 he is eligible for the benefits allowed by IRCA
12 would be shown or told where the legalization
13 office is, where they could apply. So, that's an
14 additional safeguard.

15 SENATOR PENA: That flies in the face of the
16 testimony that we have heard today.

17 MR. O'LEARY: Well, that testimony flies in the
18 face of my testimony.

19 SENATOR PENA: They have a complete packet they
20 have already qualified, but, one of your officers has
21 insisted that they be, in lieu of deportation, that
22 they sign a voluntarily departure document, and
23 they're gone.

24 We've had that testimony here today by several
25 people.

1 DR. WHITE: As in a testimony from one person
2 that an individual was told that if you don't sign for
3 voluntary departure, we are going to throw you in
4 jail and keep you there for a while.

5 And I take it, that you would say, that that is
6 something that, as far as you know, it doesn't happen.

7 Is that true?

8 MR. JOHNSTON: Let's start at the beginning. The
9 first -- sometimes these get embellished with time after
10 encouragement from people that have an agenda they want to
11 get across. I see very few.

12 For instance, I've been here for eight years,
13 I've never been sued for a civil rights violation.
14 None of these cases have gone to court because of
15 some greivous action on the part of one of my
16 officers.

17 It might be, you know, somebody might want to
18 make the case that when we've offered somebody their
19 options.

20 When you offer somebody an option and you say
21 look it, okay, these are the facts, you are a native
22 and citizen of such and such a country. The information
23 that we generally go on an Order to Show Cause
24 which begins deportation proceedings.

25 You say, yes, and you entered the country by

1 jumping the fence and you have no spouse here or
2 child here or anything that might get you -- now you
3 have the opportunity of a deportation hearing to
4 adjudicate your ability, your right to remain in
5 the United States or because you are a person of good
6 moral character and you meet the statutory
7 requirements you may leave voluntarily.

8 Now, that's not coercion, that's giving someone
9 their option.

10 And, as Mr. Barron said, they are given in writing
11 and in the language the person speaks, not only that, but
12 on the form itself before it's signed they're notified
13 quite specifically. They can change their mind at any
14 time before they leave the United States, that their
15 option to receive voluntary departure can be revoked on
16 their part, you know.

17 But this brings me to the second thing.

18 I can't say that a specific instance that you
19 referred to never happened. But to me -- the form --
20 there's a form there that if somebody's right to a
21 hearing has been violated there is an appropriate
22 form for that.

23 But, there is no reason why anybody has to be
24 tricked into taking either voluntary departure or a
25 deportation hearing.

1 There is enough business of both types out there,
2 that we have to turn it away. If somebody walks into
3 my office today, and you can ask anybody from the Tucson
4 Ecumenical Council of Southern Arizona Legal Aid, ask
5 them when they testify, how long it takes if they walk in
6 and say I want to be deported, I want to be put under
7 deportation proceedings, please issue an Order to Show
8 Cause, ask them how many months they have to wait
9 before I'll even respond and set up an appointment
10 for them to come in and be OSCed.

11 If somebody right now asks to be put under an
12 Order to Show Cause, I probably wouldn't even
13 accomodate them in the same day.

14 They would be put on a waiting list and OSCed
15 at some later date. Because there are instances
16 where people want to be under deportation proceedings
17 to grant some form of relief.

18 So this business of having to trick and
19 coerce in order to either get somebody in or out of
20 a deportation hearing, although, nobody can say it
21 doesn't happen or never happened, I'm just not
22 understanding the reasoning behind it because
23 there is enough of both type cases to last us the
24 rest of our careers.

25 I don't see the reason why anybody would want

1 to do that.

2 DR. WHITE: Any other questions?

3 MR. ZAZUETA: One of the problems that was brought
4 up this morning, very clearly, INS had a lot of problems
5 changing gears from an enforcement type of agency,
6 to a kind of deportation agency to the amnesty
7 type of agency. Do you agree with that or disagree?

8 MR. JOHNSTON: No, because we've always worn two
9 hats. We've always been an enforcer of the Immigration
10 and Nationality Act.

