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JOINT MEETING OF THE ARIZONA AND CALIFORNIA COMMITTEES

TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

FRIDAY, APRIL 16, 1993

SAN DIEGO, CALIFORNIA

REPORTED BY KAREN A. BLACK, CSR NO. 8997

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Meet.
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1 APPEARANCES:

3 FOR THE PANEL:

4 Michael Carney, Chairman
5 Manuel Pena, Chairman
6 Isabel Garcia De Romo
7 Angela B. Julien
8 Ramon M. Paz
9 Richard Zuzueta
10 Arnoldo Beltran
11 Ted Cooper
12 Edward J. Erler
13 Andrea W. Patterson
14 Herman Sillas

11 STAFF MEMBERS:

12 Philip Montez, Regional Director
13 John F. Dulles
14 Thomas Pilla
15 Arthur Palacios
16 Grace Hernandez

15 THE INTERPRETER:

16 Annette Ancira

1 investigating and resolving allegations of misconduct;
2 Information on border violence generally, as it
3 relates to civil rights; and hate crimes specifically
4 affecting immigrant communities in the U.S./Mexico border
5 region.

6 This meeting is not designed to address
7 immigration policies or economic impacts. The focus is on
8 issues directly relating to the administration of justice.

9 Among those invited to address the joint
10 advisory committee forum are Governmental officials,
11 community leaders, legal and advocacy organizations, and
12 representatives of the Immigration and Naturalization
13 Service, the Border Patrol, U.S. Customs and local law
14 enforcement agencies. Representatives of Mexican
15 enforcement entities have also been invited.

16 Based on the information collected at this
17 meeting along with the transcript of a similar forum
18 convened by the Commission's Texas and New Mexico Advisory
19 Committees in El Paso, Texas, in June 1992, a summary
20 report will be prepared for the United States Commission on
21 Civil Rights.

22 I am Michael Carney, chairman of the California
23 Advisory Committee. I am also pleased to introduce Senator
24 Manuel Pena, chairperson of the Arizona Advisory Committee,
25 who will be co-chairing the proceedings. The advisory
26 committees receive information and make recommendations to
27 the commission in areas which the committees are authorized
28 to study.

1 San Diego, California; Friday, April 16, 1993; 8:30 a.m.

3 Joint Arizona and California Advisory
4 Committee Forum

5 on U.S./Mexico Border-Related Civil Rights Issues
6 United States Commission on Civil Rights

7 MR. CARNEY: Good morning, Ladies and
8 Gentlemen. This joint meeting of the Arizona and California
9 Committees to the United States Commission of Civil Rights
10 will now come to order.

11 The purpose of the meeting is to obtain
12 information and views relating to Civil Rights issues
13 impacting communities along the U.S./Mexico Border.

14 The participants have been requested to address
15 the following issues:

16 Perceptions on the status of relationships
17 between Federal Immigration Enforcement Agencies (INS,
18 Border Patrol, U.S. Customs) and local elected officials,
19 minority group populations, and immigrant communities;

20 Views and information on the conduct of
21 Federal Immigration and U.S. Customs Enforcement agencies
22 relating to use of force, language and cultural sensitivity,
23 and the protection of civil rights;

24 Information on the accessibility, adequacy and
25 effectiveness of existing INS, Border Patrol and
26 U.S. Customs complaint procedures for receiving,

1 Other members of the committee in attendance
2 during the meeting will be: from Arizona; Isabel Garcia De
3 Romo, Angela B. Julien, Ramon M. Paz, and Richard Zuzueta.
4 From California; J. Arnoldo Beltran, Ted S. Cooper, Edward
5 J. Erler, Andrea W. Patterson, and Herman Sillas. We are
6 also pleased to have with us today.

7 Also with us today are staff members:
8 Regional Director, Philip Montez, John F. Dulles, Thomas V.
9 Pilla, Arthur Palacios, and Grace Hernandez from the
10 Commission's Western Regional Office in Los Angeles. We are
11 also pleased to welcome Annette Ancira from San Diego who
12 will be serving as our interpreter for the proceedings.
13 Anyone needing her assistance should advise the chair prior
14 to making a statement for the record.

15 This fact-finding meeting is being held
16 pursuant to the federal rules applicable to State Advisory
17 Committees and regulations promulgated by the U.S.
18 Commission on Civil Rights. All inquiries regarding these
19 provisions should be directed to the chairs or to the
20 commission staff.

21 The Commission on Civil Rights is an
22 independent agency of the United States Government
23 established by Congress in 1957 and directed to:

- 24 1. Investigate complaints alleging that citizens
25 are being deprived of their right to vote by reason of their
26 race, color, religion, sex, age, handicap, or national
27 origin, or by reason of fraudulent practices;
- 28 2. Study and collect information concerning legal

1 developments constituting discrimination or denial of equal
2 protection of the laws under the constitution because of
3 race, color, religion, sex, age, handicap, or national
4 origin, or in the administration of justice;

5 3. Appraise federal laws and policies with respect
6 to discrimination or denial of equal protection of the
7 Laws;

8 4. Serve as a national clearinghouse for
9 information about discrimination and;

10 5. Submit reports, findings, and recommendations
11 to the President and Congress.

12 I would like to emphasize that this is a
13 fact-finding meeting and not an adversary proceeding.
14 Individuals have been invited to come and share with the
15 committee information relevant to the subject of today's
16 inquiry. Each person who will participate has voluntarily
17 agreed to meet with the committee.

18 Since this is a public meeting, the press and
19 radio and television stations, as well as individuals, are
20 welcome. Persons meeting with the committee, however, may
21 specifically request that they not be televised. In this
22 case, we will comply with their wishes.

23 We are concerned that no defamatory material be
24 presented at this meeting. In an unlikely event that this
25 situation should develop, it will be necessary for me to
26 call this to the attention of the persons making these
27 statements and request that they desist in their action.
28 Such information will be stricken from the record if

1 necessary.

2 Every effort has been made to invite persons
3 who are knowledgeable in the area to be dealt with here
4 today. In addition, we have allocated time between 12 noon
5 and 1:30 p.m. on Saturday, April 17, to hear from anyone who
6 wishes to share information with the committee about the
7 specific issues under consideration today. At that time
8 each person or organization will be afforded a brief
9 opportunity to address the committee and may submit
10 additional information in writing. Those wishing to
11 participate in the open session on Saturday must contact
12 commission staff as soon as possible in order to be briefed
13 on procedural matters.

14 In addition, the record of this meeting will
15 remain open for a period of ten days following the
16 conclusion of this meeting. The committee welcomes
17 additional written statements and exhibits for inclusion in
18 the record. These should be submitted to the Western
19 Regional Office, United States Commission on Civil Rights,
20 3660 Wilshire Boulevard, Suite 810, Los Angeles, California
21 90010.

22 Let us proceed.

23 First on the agenda for today is
24 Mr. Augie Bareno from the Department of Transborder Affairs,
25 County of Los Angeles -- pardon me -- County of San Diego.

26 MR. BARENO: Thank you, Mr. Chairman. I hope
27 you can all hear me.

28 That is the County of San Diego.

1 MR. CARNEY: That is correct.

2 MR. BARENO: There is a big difference.

3 First of all, let me take the opportunity to
4 welcome you to San Diego County on behalf of the San Diego
5 County Board of Supervisors. Chairman Bilbray would have
6 liked to have been here to welcome you, but he had some
7 other commitments and he could not do so. So he asked me to
8 be here today, and it's a pleasure.

9 I would like to share with you just some
10 observations of what is occurring in this county. And, if
11 you notice, by the description of my department, what is
12 called to mind immediately is that the local government is
13 dealing with border issues which essentially have their
14 framework in the relationship between the two countries. I
15 think that speaks volumes for the situation in this county.

16 And just let me give you a little bit of
17 background on why it occurred. The impetus was based on two
18 issues: one, the emerging impact of the Simpson Rodeno,
19 IRCA situation on this county; and the environmental
20 problems occurring along the border.

21 I've been responsible for those issues for
22 about 10 to 15 years, and I can recall when we would go to
23 Congress and we couldn't get two people to listen to us
24 about border sewage or any border-related issues. And today
25 they are the cornerstones of the negotiations of NAFTA.
26 They are the cornerstones of all the discussion between the
27 United States and Mexico, and I think that the prominence of
28 those issues tells you how far we have come.

1 With respect to San Diego County, we are a part
2 of the country that is a laboratory for the good and the
3 bad. From a commerce perspective, we move millions and
4 millions of dollars across the border. We have a strong
5 historical, economic interdependence with Baja California.

6 At the same time, on the other hand, we are the
7 point of entry into the United States. And with that, the
8 associated controversies, issues, concerns, and, ultimately,
9 the questions of how public resources are used, what I
10 believe relates to your charge, is that this has created an
11 environment where we, as a community and as a state and
12 certainly as a nation -- because we are undergoing the
13 demographic change, our tolerance level to issues of concern
14 to your commission are very high.

15 You will hear today very dramatic stories. You
16 will hear today concerns for strengthening the border. You
17 will hear today that the border is the main point for drug
18 interdiction or the lack thereof. You'll hear today that
19 the immigrant population draws unnecessarily a lot of public
20 resources, taking that away from American taxpayers. You'll
21 hear all of those issues. And from each of their
22 perspectives they, in their hearts, may believe that they
23 are right.

24 But I think what has been lost in those
25 discussions -- and I'm talking about as a native San Diegan
26 and as a person involved in border issues for many, many
27 years -- I think what we have lost -- and I would challenge
28 your commission to really look at that -- what we have lost

1 is the higher ground where those issues can be part of our
2 public dialogue, become part of our public debate. I think
3 what you'll find in border states is that there is no right
4 or wrong. There is just a condition. And we either choose
5 to build upon it or it tears us apart.

6 I think what you'll find here is that there is
7 much passion in all the perspectives, but somehow, somehow,
8 because we are not changing, we cannot divorce ourselves
9 from Mexico.

10 Baja California is a very dominant force in our
11 lives. We have to find a way. We have to find the higher
12 ground where this public discourse, where the analysis of
13 issues, where the dialogue, where the differences can
14 reasonably play themselves out. I think that is what is
15 missing.

16 And we now, unfortunately, have a high
17 tolerance level for a lot of things that are not good. We
18 have a lot of tolerance for things that affect the quality
19 of life in our community. And in many cases, we don't stand
20 up and fight about it. We don't raise those issues, because
21 the issue, in and of itself, is one where, from a political
22 perspective, there is very little constituency for these
23 people that are affected by this.

24 On the other hand, there is very strong
25 constituent talk about the economic impact. So, in effect,
26 we have two worlds along the border: that which is driven
27 and dominated by the economic concerns and the real serious,
28 human capital side of which public policies, agencies and

1 someone can ask you a question?