11 Under that Act benefits such as Immigration or
12 citizenship or whatever the benefits, have always been
13 there and denial of benefits have always been there.

14 And really, for instance, we adjudicate in the
15 western United States, we have one office that
16 adjudicates 50,000 applications for benefits a month.

17 People bring in their parents their mothers, their
18 kids their brothers their sisters, employers bringing
19 in temporary and permanent workers to the United
20 States.

21 We had a form, we've had forms of legalization in
22 the past. One time it was called registry, another time
23 it was called creation of record for people that had
24 been here before specific dates before 1948, before
25 1924, there was a date in the 30s.

1 We've always worn a service hat and we also had an
2 enforcement hat. So, I don't think it took any big
3 switching gears.

4 I think because of the magnitude of the
5 legalization program that we had to get the word out
6 that it was not an enforcement trick.

7 In other words, we are not inviting people in to
8 apply for one thing and they get a deportation as
9 a result. We had to get that message across.

10 And, I'm not so sure that we had to change our
11 gears, we always did it.

12 Most of us individually in the service have worn
13 both those hats. Most of us started in the border
14 patrol and wound up as inspectors, examiners,
15 adjudicators, some of us have gone from border
16 patrolman to immigration judge. And we've always worn
17 those hats. It's just a matter of applying those
18 laws, whether it's to get somebody in the country or
19 somebody out, it's still the law.

20 DR. WHITE: Since we've heard so much about this
21 relationship between federal and local enforcement
22 before we leave this, I'd just like to mention one more
23 thing and ask for your opinions.

24 Some of you, probably all of you know, there are
25 certain communities in California -- Berkley, is one,

1 that specifically comes to mind, but I know there are
2 others, where the authorities there have announced
3 publically that their police agency will not collaborate
4 with the Federal government enforcing immigration
5 statutes.

6 Now, why they have done this, I don't know, various
7 reasons might occur.

8 But, my question would be to this effect:

9 To what extent do the federal authorities depend on
10 the collaboration of local law enforcement agencies,
11 and what would be the effect in your jurisdiction, if
12 the same thing happened here, and the Chief of
13 Police, and the Sheriff, said, we are not going to turn
14 anybody over to the border patrol or to INS?

15 MR. JOHNSTON: Okay, first time we start with --
16 we talk about collaboration.

17 Part of IRCA -- and one of the parts you very
18 rarely hear about -- calls for the expeditious removal of
19 criminal aliens from the United States.

20 Most of our dealings -- almost all of our dealings
21 with both the Sheriff's Department and the Police
22 Department -- most of what I consider an excellent
23 relationship, deals with illegal criminals or criminal
24 illegals. And these are people that are either permanent
25 residents of the United States or people that don't have

1 any documents -- how to scrape with the State or local
2 authorities and are either being released from jail or
3 they are in prison.

4 And we depend on that collaboration in order to
5 process these aliens for their well-deserved removal from
6 the United States.

7 And there is -- we depend on them for notices of
8 arrest. And from the courts we get J and Cs, Judgements
9 and Convictions. And then from the institutions
10 themselves, we get notices of release on aliens we put
11 detainers on. So their cooperation is crucial to the
12 removal of people that are a danger to our communities.

13 As a matter of fact, here in Tucson, we are
14 living in a dream world, because of the excellent
15 cooperation we get when it comes to criminal aliens
16 from both those agencies.

17 So, their cooperation for the drug dealers and
18 dangerous criminals breaking and entering aggravated
19 assault are all just crucial to our removal in that
20 program, that is mandated by IRCA.

21 DR. WHITE: What about the non-criminal aliens?

22 I would suppose that most of the people who are
23 objecting about this whole business would say that
24 they don't care about dope dealers or criminals of
25 any sort, that they were simply concerned with people

1 whose only crime was illegal entry into the United
2 States.

3 Is there a difference here?

4 MR. JOHNSTON: I don't know. My office would only
5 deal with the criminals.

6 DR. WHITE: I wonder if either the chief or the
7 sheriff would have any comment on this subject of
8 collaboration.

9 You're feeling about the way some of these
10 communities have said it's none of our business --

11 MR. DUPNIK: Is the question one of establishing a
12 sanctuary, is that it?

13 DR. WHITE: No, I think that would go to far.

14 They are simply saying -- I'm not here to
15 judge that -- it's not our business, we are not here to
16 enforce federal laws, we are here to enforce the laws
17 of the State of California and of our municipality,
18 and, therefore, we are not going to be involved.

19 MR. DUPNIK: Well, I think that's almost our
20 policy now.

21 And I think I can speak for both agencies.

22 I spent 20 years with the Tucson Police
23 Department prior to going to the Sheriff's Department.

24 DR. WHITE: Well, I'm not quite sure.

25 You said that you would turn people over if

1 you apprehended people and you found out that they
2 were illegal aliens, and you would turn them over to
3 the border patrol.

4 MR. DUPNIK: That's right. That's the only
5 exception. But we make no effort to go out and
6 identify illegal aliens.

7 DR. WHITE: But, you said, that they would take no
8 interest in whether a person is an illegal alien and
9 will not turn them over and will not do anything to
10 them unless they have violated a state or federal
11 law. That clearly is not your practice?

12 MR. DUPNIK: That's not. That's correct.

13 DR. WHITE: Does anyone else want to comment on
14 this?

15 MR. BARRON: I'd like to say a couple of things if
16 I might, with your invitation, of course.

17 DR. WHITE: Sure.

18 MR. BARRON: The illegal aliens that are turned to
19 us the border patrol by the Pima County Sheriff's
20 Department or the Tucson Police Department is almost
21 always in direct result of some violation. Either it
22 may be something as simple as a traffic violation,
23 however, it's a violation. It may be something
24 considerably more serious too, and quite often most often
25 is, all right.

1 And the local authorities both the Sheriff
2 Department and Police Department, to my knowledge, when
3 they learn that these individuals are in the country
4 illegally will forego prosecution for the local violation
5 as a rule and turn the individual to us with deportation
6 in mind. For a number of reasons, and the reasons are
7 obvious, you know, the jails are full, the courts are
8 full, et cetera.

9 And almost without exception -- from my experience,
10 and I have been in this sector 5 years, I have 25 years
11 with the border patrol -- almost without exception, we
12 have turned illegals who have for some reason
13 violated some law that caused them to come to the
14 attention of the local authorities, either the
15 Sheriff's Department or the Police Department, and
16 that's why we are called. Either that or in some
17 instances the officer in the field know that border
18 patrol units are also on the street and are patrolling
19 and are available, and once in a while the local
20 officer encounters individuals who speak Spanish only,
21 and they need us for interpretation.

22 But, apart from that, and it turns out that they
23 are illegals and we take custody of them.

24 Apart from that, they've almost all without
25 exception committed some sort of violation.

1 There is no shot-gunning on the street, so to
2 speak, because you or you or you appear to be Hispanic, we
3 don't pick you up and hold you for the border patrol, that
4 does not happen, to my knowledge.

5 DR. WHITE: Any other questions?

6 MR. ZAZUETA: There's been testimony today on the
7 State Legalization Impact Assistant Grant, are you
8 familiar with that?

9 That's where you have education and civic
10 requirements. That there has been some confusion, again,
11 on 30 or 40 hour requirements and that there has been a
12 lot of bureaucracy in getting the funds out.

13 What's been the problem as far as INS is concerned?

14 MR. JOHNSTON: By law the people or the branch of
15 INS that enacted sections 210 and 245-A for the seasonal
16 agriculture workers and for the legalized immigrants is a
17 segregated operation from our operations and, to the best
18 of my knowledge, nobody from that operation was invited to
19 this hearing.