2 MR. BARENO: Sure.

3 MR. CARNEY: Mr. Sillas?

4 MR. SILLAS: Thank you, Mr. Chairman.

5 I notice that your department is called
6 Transborder Affairs.

7 Could you describe what it is that that
8 department does?

9 MR. BARENO: Essentially, what it does is, it
10 looks at and it tries to direct and provide policy options
11 for anything occurring along the border that affects the
12 county's authority base, the fair trade, the immigration.
13 Essentially, it responds -- or tries to respond, to the
14 policy impacts of the border on San Diego County's authority
15 base, and that's -- as you know, most counties are fairly
16 wide; so we get involved with a lot of stuff, a lot of
17 Mexican federal agencies, a lot of our federal agencies, but
18 it's really -- unfortunately, it's really driven by the
19 county's mandates.

20 We spend a lot of time on sewage, because that
21 is a big-use issue basically driven by the public policy
22 attention that we give to border issues. But typical ones
23 would be environment, would be impacts on county
24 departments, looking at how development has affected this
25 county, how trade -- what we can do or not do.

26 It's very different in the sense that we have
27 undertaken what is, in effect, a foreign policy implication
28 and have localized it, because the reality of border

1 what-have-we don't do enough about.

2 And so I would ask you to look at that today
3 when you hear different perspectives -- and they are all
4 very passionate. And from where they see it certainly is
5 correct. They may or may not be, but we have lost the
6 ability to have dialogue, et cetera, either them or us. We
7 are right, they are wrong. And we have the data, or there
8 is no data.

9 Any condition that you can conceivably want
10 around this issue exists here. And I think somebody -- and
11 perhaps your commission and others -- can push us to that
12 higher level.

13 And you are not the first federal commission
14 that we have raised it to. We have raised similar issues to
15 Presidente Jatate (phonetic), to others, to our own Federal
16 Government, to Congress, to every federal agency that
17 exists.

18 So it's not a new challenge, but, perhaps, with
19 your experiences you can help move us towards that higher
20 ground where we can have these discourses and this dialogue
21 and maintain the quality of life that we, as San Diegans,
22 know is part of our history and what brought us, here. And
23 I think we can maintain that.

24 Let me welcome you to San Diego.

25 MR. CARNEY: Thank you, sir.

26 Mr. Bareno?

27 MR. BARENO: Yes.

28 MR. CARNEY: Would you remain a moment, sir, so

1 life, as you know, Mr. Sillas, in knowing about California
2 is that whatever Mexico City and Washington do occurs at one
3 level. The daily life along the border and all border
4 communities are like that. It's very different.

5 So we have to respond based on the reality of
6 living here. And what we try to do is really solve
7 problems, try to make the county move in a direction where
8 its public policies start to reflect the reality along the
9 border.

10 And that's very different if you know anything
11 about this county -- the orientations have been very
12 different. We're a traditional county, conservative in many
13 respects.

14 But the situation along the border is such that
15 we really have no other option but to move in that
16 direction. And we've been able to do some things.
17 Obviously, the problem is much larger than the scope of the
18 county, and it's driven a lot by the relationships between
19 Mexico and the United States.

20 But our relationship with Baja California --
21 the governor in the various cities -- works, because it's at
22 an informal level. It is a quid pro quo. We solve
23 problems. They solve problems.

24 It's basically the reality of our life along
25 the border that allows us to move in that direction. It's
26 unfortunate that we need to exist because that, by
27 implication, means that something else is not being done.

28 MR. SILLAS: Along that point, is there a

1 formal, joint committee or organization between the county
 2 here and Mexico, Baja California, or is it kind of informal?
 3 MR. BARENO: Well, it's a mixture of the two.
 4 In some cases, we have formal agreements with the state of
 5 Baja California to move juvenile offenders from our system
 6 to theirs.

7 In other cases, we're part of protocols that
 8 are established by the federal government, by the EPA, and
 9 others, like hazardous waste treatment. So it's kind of a
 10 cross of discipline basis. But if you know anything about
 11 dealing in Mexico, a lot of it is informal, particularly
 12 since much of the authority is centralized in Mexico City.

13 And it's essential for us to have the ability
 14 to call Mexico City on a variety of issues. And I think the
 15 fact that we are able to do that really speaks volumes as to
 16 how far we need to move, because I shouldn't be doing that.
 17 Our -- I think our governments should do that. I think our
 18 state department needs to be more responsive in that
 19 respect. And they have border coordinators, and we work
 20 with all of them.

21 But I think the issues of San Diego and Baja
 22 California -- same with Juarez and Chihuahua -- they are so
 23 great and they affect the lives of so many people that I
 24 think we need to rethink as a country, both countries, how
 25 we manage that relationship along the border. Because I
 26 think to keep the tradition of the enforcement agencies like
 27 the Border Patrol, Customs, et cetera, managing the port of
 28 entry, I think they should do their constitutional duty,

1 the desire to eat, the energy of hunger is a great one which
 2 really is part of the history of this country, that
 3 immigrants come looking for opportunities.

4 I think we have -- at some point, we would
 5 expect our leaders to say, "Look, we are undergoing a major
 6 change in this country. We need to find a way to integrate
 7 people, to welcome them in the community, to have those
 8 dialogues about the true impact on our ability to provide
 9 public service."

10 I think what you see in every discourse is --
 11 somebody can come up with all the data about the impacts of
 12 legal and illegal immigrants on our system. There are
 13 others that say we can demonstrate that there is an economic
 14 contribution. I think the reality is that data exists on
 15 both sides, but nobody makes us bring that together and move
 16 it to a higher level. We need a model. We need to say that
 17 these issues are serious.

18 I think in the whole discussion of NAFTA -- by
 19 its nature, it is a trade agreement, but the relationship is
 20 such that we have included environmental issues. We have
 21 included worker issues, and that -- in the history of our
 22 country in negotiating trade agreements, that's rare. And
 23 that's because the situation is such.

24 I think what we need to do is two things
 25 immediately: I think we need to model -- that if we
 26 continue to allow this -- these clashings -- because in
 27 public policy, I don't think there is going to be a right or
 28 wrong. There is going to be who gets the votes and who is

1 but that border represents so many other perspectives that
 2 it's far beyond what they're charged to do.

3 I think there are a lot of discussions in the
 4 NAFTA negotiations about an environmental commission. Those
 5 discussions have been around a long, long time. I think
 6 what a lot of the studies are indicating -- I'm not sure if
 7 you are familiar with the International Boundary Water
 8 Commission, but, in effect, that commission deals with the
 9 environmental issues. The commissioner is a diplomat and an
 10 engineer, but that format, in terms of problem resolution,
 11 seems to work. There is a lot of writing in the academic
 12 community about something similar managing the other
 13 perspectives. Of the border relationship.

14 MR. SILLAS: Thank you.
 15 MR. CARNEY: Ms. Garcia?
 16 MS. GARCIA: Yes.
 17 Mr. Bareno, what do you believe the role should
 18 be of the government in regard to anti-immigrant and hate
 19 groups that exist in the community?

20 MR. BARENO: I think that we have to lead the
 21 way. I think we cannot be tolerant of those people who
 22 would use a public policy discourse or discussion to exploit
 23 and further foster anti-immigrant sentiment.

24 I think what we need to do as a government is
 25 really set the example that we have to acknowledge that
 26 economically the attraction will continue to be to the
 27 developed counties. People are going to keep coming. And
 28 we know that, perhaps, they may break the law, but I think

1 able to shake the policy.

2 I think we need to say that -- we have a lot of
 3 people here that the demographics of that state and other
 4 states are such that there is going to be a change. And how
 5 do we respond to that profile? And I think we respond to it
 6 by modeling the intolerance to those things that are not
 7 good for us as a country. And that doesn't mean removing
 8 the debate or removing the difference. We are going to have
 9 those. We need to step to a higher ground.

10 I think in all of the years that I have been
 11 involved in border issues, I have never seen so many
 12 congressional people interested in what occurs here. And we
 13 were yelling for years and years for somebody just to listen
 14 to us about a major, major health problem in terms of the
 15 border sewage.

16 I think we ought to take advantage that there
 17 is that national attention, but not -- we have a tendency to
 18 use NAFTA the same way we did with the Simpson Rodeno as
 19 these panaceas. They don't solve all the problems, because
 20 the problems are much broader than those particular acts.

21 But I think the important thing is public
 22 leaders should model that. L.A. is a good example. I think
 23 there is a lot of frustration on all the sides, because they
 24 failed to take that -- I believe -- the leadership position
 25 to say that that act is inappropriate, is damaging. Now,
 26 how do we move forward?

27 I think Los Angeles waited too long. I think
 28 we run the risk, here, of not acknowledging that we are in

1 the midst of a major demographic change. And, with that,
 2 that represents a lot of changes to San Diego, which San
 3 Diego is not accustomed to. And I'm saying that, having
 4 lived all my life in this town with the exception of when I
 5 was overseas in the service. So, I mean, I see it from
 6 people that I talked to, from long-time families -- they
 7 don't recognize San Diego.

8 And so we have to realize that these changes
 9 are difficult. They are difficult. I think -- that's why I
 10 say we have to model that immigrants are not bad and that
 11 you're not going to lose your job. And, if you are, these
 12 are the impacts.

13 But we're not having that higher-level
 14 dialogue. Nobody is modeling that. What happens is the
 15 people that blame the undocumented for everything are on one
 16 side; the advocates are on the other. The politicians
 17 really kind of respond to the public tenor, and we get all
 18 of that. We're kind of going like that. Somebody has to
 19 say, "No, I think we -- you're all right, and you're all
 20 wrong, but let's move forward." Otherwise, we impact very
 21 seriously the quality of life in this county and certainly
 22 in this country.

23 And there is no answer. I think the whole
 24 issue about border considerations is that there is no
 25 panacea. NAFTA -- we've had a NAFTA in Baja California and
 26 California for 50 years; although, we didn't have an
 27 agreement and we didn't call it that. But the economic
 28 interdependence is such that it drives millions and millions

1 justice, whether it's education. And the tendency --
 2 because it's a quick fix -- is to blame the impact both on
 3 legal and illegal immigration into this country.

4 And, quite frankly, there are a lot of
 5 subissues within that. There is a lot of data that can give
 6 you a picture that you're looking for.

7 But I think, specifically, what we need to move
 8 to is a more thorough, a more comprehensive, and very
 9 extensive analysis that will tell us specifically, not based
 10 on an assumption of certain profiles of public service, but
 11 really look at what impact is on the system, what do they
 12 contribute economically. And to do those comprehensive
 13 studies, we are talking about one to two million dollars.
 14 And even then, we would get a more intensive, a more
 15 reasonable snapshot. I think that's one specific example.

16 Because what is going to happen is, we are
 17 going to continue this discourse back and forth. And nobody
 18 really has the data that is, 'A,' scientifically adequate,
 19 that people agreed to, and that how we go after it, the
 20 criteria, to determine that data really should be an
 21 inclusive act.

22 I think that is one specific example, and even
 23 that wouldn't solve it. But I think it moves us toward
 24 having a snapshot that is more acceptable, more reasonable,
 25 and looks at the impact in its total content.