20 At least I called them and they were not invited
21 and not aware of the hearing.

22 Knowing that there would probably be a question,
23 and they all happen to be in California. This Phase II,
24 my understanding is the regional office that is
25 adjudicating applications for certifications to meet the

1 educational requirements, you know, to the entities that
2 are going to give the English classes and civics classes,
3 what we used to call civic classes, they are being
4 generously awarded.

5 I also called our District Director, Pat Cain, who
6 is the acting director of the Phoenix District, which I'm
7 a part, and his opinion was that the State of
8 Arizona is satisfied with their cut of the pie,
9 when it comes to the funding.

10 So, you are just going to have to ask somebody
11 that -- I'm not aware incidental to my operation, as to
12 any dissatisfaction in that area.

13 And, as I said, nobody from that separate and
14 distinct operation was invited here today.

15 DR. WHITE: Anything else from the committee?

16 If not, gentlemen we wish to thank you very much.

17 We have reached the conclusion of the testimony of
18 the enforcement panel.

19 Oh, I'm, sorry.

20 MR. RONSTADT: You asked about our rules and
21 regulations.

22 Before I came I took the time to pull a set of our
23 rules and regs on the pertinent topic, if you are
24 interested.

25 DR. WHITE: Yes, we'll be very happy to have them.

1 Thank you very much.

2

3 For the record, would you state your name.

4

5 MR. GOMEZ: My name is Enrique Gomez, I live in
6 Tucson, Arizona.

7 DR. WHITE: What is your residence?

8 MR. GOMEZ: Tucson, Arizona.

9 DR. WHITE: All right. Would you have a seat and
10 proceed.

11 Mr. Gomez, you may proceed.

12 MR. GOMEZ: My name is Enrique Gomez.

13 I work with a program called El Proyecto, Arizona
14 Sonora.

15 We are an Aids Project that works primarily with
16 Latinos here in southern Arizona and in Sonora, Mexico.

17 The reason why I wanted to take the opportunity to
18 speak today was just regarding the added provision later
19 on after the amnesty program began or the mandatory
20 testing regarding HIV anti-body testing.

21 And mainly along the lines of personally
22 considering mandatory testing to be discriminatory in a
23 sense.

24 And considering the fact that mandatory testing so
25 far has included primarily programs that deal with

1 minorities and over represented by minorities regarding
2 prisons, regarding amnesty, and different programs that
3 require the mandatory testing, just like the Armed Forces,
4 that have an over representation of minorities.

5 So, when amnesty program began, there was nothing
6 that included the mandatory testing for HIV and later on
7 was added on and just seeing that as another -- I guess --
8 another -- regarding the whole amnesty program --
9 something that was entered in, that I thought was
10 discriminatory in a sense -- that all of a sudden this
11 provision was added and people were being asked to submit
12 for anti-body testing.

13 What I found as a result of that, people that were
14 going for the anti-body testing were not educated as far
15 as what it entailed, and a lot of people were delivering
16 sealed envelopes regarding their status from the person
17 they went to, straight to the people who are handling
18 their paperwork.

19 So, what I was seeing was people who -- that the
20 Immigration law did not take into consideration or not
21 much thought, as far as educating people or educating the
22 INS themselves, as far as what this program was going to
23 entail.

24 And not being able to give very clear answers
25 regarding what was going to happen to people who were

1 testing positive regarding the anti-body test for Aids.

2 And I went around and finally started getting more
3 answers from calling San Francisco and New York and
4 nothing really coming down from here in Tucson.

5 So, I imagine the people were not very informed
6 here, even working around the issue of immigration,
7 amnesty, and Aids itself. I imagine the people who are
8 going through the testing were less educated.

9 So, there was a very big concern there.

10 And also that there is no clear policy as to what
11 is going to happen to the people that have tested positive
12 as a result of the anti-body testing, because of their
13 application for amnesty. And that was one of the biggest
14 concerns I had.

15 And I think what a bigger concern would be the
16 policy that would be a result of this because of such an
17 afterthought or poor foresight. I would be very concerned
18 about a policy regarding what's going to happen to people
19 who have tested positive as a result of this mandatory
20 testing.