26 Thank you.

27 MR. CARNEY: Thank you, Mr. Baren.

28 Inquire as to Council Vargas, please.

1 of dollars across that border, and that will continue
 2 irrespective of what Mexico City and Washington do.

3 The same with the IRCA. People had the
 4 expectation that it would resolve all of these issues that
 5 they had, and, by it's nature and by its title, it was a
 6 reformation of the immigration system. We didn't talk about
 7 nor ever contemplate its impact on local government ability
 8 to provide services immediately. So I think we, as
 9 people -- we tend to look for that home run that is going to
 10 solve all of the problems, and it's not.

11 That's why the relationship between people and
 12 the experiences along the border and modeling -- that is
 13 really the only way we can do it. And I firmly believe that
 14 Mexico City or Washington can't solve these for us. We will
 15 solve it by our behavior, by how we conduct business, by how
 16 we respect each other. We don't have to love each other,
 17 but I think we recognize that we are connected one way or
 18 the other and a divorce is just geographically impossible.

19 MR. CARNEY: Mr. Paz?

20 MR. PAZ: Just -- very specifically, we talked
 21 about moving to a higher level. Just as a government
 22 official, you are the higher level in some areas of
 23 government. Please identify, specifically, what is this
 24 higher level that you're speaking about.

25 MR. BARENO: I think that -- what a good
 26 example would be, that in the State of California, there is
 27 much concern about -- just about every aspect of public
 28 service, whether it's health care, whether it's criminal

1 We're going to deviate from our agenda
 2 slightly and ask that Ms. Claudia Smith from the California
 3 Rural Legal Assistance Organization step forward; Marco E.
 4 Lopez, American Civil Liberties Union; and Mr. David
 5 Valladolid from the Chicano Federation.

6 MS. SMITH: Good morning.

7 MR. CARNEY: Good morning.

8 MS. SMITH: I'm Claudia Smith from the
 9 California Rural Legal Assistance, and I represent migrant
 10 workers that come here pushed by hardship and unrest in
 11 their own countries and pulled by a Southern California
 12 economy to which they are indispensable.

13 Throughout the country, it's a boom time for
 14 anti-immigrationism, but it is an especially lousy time to
 15 be a new immigrant along this stretch of the border. In a
 16 county that is racked by recession and on the verge of
 17 becoming a truly multi-racial part of the state (by the turn
 18 of the century every racial group here will be a minority),
 19 talk about regaining control of our border has become more
 20 mean-spirited -- more and more alien bashing is being done
 21 not just in the figurative sense, but in an all-too-literal
 22 sense.

23 Predictably, the Border Patrol officials in
 24 this sector have helped fan resentment of and fear towards
 25 new immigrants. They have recklessly overstated the level
 26 of illegal immigration and promoted all-too-popular
 27 misconceptions about the dimensions of undocumented crime.

28 This is the issue I want to spotlight, hoping

1 it will be a useful backdrop for the litany of Border Patrol
2 abuses, ranging from petty harassment of Latinos to
3 brutality justifying international human rights concerns
4 that others will address.

5 The Border Patrol has always seen fit to pad
6 its statistics. But over the past couple years, the
7 San Diego sectors have gotten so inflated that this penchant
8 can no longer be indulged. What the Border Patrol has been
9 doing is passing off raw, apprehension numbers as indicators
10 of massive, undocumented, alien influx.

11 On a quarterly basis, accompanied by much
12 fanfare, the Border Patrol releases figures that have not
13 been adjusted at all for the fact that the same individual
14 is now often apprehended more than once -- and not
15 uncommonly up to four times -- before he or she gets across
16 undetected. In short, each attempt is treated as though
17 made by a different person.

18 Repeat apprehensions were bound to jump
19 following reinforcement -- not to mention expansion -- of
20 fences along the border, installation of high-intensity
21 lights. The combined effect would be to funnel would-be
22 immigrants away from San Ysidro and into rugged and open
23 country around Otay Mesa, where beefed-up Border Patrol that
24 could drive more directly and faster on improved roads,
25 along hills and gullies, has of late been concentrated.

26 The data involved, then, does not signal a
27 real, much less substantial, increase in illegal
28 immigration, but ends up being relayed to the public under

1 immigration status and turn the undocumented over to the
2 Border Patrol.

3 The civil rights implications of such joint
4 activity aside, working hand in hand with the Border Patrol
5 burns much-needed bridges to the immigrant community.

6 You purely can't expect the immigrant
7 community, then, to willingly and trustingly come forward to
8 report crimes and serve as witnesses. I want to leave you
9 with a thought about what a dicey tactic playing on the
10 emotional reactions to undocumented aliens is in place where
11 anti-immigrationism often masks just as much hostility
12 towards Latino resident aliens and citizens.

13 It seems like I have a few minutes left. I
14 want to talk about a very illuminating experience that I had
15 recently with the Border Patrol. And it does not bode well
16 for the search and seizure of the -- the observance of
17 search and seizure rights by the Border Patrol.

18 My office is a law office. About six months
19 ago we had an intrusion by a Border Patrol official --
20 dressed in full regalia -- into nonpublic areas without
21 consent and without extreme circumstances. He compromised
22 the attorney-client relationship, because the room in which
23 he insisted on being in had all sorts of attorney-client
24 material spread out around. I had to go to incredible
25 lengths to get him out of the innersanctum, as it were,
26 which is my office.

27 I called Chief De La Vina's office and finally
28 ended up talking to one of the attorneys at the Border

1 banner headlines like "Immigration Wave Inundates U.S."

2 Unabashed, San Diego sector officials do not
3 hesitate to engage in even more unsound numbers crunching,
4 citing "get-away" ratios it claims (3 entrants for each
5 apprehension), pure guesstimates glommed (sic) onto by
6 nativists who advance the truly absurd but pernicious notion
7 that 1 in -- 1 in 10 San Diego County residents is
8 undocumented.

9 Sector officials also inflame debate on the
10 pros and cons of immigration by publicly linking a rising
11 San Diego crime rate with the supposed upsurge of
12 undocumented aliens.

13 Privately, you can get sector officials to draw
14 distinctions between types of aliens and types of crimes.
15 They will acknowledge that Tijuana-Based delinquents --
16 hardly typical, undocumented aliens -- are responsible for
17 most serious crimes committed here by Mexican nationals.
18 They will also acknowledge that -- except for public order
19 misdemeanors -- the usual migrant worker is likely to be
20 involved in crime simply as a victim.

21 A "stronger fight" against illegal immigration
22 won't, then, have much impact on San Diego crime, but the
23 effort to present the undocumented as a public safety
24 problem has served the purpose of giving police departments
25 sufficient cover to team up with Border Patrol. Largely
26 barred from enforcing immigration laws, police will
27 cooperate by resorting to pretextual arrests on minor
28 offenses in order to interrogate someone about his or her

1 Patrol on one phone, a very high-level supervisor on another
2 phone to get this agent to move out of our offices.
3 That's -- the lengths to which we had to go is only part of
4 the point. The rest has to do with the complaint procedure.

5 I wrote a very strong complaint letter, and
6 three months later, there has been no response. We sent it
7 all the way to the Western Commissioner in L.A. It had not
8 been responded to by the Western Regional Commissioner.

9 It was not responded to by the office here that
10 is in charge of investigating complaints. It turns out that
11 after shuffling around they found out that it had been
12 mislaid, not all the pages were there, this and that. So
13 everything was sent back.

14 About two months later, I got back something
15 that really stunned me. And I certainly think I am rather
16 jaded and don't shock very well, although I did not expect a
17 full-scale Miaculka (phonetic). But what I got were such
18 twisted facts, when I had, myself, witnessed them, that I
19 was really shocked.

20 There was a refusal to countenance any
21 wrongdoing on the part of the Border Patrol, which I had run
22 into before. But when I, myself, had witnessed the facts
23 and then had to experience the distortion -- which I said
24 was really stunning -- what this particular serious concern
25 is, because there has been a real change in demographics.

26 What you're getting now in terms of the new
27 immigrants are a lot of indigenous people from the interior
28 of Mexico, places like Oaxaca, Mixteca, and from Guatemala.

1 And there are a lot of cultural and linguistic barriers to
2 their making complaints. And this kind of heavy handedness
3 by the Border Patrol -- which is fairly routine at this
4 point -- and then a complete travesty of the complaint
5 procedure, just does not bode well.

6 Thank you.

7 MR. CARNEY: Mr. Valladolid? Excuse me.

8 Ms. Garcia?

9 MS. GARCIA: Ms. Smith, I think you are
10 probably aware that there is going to be a bill introduced
11 regarding civilian oversight of some type to Congress.

12 What are your views in regard to the impact
13 that would have to the problems here in this county?

14 MS. SMITH: It can't help but help.

15 Certainly, as I said, going back to the very personal
16 experience I had with the Border Patrol -- and if I get
17 dealt with in that way -- and I'm not shy -- you can imagine
18 how other complaints get dealt with. I think it would be a
19 sublibrium (phonetic) development.

20 MR. PAZ: Just two quick questions. One,
21 would you just identify for me -- because I didn't
22 understand Western Regional -- what agency are you referring
23 to?

24 MS. SMITH: The Immigration and Naturalization
25 Service. They have a Western Regional Commission out of
26 L.A.

27 MR. PAZ: Secondly, are you familiar with the
28 agency held by Mr. Baren, the Transborder Affairs of the

1 place. That's what I've been trying -- very
2 inarticulately -- to get you to realize; that the border
3 area is a place where feelings -- I've been up and down
4 California for 20 years working with farm workers, and there
5 is rawness in terms of racism here that you can -- you can
6 taste it. And it cannot help that tenure to give licenses
7 to agencies that otherwise would be a little bit more
8 careful.

9 MR. ERLER: Then the Border Patrol and the INS
10 are the major -- the major factors in the racial tension?

11 MS. SMITH: They are not a major factor, but
12 they are a player by promoting them.

13 MR. CARNEY: Mr. Zazueta?

14 MR. ZAZUETA: Thank you, Mr. Chairman.

15 Ms. Smith, what do you do when you find these
16 errors in statistics from the Border Patrol?

17 MS. SMITH: Basically, I try and get the
18 media -- which have been, as a matter of fact, lackadaisical
19 about really looking into them and exposing them to give
20 them some play. By the time you get a second story, the
21 damage of those banner headlines has been largely done, and
22 it is very hard to undo.

23 MR. ZAZUETA: Thank you.

24 MR. CARNEY: Mr. Beltran?

25 MR. BELTRAN: Just a simple question to expand
26 on Mr. Erler's question. I'm not interested in asking about
27 the policy as much as the practice with the Border Patrol.

28 Is it your experience for the clients you serve

1 County of San Diego?

2 MS. SMITH Sure.

3 MR. PAZ: Have you made any references to that
4 particular agency regarding your concerns?

5 MS. SMITH: You have got to remember we're a
6 law office, and we usually sue. People don't necessarily
7 end up going through the good offices in terms of mediation
8 of other agencies, so, no, not in terms of this complaint.