21 DR. WHITE: Any questions.

22 SENATOR PENA: Do I understand that's a new rule, a
23 new regulation, adopted by INS?

24 MR. GOMEZ: For the mandatory testing, yes. If I
25 understand it correct, it was December.

1 SENATOR PENA: When are they required to do that?

2 MR. GOMEZ: Pardon me. This is for persons
3 applying for amnesty as of December of '87.

4 SENATOR PENA: And it's done at their cost?

5 MR. GOMEZ: Yes. And also there is physicians that
6 they are referred to and that's another question regarding
7 the issue of confidentiality who is the persons who are
8 privy to this information regarding their status, whether
9 it's negative or positive.

10 So these are people who after as of December, all
11 the way through have had to test for the anti-body, for
12 the HIV anti-body.

13 And there is no clear provision as to what is going
14 to happen with these people who have tested positive, of
15 which there have been people who have tested already.

16 SENATOR PENA: How many things are they tested for?

17 MR. GOMEZ: Pardon me.

18 SENATOR PENA: How many things are they tested for?

19 MS. GALLEGOS: There are 33 grounds of exclusion to
20 begin with.

21 DR. WHITE: Medical grounds?

22 MS. GALLEGOS: No.

23 DR. WHITE: How many medical grounds?

24 MS. GALLEGOS: Tuberculosis, HIV, mental illness.

25 MR. GOMEZ: Hepatitis B.

1 DR. WHITE: I'm sure that you know that even during
2 the time when the United States had essentially unlimited
3 immigration in the late '19s early '20s up to 1921 and
4 essentially anybody who wanted to come could.

5 But, there were always some exceptions and one of
6 the major exceptions was that people who were found to
7 have certain diseases were excluded.

8 At that time tuberculosis was a big thing. And,
9 people, immigrants arriving and asylums were routinely
10 examined by physicians, government physicians, and if were
11 found to have certain diseases were excluded.

12 And it's hard to compare, let's say, tuberculosis
13 in 1890, with Aids in 1988, as to the degree of
14 seriousness, but, clearly in both cases you are
15 dealing with very serious public health problems.

16 And one would have to assume that in all
17 likelihood there is going to continue to be an
18 official and public concern about this particular
19 thing.

20 So my question to you would be what do you think
21 should be done about it, other than what is being done,
22 assuming that anything at all is going to be done.

23 MR. GOMEZ: Yes. And that's the part that is very
24 difficult just trying to figure out, I can assume very
25 much regarding what's going to happen for people who

1 have tested positive. I can expect the worse and say
2 that they are not eligible and go farther and say you
3 are not welcome, you are not able to be here. Or, I
4 guess mainly there is nothing said and that's the
5 concern that this came up so much later and as if
6 someone thought up, oh, let's include this also. And
7 very much as an afterthought and never instituting
8 any kind of information that would go to the persons
9 who were the applicants, or actually to the people who
10 were in the programs themselves which includes the INS.

11 My concern would be that yes, there are those
12 serious illnesses and everything and when you couple
13 this with someone who is applying for amnesty, then
14 you are dealing with two major factors in the person's
15 life. Mainly their continuing to live here and continue
16 to live, period.

17 So my concern would be how this information is
18 being used and I would stress finding out what is the
19 policy regarding the confidentiality of this information
20 regarding the person's status.

21 And that would be a very big factor on who is
22 privy to this information and what will happen to
23 it, and what will happen to the persons who are
24 positive for the virus in whatever stages.

25 Personally, I would say for them to continue to be

1 here and for that not to be any part of a strike
2 against them being able to remain here or as far as their
3 filing for amnesty.

4 But, then again, there is nothing clear, so, I
5 can't really say.

6 DR. WHITE: Any other questions?

7 Do you wish to testify?

8 MR. CORDOVA: Yes, sir.

9 DR. WHITE: Now, I'm asking for questions from the
10 committee. Now, if you wish to be heard, we will be
11 pleased to hear from you.