9 MR. PAZ: Do you consider that office a highly
10 responsive office to the concerns of your service?

11 MS. SMITH: I'm sure that they are. We tend
12 to, again, to deal in the litigation mode and so don't have
13 as much occasion to use it as a number of other agencies.

14 MR. CARNEY: Mr. Erler?

15 MR. ERLER: Yes.

16 Ms. Smith, from your account of complaint
17 procedures and the -- what you utilized to be a
18 falsification of statistics, do you believe that it's the
19 deliberate policies of the INS to -- whether stated or
20 unstated -- to systematically violate the rights of
21 undocumented aliens?

22 MS. SMITH: Well, I don't think it's a policy
23 to systematically violate, but --

24 MR. ERLER: I mean an unstated policy.

25 MS. SMITH: An unstated policy? I think
26 that's, you know, a little far-fetched. And no, I'm not
27 into black and whites. There are a lot of grays. But
28 certainly, you will find that this is a very different

1 that management within this institution tolerates or permits
2 these practices to go on unpunished or not subject to some
3 kind of review and punishment for excesses by individual
4 officers?

5 MS. SMITH: Internally, I don't know if anyone
6 is brought up short or not. What I do know, from my
7 experience in making many, many complaints, is that what I
8 always get back is a complete refusal to countenance any
9 criticism on Border Patrol agents.

10 MR. BELTRAN: Well, have you ever observed
11 repeat offenders of the patrol?

12 MS. SMITH: Actually, I haven't had experience
13 with repeat offenders, no. And with my clients, frankly,
14 it's pretty difficult, sometimes, to identify even -- which
15 is something that the Border Patrol makes -- it's rather
16 difficult to pinpoint who the officer was. We try to do it
17 by location, by time, by general description.

18 The other thing is that with the new
19 demographic changes, especially dealing with the
20 Guatemalans, they are not as obsessed with the Gregorian
21 calendar as you and I are, and certainly know places by
22 sight and not by Avenues. So sometimes it is very difficult
23 to be able to pinpoint to the Border Patrol's satisfaction
24 initially where an incident took place. And sometimes it
25 takes going back and forth, and you have to go through
26 translators trying to pinpoint how many days after you had
27 that job do you think it happened. It's takes a while to
28 pinpoint it. And if -- as you -- if the Border Patrol sees

1 any corrections in your facts, even though the gist of the
2 complaint remains the same as the actual harassment, what
3 you will get is letters saying something like, well, your
4 complaints are spurious like always, and maybe there was --
5 somebody was impersonating the Border. Patrol, and that, of
6 course, is a federal offense, and we'll turn your letter
7 over to the FBI. That is sort of the usual.

8 MR. CARNEY: Mr. Paz?

9 MR. PAZ: Ms. Smith, just specifically, have
10 you addressed your concerns to Gustavo De La Vina?

11 MS. SMITH: Oh, yes.

12 MR. PAZ: What was his response to you?

13 MS. SMITH: We've had amicable conversations
14 over the phone, but then I have a lot of -- a lot of
15 correspondence with the Border Patrol. But in the end, I
16 don't -- I don't see any changes.

17 MR. PAZ: And the other individual, James
18 Turnage, have you addressed the issues to him?

19 MS. SMITH: No, not James Turnage. James
20 Turnage is more somebody who you would address complaints to
21 about the processing of immigration papers and those kinds
22 of things. I go either to Mr. De La Vina or the Western
23 Regional Commission.

24 MR. PAZ: Thank you.

25 MR. CARNEY: Mr. Sillas?

26 MR. SILLAS: I take it from your comments that
27 apprehension by the Border Patrol of persons crossing the
28 border does not prevent them from attempting to cross again.

1 for their presence?

2 MS. SMITH: They claimed -- once we challenge
3 them -- that they were in hot pursuit of an undocumented
4 worker. In fact, the point is the client had an appointment
5 to come in and see us. They claimed the document is
6 legalized as part of IRCA. And the hot pursuit claim tended
7 not to be very credible when you consider that the client
8 sat singularly undisturbed in our reception area for about
9 ten minutes before he even went in to have an interview with
10 a law student with whom he was scheduled. And the Border
11 Patrol agents didn't even come in until 15 minutes after
12 that. By the time that I got a letter from the Border
13 Patrol, the client was no longer just an alien, he was a
14 smuggler.

15 MR. CARNEY: Was there a search conducted of
16 the premises?

17 MS. SMITH: No, because we were forceful
18 enough. But the agent refused to budge from a spot where we
19 had all sorts of client files open, and there were
20 conversations that were going on in other rooms by people
21 who were unaware that the Border Patrol was there. But the
22 point is that they could be listened to.

23 MR. CARNEY: Do you have any experience with
24 respect to Border Patrol procedures that they either follow
25 or just disregard Fourth Amendment restrictions on searches
26 and procedures?

27 MS. SMITH: Well, this is a law office and
28 nonpublic areas should not have been entered into without

1 MS. SMITH: No. It just takes -- it's more
2 difficult now. It takes more tries.

3 MR. SILLAS: So that the gist of your testimony
4 is that the numbers don't increase. And logically, then,
5 the more successful the Border Patrol becomes in shutting
6 off the border, the higher the number they will have in
7 apprehensions, because apprehension doesn't stop them from
8 crossing.

9 So, where an individual might cross the first
10 time with a loosely-netted border, he might be apprehended
11 five times in attempting to cross because of the changes of
12 policies. Is that right?

13 MS. SMITH: Precisely. And, in fact, there may
14 be recently a drop in the actual entrance, although not in
15 apprehension, because of the recession.

16 MR. SILLAS: Let me pursue this. Is there any
17 type of statistics that would support your proposition?

18 MS. SMITH: No; strictly anecdotal

19 MR. SILLAS: All right. Thank you.

20 MR. CARNEY: Ms. Smith, with respect to this
21 concern --

22 MS. SMITH: Excuse me. Just to go back -- but
23 it is something that Colegio de la Frontera Norte and the
24 U.S. -- and the U.S. Mexico Center of UCSD supports after
25 research that they have done with -- and it's not coming off
26 the top of my head now.

27 MR. CARNEY: Ms. Smith, with respect to the
28 intrusion into your office, what was the announced reason

1 consent.

2 MR. CARNEY: I mean, in the overall
3 experiences that you deal with the Border Patrol, do you
4 find that they adhere to the restrictions of the Fourth
5 Amendment or that they just disregard them?

6 MS. SMITH: You're going to listen to another
7 panel which deals much more with the day-to-day abuses than
8 I do. I deal much more with labor issues. But that -- I
9 think that it is the fact that I had to go to these kinds of
10 lengths certainly is indicative of what other people face.

11 MR. CARNEY: Thank you.

12 Mr. Erler?

13 MR. ERLER: I would just like to ask a general
14 question. In your opinion, do you think that the costs in
15 terms of discrimination and racism of enforcing immigration
16 laws is simply too high and would be better served if we
17 simply did -- no longer attempted to enforce the laws?

18 MS. SMITH: Frankly, I don't engage in those
19 kinds of debates. I deal with the policy that is set, but I
20 insist on observance of the law.

21 MR. CARNEY: Thank you, Ms. Smith.

22 Mr. Valladolid? Did I pronounce it correctly
23 the first time?

24 MR. VALLADOLID: The pronunciation is
25 Valladolid. You did pretty good actually.

26 MR. CARNEY: Thank you.

27 MR. VALLADOLID: Mr. Chairman Carney, the
28 Honorable Manuel Pena, and distinguished members of the

1 United States Civil Commission, it is an honor for me to
2 have the opportunity to address you on one of the most
3 important issues of our time, certainly one of the most
4 controversial and divisive ones.

5 I would like to thank the Commission in advance
6 for hosting these important hearings in San Diego, the
7 region that probably represents the highest border crossings
8 probably in this hemisphere and probably on a worldwide
9 basis.

10 I am David Valladolid, the first Vice Chair of
11 the Chicano Federation Board of Directors. The Chicano
12 Federation is a community-based organization that has served
13 and represented Latinos for 22 years in the County of
14 San Diego. As a service agency, we have provided general
15 counseling, citizen and immigration referrals, leadership
16 and economic development, food drives, and cultural events
17 throughout the year.

18 As an advocate agency, we have been at the
19 forefront of social justice issues sponsoring civil rights
20 and voting rights litigation, working to have better police
21 community relations, advocating our educational reform,
22 fighting for health and human services for the poor, and
23 being vigilant and outspoken on issues of immigrant use, not
24 only by Border Patrol, but by vigilante groups and employers
25 who tend to exploit the conditions that many undocumented
26 people find themselves in.

27 This Chicano Federation is also an affiliate of
28 the National Council of La Raza (phonetic), and we have

1 working with the immigrant community. There was a consensus
2 that exists where there is virtually no communications with
3 the Border Patrol and that the INS, also, is very difficult
4 to access to get the most general information from.

5 There was also a consensus that the immigrant
6 community remains very uninformed as to the laws and
7 regulations that they need to follow toward citizenship
8 programs. This certainly has created an atmosphere of fear,
9 apprehension, and general distrust by the immigrant
10 community towards the INS and the Border Patrol, and has
11 made them more vulnerable to the exploited conditions they
12 find themselves in and to unscrupulous attorneys and
13 consultants -- immigration consultants, who prey on them.

14 One of the counselors stated that he receives
15 two to three complaints of abuse by the Border Patrol on a
16 weekly basis. He says they range from verbal abuse to
17 actual serious physical abuse.

18 He said, for the most part, immigrants do not
19 feel that there is any form of redress, that they, many
20 times, choose not to complain because they find the
21 complaint procedure is either nonexistent or too cumbersome.
22 And he indicated to me that, probably, the only cases that
23 go forward are those that are very egregious in nature and
24 are usually referred to congressional offices or to the
25 American Friends Service Committee with Roberto Martinez.

26 The senior program coordinator stated that
27 older immigrants, many of whom have been here 20, 30, even
28 40 years, have recently come under a great deal of despair

1 worked on a national level towards policy and immigration
2 reform.

3 I come before you this morning to provide you
4 insight in the relationship, or lack of, that exists between
5 the Border Patrol and the Latino community-based
6 organizations, and to share some of the impact that it has,
7 not only with the undocumented community, but also with
8 Latino citizens here in San Diego.

9 On a personal note, I spent the latter part of
10 15 years working with individuals like Claudia Smith,
11 Roberto Martinez, and others documenting the violence and
12 the abuse that has gone on at this border. And personally,
13 I was very frustrated and tired of being angry and have
14 redirected myself more in the last couple years toward
15 political involvement for Latinos, because I believe that in
16 the long run that will be where we need to make changes in
17 terms of policy.

18 You're visiting a county where up to just two
19 or three months ago, we have never had a Latino elected to
20 the City Council Board of Supervisors, the Board of
21 Education, et cetera. So it's a community that is very much
22 powerless. And I think that, for the most part, elected
23 officials have always thrown their hands up in the air
24 around the issue of immigration and said, "It is a federal
25 issue. It is something we can't be involved with." But it
26 very certainly has impacted and affected our communities.