12 Well, if there are no further questions from the
13 committee, we thank you for your testimony.

14 MR. GOMEZ: Thank you.

15 DR. WHITE: All right, sir, if you'll step up.

16 If you would state your name and residence for the
17 record.

18 MR. CORDOVA: My name is Juan Carlos Cordova, and
19 I'm a Salvadoran refugee here.

20 DR. WHITE: You're a what?

21 MR. CORDOVA: A Salvadoran refugee, from
22 El Salvador.

23 I just have about three points to make.

24 Number one, as a refugee I came to this country
25 because I feared for my life in El Salvador.

1 I was persecuted by the government of
2 El Salvador, and I learned to fear the authorities of my
3 country.

4 People who are refugees in this country and are
5 applying for amnesty are being faced with an option like I
6 did.

7 If you are being persecuted you cannot go to the
8 authorities, because, they will persecute you and kill you
9 or torture you.

10 Here INS is the one enforcing the amnesty. People
11 have been traditionally and historically been deported
12 by INS.

13 Therefore, it's an ideological thing to ask from
14 someone who fears INS to go there and say, okay, I'll
15 apply for amnesty.

16 I would not go to the police or to any
17 authorities in my country to seek protection, because they
18 wouldn't.

19 In the same way that here, I could not go to border
20 patrol to ask them to let me stay here because their job
21 is not to let me stay here, their job is to deport
22 me.

23 That is the fear that we as refugees have.

24 It was testified here earlier that less than ten
25 percent of Salvadorans here qualify for amnesty, and

1 less than that applied. And that goes with that fear.

2 The other thing is that for refugees to get work
3 permits they may get them after they apply for
4 asylum, but they may not get them too. That is
5 determined by the INS. In the meantime they would be
6 unemployed.

7 Everybody according to IRCA needs to have a work
8 permit to work.

9 If a refugee is not granted a work permit because
10 he or she has applied for political asylum they
11 might be unemployed for an indefinite period of
12 time.

13 Therefore, putting them in a hard situation not for
14 them only, but their children their spouses and their
15 family.

16 The other thing is that I have learned English
17 here. Lots of people are slower in learning English.
18 Most everyone is eager to learn.

19 In order for people to know about IRCA, it was very
20 difficult because there were changes every single month.

21 I work at a law office here and, yet, I had a hard
22 time keeping up with every change in the law.

23 I helped other people like myself fill out
24 applications.

25 It was impossible to do -- because one month you

1 were told you were not eligible, the next month you were
2 told you were.

3 And that is twice as hard for people who don't know
4 the language or don't have a basic understanding of this
5 law, which is a very complicated law. That's all.

6 DR. WHITE: Any questions?

7 MRS. FAUST: How long have you been here?

8 MR. CORDOVA: I came here in 1981.

9 DR. WHITE: Okay. If there are no further
10 questions, we thank you for your testimony.

11 MR. FRANCO: I would like to testify.

12 DR. WHITE: You would like to testify, sir?

13 Come forward.

14 Please state your name and residence for the
15 record.

16 MR. FRANCO: My name is Rene Franco, and I am from
17 Guatemala.

18 DR. WHITE: Would you give me your name again,
19 please.

20 MR. FRANCO: Rene Franco. R-E-N-E F-R-A-N-C-O.

21 DR. WHITE: Okay, thank you.

22 MR. FRANCO: And I am from Guatemala.

23 As Carlos, also, I came to this country as a
24 refugee.

25 One of the things that people, I think, should

1 understand in this country is when you talk about
2 Guatemalans, about Salvadorans, we are not coming to
3 this country or to Europe or to any other country
4 because we want to leave our homelands.

5 Most of us have been forced to leave. And I'd be
6 happy to be in my homeland.

7 There is no country like Guatemala.

8 And I have been all over this country. And this is
9 a beautiful country too, but there are no mountains like
10 in Guatemala.

11 One of the things that I think people should know
12 in order to get a sense about why we are here, or why
13 we are coming to this country -- one of the things is that
14 when we talk about laws or regulations, those are done
15 follow with the policies of U. S. and Guatemala and El
16 Salvador.