27 For this presentation, I interviewed,
28 extensively, program staff to solicit direct experiences in

1 and fear based on this new \$70 fee for green card renewal
2 that is being implemented by August of 1993.

3 Many live on low and fixed incomes and aren't
4 able to even meet these fee requirements. So they now,
5 basically, are very afraid to leave their homes. She
6 indicated to me that she receives very few, if any,
7 complaints of actual Border Patrol abuse towards the older
8 immigrants.

9 The counselor -- that I spoke of before that
10 told me about the high incidence of complaints that come
11 through his office -- indicated that this pattern of abuse
12 has remained very much constant for the past seven years
13 that he has worked in our office. He concluded that to, a
14 large degree, the immigrant community has become so
15 accustomed to the harassment and to the different forms of
16 abuse, most of them now chose to simply overlook it.

17 On another personal note, I come from a family
18 of seven generations here in California; yet, I have
19 personally been stopped and questioned not only in my
20 community but at several freeway checkpoints on more than
21 one occasion by the Border Patrol. This represents a direct
22 violation of my civil rights and is an affront to me since
23 the only probable cause for them stopping me was my
24 appearance.

25 The general feeling by many Latinos in our
26 community is that the Border Patrol exists primarily to try
27 to intimidate and harass Mexicans and Latinos. Also that it
28 functions with almost complete impunity and is not

1 accountable to anyone.

2 "An editorial in the 'San Diego Union-Tribune'

3 on Sunday, April 11th, entitled 'Rewards for Misconduct?

4 INS Cases Form a Disturbing Pattern,' referenced evidence

5 gathered by Copely News Service, Marcus Stern, which claimed

6 that senior officials of the INS routinely look the other

7 way when allegations of misconduct are lodged against some

8 INS employees. The editorial cited several examples of INS

9 employees being promoted at a time when they were under

10 investigation for charges ranging from sexual harassment to

11 actual physical attacks on co-workers."

12 "The editorial concluded 'that in testimony

13 before a house subcommittee, INS Inspector General Richard

14 Hankinson recently criticized the agency for the casual

15 manner in which it deals with allegations of wrongdoing.

16 Several former INS employees put it more bluntly. They

17 contend the agency reflexively protects its own, regardless

18 of their misconduct.'" End of quote.

19 I'm not here today to vilify all Border Patrol

20 agents and/or to charge them all with misconduct in the

21 performance of their jobs. I believe that, for the most

22 part, they probably do the best job they can in a very

23 difficult and impossible job. But I also believe that there

24 does exist an element in the Border Patrol who purposely set

25 out to abuse immigrants, and they need to be weeded out.

26 The real problem, as I see it, is our national

27 policy on immigration. It singularly represents the most

28 incredible waste of tax dollars and human resources in the

1 history of our nation. If we invested half of the billions

2 of dollars in human energy that we have expended to control

3 our borders into an economic plan for Mexico and our other

4 neighbors to the south, we would not be here today debating

5 the issue of human rights violation and/or confronted with a

6 national hysteria of an illegal invasion and an alleged,

7 negative impact on the undocumented community.

8 But since this policy direction will not

9 substantially change in the near future, I appeal to this

10 commission, in the name of human decency, that you use your

11 power and influence to promote major immigration reform.

12 In the next two days, you will hear many sides

13 of this important issue. Each side will provide case

14 studies, inflated statistics, many reports, and an

15 assortment of remedies to promote their position on the

16 immigration question. So, in spite of our differences, we

17 probably would all agree that the present, national,

18 immigration policy is and has been a failure. If the

19 current failed, trend continues, our society will pay the

20 price, both in terms of the continued, financial drain, but

21 also in terms of the human tragedy and social conflicts that

22 will make the L.A. riots seem like a warm-up call.

23 In a free society, no law enforcement agency

24 can or should be allowed to function without accountability

25 or responsibility, both to the constitution and the citizens

26 it represents. History is too full of examples of human

27 tragedy when groups or agencies have been able to exercise

28 power or control over others with full impunity in terms of

1 their conduct.

2 The authors of our constitution understood our

3 human weaknesses when they implemented systems of checks and

4 balances; therefore, no one should fear the checks and

5 balances of a federal oversight committee or community

6 review boards, et cetera, unless they have something to

7 conceal.

8 To change the current "us versus them"

9 relationship that exists between the Border Patrol and the

10 Latino Community, I offer the following recommendations:

11 One, the establishment of citizen advisory

12 groups to each region that will work with the Border Patrol

13 and INS directors.

14 Two, the establishment of a citizen oversight

15 committee in each region with the power to investigate,

16 subpoena, and make official recommendations on complaints

17 found meritorious.

18 Three, restrict the Border Patrol to a one-mile

19 radius of the international border, thus concentrating

20 efforts at the point of entry and limiting the civil rights

21 abuses in the Latino community. -

22 Four, reform the complaint procedure to provide

23 greater access to any individual who believes their rights

24 or due process has been violated.

25 Five, provide mandated cultural diversity

26 training for all agents and personnel that deal with the

27 immigrant communities.

28 Six, reduce the firepower of agents who patrol

1 the border -- the vast majority of their contacts are with

2 unarmed immigrants that pose very little danger.

3 Seven, recruit agents from the region that they

4 will be assigned in order to ensure their familiarity with

5 the customs and traditions of the communities they observe.

6 Eight, establish a binational human rights

7 commission that will monitor the border region.

8 Nine, develop a binational Border Patrol agency

9 with dual jurisdiction -- thus it would facilitate

10 intelligence gathering and maximize the nations resources.

11 Ten, streamline the immigration process -- the

12 current waiting periods are excessive and have a very

13 chilling effect.

14 Eleven, the visionary remedy would be to

15 establish a binational border region and establish a radius

16 around the border with full economic, social, political, and

17 policing cooperation between both of our nations.

18 While we face a very complex situation on our

19 borders -- our remedy needs to be approached with an

20 understanding of its historical, economic, and social

21 implications, one that takes into account the economic and

22 human factors in finding solutions. Again, Commissioners, I

23 thank you for the opportunity to address you on this issue.

24 If you have any questions, I would be more than happy to

25 answer them.

26 MR. CARNEY: Ms. Garcia?

27 MS. GARCIA: Mr. Valladolid, I have a couple of

28 areas to ask you questions from.

1 Obviously, all us of us are concerned with acts
2 of violence, and, obviously, that is what draws most of our
3 attention and concern. However, I want to focus a little
4 bit on simple Fourth Amendment stops, as you referred to
5 them.

6 How do you believe that we can get an actual
7 gauge of how frequent that is? And is your group involved
8 at all in trying to document that kind of civil rights
9 abuse? Because -- obviously, as a civil rights commission,
10 we're very concerned that Fourth Amendment stops be made
11 without probable cause or reasonable suspicion for some
12 kinds of crime. And what you've told us today is that
13 people are stopped. And, I guess, many of us know from
14 experience that people are stopped because of their
15 appearance.

16 MR. VALLADOLID: In the past, there were
17 coalitions here in San Diego -- the Law and Justice
18 Coalition being one of them that formed -- that did
19 document, from the actual stopping all the way up, in terms
20 of the abuses. And we brought those forth. Roberto
21 Martinez, one of the co-founders of that coalition,
22 testified many times at a state and federal level trying to
23 bring that evidence and information forward.

24 I don't know if it's been continued in terms of
25 documentation. I think it does exist on a regular basis. I
26 think, for a long time, we, here, in San Diego, have
27 advocated with our police department to stop any -- for
28 sometime there was cooperation between the police department

1 the north and east counties, where we are -- unfortunately
2 head up some of the Ku Klux Klan groups here in San Diego.

3 The leadership is here. It's very vocal. It
4 gets access to cable television to talk about their hate
5 positions. So we know that, to no degree, has there ever
6 been an acceptance to those groups and their activities. In
7 fact, I think that most law enforcement agencies from the
8 Border Patrol on down find them, you know, reprehensible and
9 in no way condone and advocate what they do.

10 MS. GARCIA: But didn't you have a mayor here
11 in San Diego -- maybe I'm wrong -- a mayor that is part of
12 one of these organizations, an ex-mayor?

13 MR. VALLADOLID: We have a former mayor who,
14 after leaving office, became a radio spokesperson, and, as
15 many believe, used that station for rating purposes to
16 inflame the issue of anti-immigrants.

17 And he has cast people from groups like FAIR
18 and Light Up the Border, and -- I don't know if he's
19 actually had the actual hate groups on his shows, but
20 certainly the perspective or the image that he has carried
21 is that he has fostered and inflamed the issue rather than
22 helped it.

23 MS. GARCIA: Thank you.

24 MR. CARNEY: Mr. Paz?

25 MR. PAZ: Mr. Chairman.

26 Mr. Valladolid, I have two questions for you:
27 One is that the Border Patrol sometimes alludes to their
28 enforcement powers by saying that they are dealing more with

1 and the Border Patrol. And when the police department
2 determined -- or felt that someone might be undocumented,
3 they would actually hold them, to find out later after
4 holding a person, that the person wasn't undocumented. And
5 the Border Patrol would tell them when they got there that
6 there was not enough evidence to take them in.

7 We have asked and worked to have policies here
8 in this city that would not allow for those joint efforts
9 between the Border Patrol and the police department, because
10 we feel that it chills our community from accessing the
11 police department when it needs them if there were people
12 that would fear that the Border Patrol would be brought in.

13 But to get back to your question are -- is
14 there documentation? I would ask that you ask that question
15 to Roberto Martinez and other people who work more on a
16 daily basis in documenting cases, and they can provide you
17 that information.

18 MS. GARCIA: I also want to ask you in regard
19 to the prevalence of anti-immigrant groups and hate groups
20 that some of us in Arizona have heard much about here in the
21 San Diego area, my question is: What do you feel
22 the local -- or how do you assess the local and national
23 response to these very dangerous groups?

24 MR. VALLADOLID: The response, obviously, has
25 always been by the elected officials and leadership never to
26 condone the actions of hate groups and vigilante groups.
27 Certainly they exist in this county. We have a lot of
28 evidence of their existence, not only on the border, but in

1 the drug smuggling or trafficking situations than the factor
2 of the human individual.

3 Can you respond to the decree that we do have
4 drug smuggling? And how is it used to, perhaps, cover up,
5 really, the abuse that exists with human beings?

6 MR. VALLADOLID: I don't think any of us would
7 ever deny that there is a drug crossing on the border and
8 that there is a criminal element that crosses the border. I
9 think there needs to be a separation. I don't think -- I
10 think we have the DEA, and we have other drug enforcement
11 agencies that are responsible for drug interdiction on the
12 border, and they should be set up to deal with that
13 problem.

14 When you begin using law enforcement agencies
15 like the Border Patrol to also be drug interdiction
16 agencies, then you end up running into a lot of problems.
17 What we have found is that the drug issue on the border has,
18 basically, promoted the militarization of the border.