17 And, of course, there is friendship among the
18 Guatemalan and the Salvadoran government. United States
19 is going to refuse to see us as political refugees.

20 So, I think with all those new regulations, laws,
21 that you see, day by day the space is getting -- is
22 close -- you know, for us, and we are always dealing to
23 survive.

24 You know, as was testified in the morning. Of
25 course, we want to work. That's one of the things that I

1 tell the students when I go to places to give
2 presentations is that Guatemalans and Salvadorans, and
3 I think most of people from Latin American, haven't
4 had childhood. Why? Because if you are 7 or 8 years
5 old you have to go with your parents to the
6 mountains to gather firewood or to help in the cornfield.
7 So we are used to working.

8 So, and we see all this new Immigration Law, you
9 know, giving us a hard time, as Carlos was saying, to
10 get a work permit to be able to work and survive,
11 and also feed our families.

12 So, I think, you know, that today that I have this
13 opportunity to talk to you, to tell you my experience,
14 is with the hope that through your understanding some
15 of those laws and regulations can be changed. Or at
16 least a profound study about the impact of that law
17 among Central Americans.

18 Because, you know, we are in a really hard
19 situation, you know, with discrimination in the work
20 places, no work permit. If you look Latino, you can get
21 stopped by the police. And I was surprised when the
22 sheriff and the other sir, was saying, no. That's not
23 true, it happens everyday, not only with us, with
24 Latinos, but, also with Anglo people. I have seen that
25 especially in the parks.

1 So that's my testimony.

2 If you have any questions, I'd be happy to answer
3 them.

4 MRS. FAUST: If you could change one regulation,
5 which one would you change, and how would you change it?

6 MR. FRANCO: Well, that's hard to say, because
7 there is no point on the law about saying, for instance,
8 helping in a humanitarian way.

9 So, I think, what is needed is to listen to the
10 people that have been involved with Central Americans.

11 They are the ones, firsthand, that knows us, and
12 that knows the situation in Central American.

13 DR. WHITE: Ms. Whitlock.

14 MRS. WHITLOCK: Do you mind saying what your status
15 is presently, your legal status?

16 MR. FRANCO: Oh, yes, I'm legal. I'm a permanent
17 resident.

18 MRS. WHITLOCK: So, did you come in under amnesty
19 or was it prior to that?

20 MR. FRANCO: No, I have almost 6 years years living
21 in this country. So I got my papers through marriage.

22 DR. WHITE: Are you going to apply now?

23 MR. FRANCO: No, I was going to apply, but, when I
24 saw the situation with Guatemalans applying for asylum,
25 you know, I decided to wait.

1 But then, you know, love is everywhere. So, I met
2 a woman and we got married and here I am.

3 So, that's why I say love is everywhere and
4 anywhere.

5 DR. WHITE: It's easier than political asylum.

6 MR. FRANCO: Well, not exactly.

7 MR. ZAZUETA: I think that's a good happy ending.

8 DR. WHITE: I want to thank all of you for your
9 attendance.

10 MS. GALLEGOS: I wonder if I could clarify two
11 points for the record.

12 DR. WHITE: Well, briefly. But you have testified
13 previously?

14 MS. GALLEGOS: Yes, I have.

15 DR. WHITE: Your name again?

16 MS. GALLEGOS: Isabel Garcia Gallegos. And I
17 testified this morning.

18 I wanted to clarify two points, because they were
19 addressed both in the business sector and then in the law
20 enforcement sector.

21 Number one. I want to remind the Advisory
22 Committee that when the Legislation was being discussed
23 in particular employer sanctions, INS made much to do with
24 the argument that we needed to protect the undocumented
25 worker against the unscrupulous and exploitive

1 employer.

2 We know Congress who these people are we have a
3 pattern and practice of companies who are violating
4 existing labor laws.

5 But since we don't fund the labor department
6 sufficiently they are not enforced.

7 We know who they are, this is who we are going
8 against.

9 What happens after IRCA of '86, unfortunately, Mr.
10 O'Leary is gone. They have focused on the small
11 businesses, on the tortillerias, on the small bakeries, on
12 the small restaurants. They have not gone against the big
13 business that they initially were going to target.