19 I remember a couple years ago documenting that
20 there were at least seven to eight military and law
21 enforcement agencies working on this border. And I think
22 the major basis for their activities was drug interdiction.

23 Whether the Border Patrol uses the -- I think
24 the Border Patrol justifies the way they're armed on the
25 basis that there are drug people crossing the border and
26 they're doing drug interdiction. And that is the
27 justification that they are going to run into these criminal
28 elements, and they have to be heavily armed to protect

1 themselves. And, certainly, nobody is asking them to go out
2 there and jeopardize themselves.

3 But the reality is that the majority of people
4 that cross that border, legal or otherwise, are not drug
5 pushers or carriers or criminals. And I think that's -- our
6 biggest point of contention is that the media highlights
7 those that are caught in terms of drug activity. And there
8 is -- a misrepresentation that the general public carries in
9 that a lot of the problems of drugs, disease, et cetera, are
10 caused by people crossing the border.

11 MR. PAZ: I would like to ask you the same
12 question I asked Ms. Smith.

13 What is your working relationship with both
14 Mr. De La Vina and Mr. Turnage in terms of ironing out
15 issues or addressing issues that you service?

16 MR. VALLADOLID: It's rarely used. I've known
17 both Mr. Turnage and Mr. De La Vina. And I've met with
18 them, and I've talked with them, and I, basically, find them
19 personable people. They, obviously, don't agree with the
20 perspective that I bring to the table. And I certainly have
21 differences with them on theirs.

22 I have never used the Border Patrol to lodge
23 complaints because: One, the complaint procedure, I think,
24 is through the Office of Inspector General where any formal
25 complaint would be lodged on abuse cases. And I, frankly,
26 use more the congressional offices to refer people to -- if
27 it isn't to send them over to the American Friends Service
28 Committee -- because there will be a follow-up investigation

1 and a formal documentation of the complaint.

2 But in terms of INS with Mr. Turnage, I've
3 spoken to him to get his assistance on individual cases but
4 not on any formal manner.

5 MR. PAZ: This is a different kind of a
6 question, but, because of the name of the agency you
7 advocate, do you feel any kind of repercussion in terms of
8 racism just because of the word "Chicano"?

9 MR. VALLADOLID: Absolutely. We get our hate
10 calls, mail to our agency. We -- the reality is that for
11 many, we are not outspoken enough. For the other side, we
12 are outspoken too much. So, we are in that middle spectrum
13 where we try to keep a sense of respect and dignity for
14 everyone who is involved.

15 But at the same time, we have the image, by
16 many, that we are this militant, radical organization that
17 is just too culturally sensitive. So we have our number of
18 calls and hate letters that come into our agency.

19 MR. PAZ: Thank you.

20 MR. CARNEY: Ms. Patterson?

21 MS. PATTERSON: Sir, you've offered a number of
22 recommendations, here, this morning. I have two questions
23 for you:

24 Have you had an opportunity to discuss any of
25 the recommendations with the Border Patrol? And, secondly,
26 if so, what type of reaction did you get?

27 MR. VALLADOLID: Probably, the only one that
28 I've ever discussed openly with De La Vina about was the

1 Community Advisory Group, and he was, actually, at the time
2 we were talking, seemingly favorable with the idea of having
3 people dialogue with him and to get a real sense of how the
4 community feels and get some input. It didn't develop, but
5 I think that that was probably the only thing I have ever,
6 really, discussed with him.

7 MS. PATTERSON: Thank you.

8 MR. CARNEY: Dr. Erler?

9 MR. ERLER: Yes. Mr. Chairman, I must say that
10 I, categorically, rejected Commissioner Garcia's implication
11 that all those who seek stronger enforcement of immigration
12 laws are necessarily hate groups. And I don't think that --

13 MR. CARNEY: Dr. Erler, I think that -- reframe
14 from commenting in that nature and just --

15 MR. ERLER: Well, she did express an opinion.
16 And I must say that I, also, have, many times, expressed an
17 opinion on that subject. But I do have a question for the
18 witness. It wasn't clear from your statement.

19 Did you say that it was your opinion that the
20 INS exists specifically to harass Latinos? Or were you
21 reporting the opinion of other people?

22 MR. VALLADOLID: I was reporting the opinion of
23 myself in terms of the Border Patrol and the INS -- not
24 necessarily the INS. The Border Patrol, I think, in the
25 opinion of a lot of people, has been used as an instrument
26 of harassment.

27 MR. ERLER: Is that also your opinion in this
28 case, Mr. Valladolid?

1 MR. VALLADOLID: Yes.

2 MR. ERLER: And is this an unwritten policy or
3 an unstated policy of --

4 MR. VALLADOLID: I think it is a patterned
5 practice.

6 MR. ERLER: A patterned practice.

7 You, also, mentioned that you believed that the
8 principal problem that we are facing here stems from our
9 national policy on immigration. And you made some rather
10 innovative suggestions.

11 Do you believe that our national policy in
12 these matters would be better served if we had something
13 like an open border rather than our present system?

14 MR. VALLADOLID: Well, I think -- given the
15 realities of the border where you have a country in crisis
16 economically and then you have our country in a labor
17 shortage and in need of labor -- so you have the
18 push-and-pull phenomena. Certainly, an open border would
19 not be like the borders that we have with Canada, because
20 Canada's standard of living is equal and some would argue
21 even better. So, therefore, there isn't the need to come
22 across.

23 I think had we invested -- as I said in my
24 statement -- the amount of money and time and resources into
25 the development, the economic development of our neighbors
26 to the south, we wouldn't be here today debating this
27 issue. I think we're talking about the free trade agreement
28 with the free movement of products.

1 I proposed to a committee several months ago
2 that there ought to be a grandfather clause in NAFTA that
3 would allow that -- let's say within 20 years -- that the
4 border would be a free-and-open border. And, therefore, the
5 incentive to our leadership would be that you'd better make
6 sure that NAFTA is not a one-way street, because in 20
7 years, when that border opens, you will see a crossing that
8 you've never seen before.

9 MR. CARNEY: Mr. Cooper?

10 MR. COOPER: Mr. Valladolid, I have a question
11 about local officials. And I'm asking for an opinion about
12 the response of local officials. You referred to a former
13 city official on a certain talk show and its perceived
14 effect on the public or the community.

15 What about other key local officials, in
16 general, and their responses to anti-immigration, hate group
17 activity, how do you perceive the way that that's going
18 right now in terms of local leadership? Do they openly
19 support, for example, any of the recommendations that you've
20 made here today, to your knowledge? What is your feeling
21 about that?

22 MR. VALLADOLID: "Openly support" some of the
23 things that I've cited?

24 MR. COOPER: Yes.

25 MR. VALLADOLID: I haven't heard if they openly
26 would support. I think some of the recommendations, they
27 could accept them. I think, for the most part, the elected
28 leadership stays out of this issue, because it's such a

1 recent past with the bettering of the governmental and
2 policing relationships between our two counties.

3 So I think there is some movement a foot that
4 is positive; that certainly I think the federal government
5 bears the responsibility to ensure that the current trends
6 that exist on this border be stopped in terms of the
7 violations and abuse.

8 MR. CARNEY: Mr. Zazueta?

9 MR. ZAZUETA: Senor Valladolid, is it -- am I
10 correct to say that on your comprehensive program, very
11 comprehensive program, to adopt it, it would take political
12 will?

13 MR. VALLADOLID: That's an understatement,
14 and I think that -- honestly, not all of my suggestions are
15 ready for our time. But I think that, certainly, some of
16 them should be looked at. And others that you will receive
17 in these hearings need to be examined and put forward as
18 ways to rationally address the issue of immigration, because
19 I think our policy that currently stands has been
20 reactionary in nature. And it hasn't been effective.

21 We were telling people before IRCA was passed
22 that it was not going to be effective and that it was not an
23 enforcement issue. It was an issue of economics. It was an
24 issue of human beings.

25 And I think that shortsightedness on our part
26 has led to a situation where even with NAFTA at the
27 doorstep, they're projecting a 20 percent increase of border
28 crossings during the next 10 years.

1 controversial one.

2 They probably look at it as not politically
3 expedient to take a position. They just say it is a federal
4 issue and, therefore, something that we don't deal with and
5 don't have to contend with. When it does come up, elected
6 people will buy into the negative impact studies that have
7 been coming out recently in terms of the impact of the
8 immigrant community.

9 And I don't think any of us go against the idea
10 that the Federal Government ought to accept some of the
11 responsibility of the impact that is made by the
12 undocumented agreement. I think the studies, as you heard
13 already this morning -- you can find studies on both sides
14 that negate one another. Senator Craven did a study, here,
15 in San Diego that showed this incredible millions of
16 millions of dollars of a negative impact. And yet a similar
17 study in L.A. -- where one could argue that you have
18 certainly a greater immigrant community -- they found the
19 opposite: that with every dollar used in public services
20 there was four dollars put in by the undocumented.

21 So getting back, I guess, to your question, are
22 elected leaders open to the recommendations? I think they
23 would be to some. I think elected leaders need to take more
24 responsibility for the issue of immigration. It is
25 something that affects us.

26 We've seen some positive movement lately with
27 our own mayor and the mayor of Tijuana creating a
28 sister-city relationship. We've seen more movement in the

1 I don't see it slowing down. I don't see the
2 situation being improved until we start looking at some
3 creative and new ways of approaching the whole thing. And I
4 think, yes, it isn't politically expedient right now for
5 people to go out in front on this issue, but the reality not
6 to do anything is going to divide this country like it's
7 never been divided before. And I would hate for us to allow
8 that to happen. And in a time when we were trying to build
9 relationships with Mexico and counties to the south, we need
10 to make sure that the issue of the border is addressed in
11 those negotiations.

12 MR. ZAZUETA: Thank you.

13 MR. CARNEY: Ms. Julien?

14 MS. JULIEN: Sir, you have given us several
15 recommendations. Can we go back to your fourth one for just
16 a moment? Reforming the complaint procedure. We've heard,
17 repeatedly, today that the complaint procedure is
18 inadequate. And you say you've used some different avenues
19 rather than going through the Border Patrol procedure.

20 Can you give us any specific recommendations
21 for changing that procedure that, perhaps, you've gained by
22 going through different avenues?

23 MR. VALLADOLID: I think the best suggestion I
24 could give you would be local oversight committees. If you
25 have a complaint procedure that is handled by the Office of
26 Inspector General and goes through the whole bureaucracy, no
27 one ever really knows where it ends up. That really --
28 certainly doesn't increase the confidence of people to

1 believe that there is going to be redress when there is
 2 meritorious allegations of abuse. I think if you had some
 3 local control of an oversight committee appointed in this
 4 area where complaints could be processed here, investigated
 5 here, and recommendations on disciplinary action, if
 6 appropriate, could be made here locally, I think you would
 7 find a lessening in the antagonism between the agencies of
 8 the Border Patrol and the community.