14 That's why I think some of the reports here were
15 glowing, you know, they have no problems, but the small
16 businesses are bearing the brunt. I have checked with
17 other cities it's been small businesses that have been
18 cited.

19 In representation of a woman -- who is not here --
20 she was going to make it -- of a small tortilleria here in
21 Tucson, she had an employee, she attempted to work, she
22 called the border patrol in to do some educationals --
23 there was some misunderstanding -- she kept in her
24 employer in October of last year a gentlemen who was going
25 through legalization, clear legalization applicant, was

1 waiting to earn the money to pay for the fees he became
2 legalized officially in January of '88.

3 This woman was cited for an unauthorized hiring
4 that she knowingly hired an unauthorized person. Is this
5 what we intended, number one?

6 Then I want to go on to the law enforcement. The
7 testimony has been very very revealing, not only to
8 yourselves, but to me. Because both the Tucson Police
9 Department Assistant Sheriff and the Sheriff of this
10 county stated what we stated previously, and that is that
11 they are not following the law.

12 The Sheriff, said, "Yes, if we believe, they are
13 illegal aliens, we call border patrol."

14 That's clearly illegal. They are to detain and
15 keep in detention only people that they have probable
16 cause. He stated later probable cause to believe that
17 they are committing a felony.

18 To begin with probably the term "illegal alien" is
19 horrible, not only because of the connotations, but,
20 obviously, people are interpreting illegal aliens, that
21 means you are a criminal.

22 People are charged and convicted of murder, rape
23 everything. They're never called illegals. And yet human
24 beings are called illegals. No human being is illegal,
25 number one.

1 And what standard did they give you about their
2 stoppage.

3 You asked, Mr. Johnston, stated this has nothing to
4 do with IRCA.

5 What our point was this morning was that since
6 passage of IRCA this problem has been exacerbated, it has
7 increased, and they know that it has increased. Of
8 course, they disclaim any wrong police procedures all the
9 way around.

10 But, I think it's very important for this
11 Commission to see what we are up against, what we are all
12 up against.

13 If the two top law enforcement officials come in
14 here and say, "Well, we don't enforce immigration laws."
15 But, on the other hand say, "Well, yes, if we believe
16 they're illegal aliens." What do you mean you believe?

17 What does that mean? Because you are brown,
18 because you don't speak well, because you say I was born
19 in Mexico. So what, my father was born in Mexico, he's a
20 U. S. citizen, so it doesn't matter.

21 Again, the crime is only if you are going to look
22 at a crime, and, unfortunately, it is a crime right now to
23 cross the border illegally.

24 That's the only crime that they can investigate,
25 and yet they detain through their own admissions, they

1 detain people that they believe are.

2 DR. WHITE: Are you saying that it should not be a
3 crime under any circumstances for anyone to cross the
4 border?

5 MS. GALLEGOS: I don't believe it should be a
6 criminal penalty. But that's beyond, okay, let's accept
7 it, it's a crime it's on the books. And they're
8 prosecuted.

9 As a federal defender, I've represented many
10 individuals charged with the offenses -- doing two years
11 in federal prison -- at great taxpayer expense --
12 because they were found in the country after having been
13 deported one time, previously, officially by the INS.

14 And, so, they're doing two years in a federal
15 prison at a cost of 20,000 to 30,000 a year to the
16 taxpayers.

17 But, beyond that question is, that's the
18 criminal offense.

19 The Sheriff didn't say, "We believed he crossed the
20 border illegally, and so we detained him to investigate
21 that crime."

22 They said, "Well, if we believe that they are
23 illegal, we detain them." And that's clearly in
24 violation of existing law.

25 DR. WHITE: Thank you.

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All right, we will declare the meeting adjourned.

Thank you for coming.

(Whereupon, at 5:00 o'clock p.m., the foregoing proceeding were adjourned.)

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