9 As grim a picture that I can paint, I can also
 10 tell you that six, seven years ago, we had a similar
 11 relationship between the community and police departments,
 12 especially in the City of San Diego. And that, over the
 13 last six or seven years, has changed dramatically as a
 14 result of -- even a review board that many argue is not a
 15 review board, because it didn't have subpoena and
 16 investigative powers. But because a lot of people committed
 17 themselves to police -- community policing -- committed
 18 themselves to begin developing respect and a positive
 19 relationship between law enforcement and the community --
 20 that things have changed here.

21 So I don't think we can just simply say the
 22 Border Patrol issue is something that can't be changed in
 23 terms of the relationship. We need to make them accountable
 24 to the communities in which they serve.

25 MS. JULIEN: And did I understand you to say
 26 that the citizen group is something that the Border Patrol
 27 has been receptive to?

28 MR. VALLADOLID: No. No. I said earlier --

1 MS. JULIEN: I think you said the citizen
 2 advisory group.

3 MR. VALLADOLID: An advisory group. It is
 4 something they were not necessarily opposed to. I think a
 5 citizen review or an oversight committee is something that
 6 they will adamantly reject.

7 MS. JULIEN: But the advisory group, they, at
 8 least, talked about?

9 MR. VALLADOLID: Yes.

10 MR. CARNEY: I would like to thank both of you
 11 for attending today, and --

12 MR. VALLADOLID: Thank you.

13 MR. CARNEY: -- and if you have any other
 14 additional information to submit, would you please do so?

15 MR. VALLADOLID: Sure.

16 MR. CARNEY: Next I would ask that we have
 17 Mr. Juan Vargas, member of the San Diego City Council, and
 18 the Counselor Attache Miguel Escobar Valdez from the Office
 19 of the Consul General of Mexico -- would you please step
 20 forward.

21 MR. VALDEZ: I'm Consul Miguel Escobar, and I
 22 represent the Consul General of Mexico in San Diego. In the
 23 invitation received by our consulate from the
 24 U.S. Commission on Civil Rights, it was requested that we
 25 should provide information on the following subjects. And I
 26 would like to follow the order stated in that letter:

27 First, perceptions on the relationship between
 28 the United States enforcement agencies, such as INS, Border

1 Patrol, U.S. Customs, and the Consulado General De Mexico in
 2 San Diego.

3 Let me tell you right away that a great deal of
 4 these relationships have to do with the migrant flow through
 5 the San Diego-Tijuana border and the way our undocumented
 6 migrants are treated. The Mexican migratory, workers --
 7 principally, undocumented workers from the United States --
 8 are very much vulnerable. And this vulnerability has to do
 9 to the fact that they must often deal with law enforcement
 10 officers in a practically helpless state.

11 In the United States, the entry of undocumented
 12 aliens is an offense of a criminal material. So we are
 13 talking about empowering immigration authorities in this
 14 country for combatting the entry of "illegals" with the
 15 greatest discretionary powers, which sometimes leads to the
 16 excessive use of force and of lethal weapons to apprehend
 17 undocumented workers. In this case, responsible agents of
 18 the INS have generally been exonerated.

19 So these unfortunate situations cast inevitable
 20 reflections upon the relationship between U.S. enforcement
 21 agencies and the Consulate General of Mexico, inasmuch as
 22 one of the main objectives of every Mexican consular
 23 representation abroad is the protection of our nationals.
 24 And, actually, one of the most important goals of the
 25 Mexican foreign service is to protect the rights of Mexicans
 26 in foreign land.

27 Does this mean that the mentioned relationship
 28 is permanently strained because of the cases of violations

1 of human rights perpetrated against our nationals? I
 2 wouldn't go as far as that.

3 We do have confrontations and frictions in
 4 circumstances of institutional violence. But we -- the
 5 Mexican Consulate, INS, Border Patrol, San Diego Police,
 6 San Diego County Sheriff, U.S. Customs, et cetera -- have to
 7 be able to work in harmony and establish a degree of
 8 cooperation and understanding in many instances.

9 The second subject in the letter of invitation
 10 has to do with the conduct of Federal Immigration and U.S.
 11 Customs Enforcement agencies relating to the use of force,
 12 language, and cultural sensitivity, and the protection of
 13 human rights.

14 In one of its reports, the Comision Nacional de
 15 Derechos Humanos -- the national commission on human
 16 rights -- the Mexican national commission of human rights --
 17 pointed out that about half the violations of human rights
 18 of Mexican, migratory workers officially reported, occurred
 19 in the San Diego area, while the next highest incidence
 20 occurred in El Paso, Texas.

21 Regarding the U.S. law enforcement officers
 22 identified as the perpetrators of this violation of human
 23 rights, the official data show that the majority -- nearly
 24 60 percent -- involved officers of the United States
 25 Immigration and Naturalization Service. They were followed
 26 by elements of the Crime Prevention Unit of the San Diego
 27 Police Department which is around 10.2 percent; regular
 28 police officers, 8.5 percent; and custom officials,

1 7.6 percent.

2 Use of force, lethal force, by Border Patrol

3 agents and our other law enforcement agents on undocumented

4 migrants has been one of the main worries of the Mexican

5 Consulate General in San Diego. And in all of these cases,

6 there is a common denominator: Impunity.

7 To our knowledge, not one officer under

8 investigation for committing bodily harm to a migrant has

9 ever been found guilty. I do not think there is a cultural

10 sensitivity on the part of INS elements in relation to the

11 migrant worker, especially the undocumented one.

12 Actually, you could think, sometimes, in terms

13 of rationally discriminatory attitudes. There are many

14 recorded cases of maltreatment, verbal abuse, and insulting,

15 obscene language on the part of the Border Patrol agents.

16 Coming to subject number three: Information on

17 the accessibility, adequacy, and effectiveness of existing

18 INS, Border Patrol and U.S. Customs complaint procedures for

19 receiving, investigating, and resolving allegations of

20 misconduct. This thing has already brought some answers

21 from some of the people here.

22 Complaint procedures are something to behold.

23 You have to realize that many times, the victims of

24 misconduct become the accused. These abuse migrants, with

25 no protection at all, unfamiliar with U.S. laws and U.S.

26 culture, with no knowledge of English and sometimes even of

27 Spanish, fearing deportation, cannot defend themselves

28 against trumped-up charges and most of the times will accept

1 members of this agency have in performing, particularly with

2 regard to the use of force and lethal weapons.

3 Number two, that in the training of officers of

4 the Border Patrol, the idea of respect for human life and

5 dignity should be instilled. Also, emphasis should be

6 placed on the fact that undocumented workers are not

7 criminals.

8 Number three, that the officer of the INS be

9 inculcated with a less police-like stance -- how can I say

10 it -- humanitarian approach to these migrants, seeking to

11 control them without violent means, when entering the U.S.

12 territory.

13 Number four, that the collaboration between the

14 FBI and Mexican authorities should continue in the

15 investigation of specific cases in which it is presumed the

16 acts of violence committed by U.S. law enforcement officials

17 involved violations of the human rights of Mexican migratory

18 workers. We would like, also, that the FBI continue on its

19 task of identifying individuals and groups who, on the basis

20 of ideological considerations of the racial type, commit

21 acts of violence against Mexican nationals.

22 Thank you so much.

23 MR. CARNEY: Thank you, sir.

24 Mr. Sillas?

25 MR. SILLAS: Mr. Consul General, thank you so

26 much for being here this morning and for that particular

27 presentation.

28 The question I have is: whether or not, in your

1 deportation rather than pursue complaints against elements

2 of the law.

3 The INS systematically refuses to divulge the

4 names of agents involved in shootings and other types of

5 mayhem. And this, of course, makes it very difficult for

6 the victims to identify those who abused them if they ever

7 should be thinking in filing administrative complaints or

8 civil lawsuits.

9 And in relation to the last subject of the

10 letter, which has to do with " ... general views on border

11 violence and hate issues as they relate to civil rights, and

12 recommendations for addressing these problems."

13 We recognize two types of violence at this

14 border: the quote, "usual" sort of violence -- that is,

15 violence perpetrated by habitual delinquents that prey on

16 migrants -- and the institutional kind of violence, violent

17 actions in which law enforcement officers participate.

18 The first type of violence, I'm glad to say,

19 has declined dramatically, thanks to a concerted effort on

20 both sides of the border. On the Mexican side, the Grupo

21 Beta, an integrated police operative, has worked wonders.

22 And I would like to express my hope that there is, or will

23 be, a declining trend in relation to institutional violence.

24 Now, for the recommendations:

25 Number one, we would like to think -- we would

26 like to see that the standards regulating the operation of

27 the INS, the Border Patrol be periodically reviewed in order

28 to reduce to a minimum the broad discretionary powers

1 opinion, there is a difference of treatment by the Border

2 Patrol with persons who are undocumented as opposed to

3 persons who are documented or who are citizens of the United

4 States.

5 MR. VALDEZ: I don't think so. I think that

6 sometimes, very frequently, physical aspects and the -- and

7 the perception that they are dealing with among, quote,

8 "Hispanics" -- we don't like the term Latinos -- Mexicans,

9 actually govern their very actions. In the case of

10 undocumented migrants, we do have -- we do have the feeling

11 that there is a roughness in the treatment of them.

12 MR. SILLAS: The initial contact by a Border

13 Patrol agent may be based upon physical appearance of an

14 individual, referred to as "Mexican," and at that point in

15 time, given the individual Border Patrol agent -- may or may

16 not have an idea as to the naturalization or the citizenship

17 of that individual.

18 My question is, in your opinion, is there a

19 difference of treatment of an individual once the Border

20 Patrol finds that this person is an undocumented immigrant?

21 MR. VALDEZ: It has been -- Yes, I would say

22 so. I would say when they realize that they are dealing

23 with undocumented people, they would have a different

24 attitude.

25 Once they do have the certainty that these are

26 "wetbacks," "undocumented people," "illegals," whatever,

27 they have a different sort of attitude.

28 MR. SILLAS: And is that treatment better or

1 worse, in your opinion, than a person -- in the treatment a
2 person would get if he were a citizen or a documented
3 person?

4 MR. VALDEZ: Not necessarily. Not necessarily.
5 Unfortunately, it happens quite often, and it shouldn't be
6 considered as a general rule.

7 MR. SILLAS: But there have been instances, in
8 your opinion, that a person who is found to be undocumented
9 is treated poorer (sic) than --

10 MR. VALDEZ: Yes. There have been many
11 documented instances of that particular type.

12 MR. SILLAS: And do you have an opinion as to
13 how that might come about in the sense that the Border
14 Patrol feels that that person is helpless in terms of being
15 able to respond?

16 MR. VALDEZ: Well, one of the recommendations
17 that you just heard is that we would like to see more of
18 this sensitivity instilled in these Border Patrol agents.
19 They should realize that they are facing unarmed people that
20 actually are coming across -- without documents, of
21 course -- trying to get a job. And they are not, for the
22 most part, criminals. Absolutely, they are not, by a great
23 majority, criminals.

24 So, perhaps, they should be -- the Border
25 Patrol should be able to work out some sort of a policy in
26 which the treatment for these undocumented migrants should
27 change. There should be a more humane approach to this.
28 I'm not trying to set up policies, no, sir, not at all. I'm

1 mean, I would say that the cooperation between law
2 enforcement agencies on both sides of the borders on
3 preventing the violence on El Gordo would be the greatest,
4 possible example.

5 That type of violence, the usual sort of
6 violence, is becoming quite transit in that no man's land,
7 which we call El Gordo, in the Tijuana and San Ysidro
8 border. By the latest figures -- the last, Mexican, fiscal
9 year, the decrease was around 80 or 78 percent. Yes --

10 MR. ERLER: Did the --

11 MR. VALDEZ: -- in preventing that sort of
12 violence have been very -- no, sir.

13 MR. ERLER: I see. So the major cause of
14 border -- or the major source of border violence, then,
15 remains the Border Patrol, essentially?

16 MR. VALDEZ: I wouldn't say that. I would say
17 that we still have cases, documented cases, the sort of
18 institutional violence that permeates the -- what are the
19 actions of law enforcement -- some law enforcement agents
20 working on the border on the U.S. side.

21 MR. ERLER: You also mentioned twice that we
22 must realize that undocumented workers are not criminals.
23 But I understand -- I don't take that to mean that you don't
24 think that breaking the United States law is not a criminal
25 act?

26 MR. VALDEZ: Well, there is a difference
27 between the Mexican legislation and the U.S. legislation in
28 not having the proper documents in an administrative

1 just saying what would be the recommendation from the
2 Mexican Consulate as suggested.

3 MR. CARNEY: Thank you.

4 Dr. Erler?

5 MR. ERLER: Yes.

6 Mr. Consul General --

7 MR. VALDEZ: Hold on, sir. Just a second. I
8 am not the Consul General of Mexico in San Diego. I'm
9 one of the Consulates.

10 MR. ERLER: Oh, I'm sorry.

11 MR. SILLAS: We just promoted you.

12 MR. ERLER: Wasn't that your form of address,

13 Mr. Sillas?

14 MR. SILLAS: Yes.

15 MR. ERLER: I was just following Mr. Sillas' --

16 I'm sorry. I hope I haven't offended you.

17 MR. VALDEZ: No, sir, not at all. I hope I
18 will one of these days.

19 MR. ERLER: Well, I hope so.

20 MR. SILLAS: You have our recommendation.

21 MR. ERLER: You mentioned that there are two
22 kinds of violence that were prevalent. And the first type
23 of violence that you mentioned was immigrants perpetrating
24 violence upon other immigrants. And you mentioned that this
25 was declining. Is this still a significant problem, in your
26 opinion?

27 MR. VALDEZ: I think -- it would -- if we would
28 like to get an example of what bilateral cooperation would

1 offense. And, in any case, we are dealing with human
2 beings. That what they are trying to do is better their
3 personal situations and to get a job -- mainly that.

4 So we try to stress the fact that these are
5 workers migrating to find a way of making things better for
6 their families, and we should see things in that context.

7 MR. ERLER: And I agree with that. But does
8 this mean, then, that American immigration laws are simply
9 not compatible with the humanitarian view of our relations?

10 MR. VALDEZ: I haven't said that, sir.

11 MR. ERLER: I wonder if that is the
12 implication.

13 MR. VALDEZ: No, sir, not at all. What I mean
14 is, we deal only with the violations of human rights of our
15 nationals. And in that context, we do believe that there
16 are many instances in which those human rights have been
17 violated. And that's what our main proposals are of our
18 main existence in San Diego or whatever.

19 MR. ERLER: Thank you very much, sir.

20 MR. CARNEY: Mr. Paz.

21 MR. PAZ: Yes.

22 MR. VALDEZ: Que paso, Ramon?

23 MR. PAZ: Muy bien.

24 I would like to also follow up on a question
25 that I had asked of previous people. I would like to know
26 your relationship, your working relationship, with both
27 Mr. De La Vina and Mr. Turnage in terms of addressing to
28 them some of the violent crimes or problems that you have

1 seen or witnessed or are addressing on behalf of the welfare
2 of the Mexican people.

3 MR. VALDEZ: Let me put it this way. We do
4 have a good working relationship with Mr. De La Vina and
5 Mr. Turnage. We talk to them quite often, and we deal with
6 them in many, many instances. Within reason, we have a good
7 relationship. But this does not mean that we are getting
8 our problems solved in the best possible manner.

9 Whether it is the investigation of human
10 rights violation complaints -- take such a long time. We
11 sometimes do not get a very definite answer. And most of
12 the times -- almost all of the times, I mean, we -- we do --
13 we see that the accused are not -- are never -- are never
14 found guilty. So in terms of establishing a working
15 relationship, yes, we do have one with the Patria (phonetic)
16 in San Ysidro and with Customs. Sometimes it does not
17 produce much.

18 MR. PAZ: You mentioned the word "sensitivity"
19 in trying to solve the problem. What would be your
20 impression of these two gentlemen's sensitivity towards the
21 problem?

22 MR VALDEZ: I think they have enough experience
23 to feel -- to feel what is the -- what is happening on the
24 border. I think they are sensitive enough in terms of the
25 migrant flow and have knowledge enough to know what is
26 happening and how things are going on the border.

27 Still, they represent a system. And to put
28 it -- somehow they have to work and abide by that system. I

1 people in the field and talking with them every day as they
2 come through our office to consult with our staff on a
3 myriad of problems, many of whom we try to help in dealing
4 with the authorities.

5 One of the areas of great conflict has been as
6 the on-off-on-again collaboration between the Border Patrol
7 and the sheriff's department personnel. Very often, the
8 sheriff's personnel have called on the Border Patrol agents
9 to assist them in interrogation, because many of the
10 sheriff's people are not able to speak Spanish. And what
11 happens in those cases is that the sheriff's personnel
12 become identified with the Border Patrol agents.

13 Consequently, very often, a Hispanic person who
14 is a victim of a crime does not call the sheriff's
15 department for protection because of fear of being turned
16 over if he happens to be undocumented and simply out of fear
17 because of these kinds of experiences.

18 For example, just about -- less than two weeks
19 ago, a man called my office -- his wife, I believe, made the
20 first call to my office. Her husband was stopped by the
21 Sheriff's office in the City of Encinitas because the
22 license plate was missing on her car which he was driving --
23 her husband was driving.

24 Her complaint was that instead of his being
25 asked to show his driver's license or his car papers, he was
26 asked for his immigration papers. When he could not produce
27 them -- because they were left at home -- very often they
28 are working in construction and leave these important

1 don't think I can tell you more about that sort of thing.

2 MR. PAZ: And the last question: Have you ever
3 dealt with Mr. Camacho or Mr. Esposito, in any manner,
4 regarding the stated issue?

5 MR. VALDEZ: Yes. The Mexican Consulate has
6 many times dealt with Mr. Camacho, and we have found that
7 relation quite good in most instances.

8 MR. PAZ: Thank you, sir.

9 MR. CARNEY: Thank you, Mr. Valdez.
10 Raymond Buendia, Andrea Skorepa, and
11 Reverend Rafael Martinez.

12 Which of you wishes to proceed.

13 REVEREND MARTINEZ: Distinguished members of
14 the Civil Rights Commission, my name is Rafael Martinez.
15 I'm the executive director of North County Chaplaincy, that
16 is in San Diego, North County, which is a community-based,
17 multipurpose, social service agency.

18 Most of our work is with immigrants from Mexico
19 and Central America and mostly in the agricultural areas of
20 the North County, many of these people living in the cities
21 of the various communities of North County, many of them in
22 encampments and in the canyons and hills of our beautiful
23 county.

24 I would like to share with you some of the
25 areas that are of a great deal of concern as we deal on a
26 day-to-day basis with these people.

27 I am not a public official. I'm not a
28 bureaucrat. I'm a frontline, humble pastor serving the

1 documents at home -- because rather than carrying them in
2 their pocket where they get soaked with perspiration or very
3 often lost -- when he was not able to produce them, the
4 sheriff's agent called the Border Patrol. Fortunately, it
5 was in front of the house of his employer who came out upon
6 this incident and was able to prove and show that this
7 employee of his is a permanent resident of the country.

8 Also, another misuse of force has never been
9 more evident than in the case of a woman in the village of
10 Poway who was alleged to have been raped by some Mexican.
11 The sheriff arrested 85 Mexicans and incarcerated several
12 men whom they took out of their employment places. The case
13 was finally dropped because of lack of evidence. The
14 sheriff's office praised, later on, their officers for a job
15 well done.

16 One of the newspapers -- from one of the
17 newspapers a few days after it says, a federal judge has
18 ruled that the Sheriff's Department did not violate the
19 rights of six Hispanics who were charged with raping a Poway
20 teenager a few years ago. The five men and one woman were
21 among more than 80 documented and undocumented workers who
22 were detained after the 15-year-old girl said she was raped
23 behind an old Poway Market Shopping Center. The charges
24 against all six were later dropped.

25 A common problem is encountered by the meeting
26 of Sheriff's officers and persons whose language they cannot
27 speak. And one of our recommendations is that language
28 education should be a must in the requirement of a law

1 enforcement officer in these areas.
 2 In fact, it should be required at a reasonable
 3 high level of proficiency, not just Amigo/Sombrero kind of
 4 Spanish. The same can be said about cultural sensitivity.
 5 The unnecessary humiliation of our people who are simply
 6 suspected because of their appearance, because of their
 7 language or social morals -- such as, for instance, stopping
 8 to talk with a small group of friends on a sidewalk or in a
 9 corner, it seems, to us, that this is a misuse of police
 10 support, authority, and certainly unconstitutional.

11 Accessibility to complaint procedures and
 12 places is almost unknown in our community. I really don't
 13 know if any one of our people has ever made an attempt to
 14 use it. Just having to go downtown to file a complaint
 15 discourages most of them. These people are not familiar
 16 with the center of the City and certainly with its parking
 17 limitations and costs.

18 The files on border violence during the last
 19 few years that I have been here, are extensive and are very
 20 well documented. For instance, the three young men, Mexican
 21 workers, who were simply shot by high school students who
 22 simply went out "to hunt ourselves some Mexicans this
 23 evening." These two young workers going home at the end of
 24 the day to the camp were killed. The young high school
 25 students went back to their high school in one of our high
 26 class communities bragging, "Hey, we hunted ourselves a
 27 couple of Mexicans today."

28 Another one is the farm worker that was tied

1 down with a bag over his head by the owners of the five --
 2 of the "Gallinita" Country Store in the village of Carlsbad,
 3 and then was thrown on the grass behind the store with a
 4 paper bag held over his head simply saying in clumsy Spanish
 5 no mas aqui, meaning don't come over here.

6 The five day laborers who were clubbed by a
 7 group of white men in the village of Alpine simply because a
 8 woman alleged to have been raped, which turned out not to be
 9 true at all. She had a fight with her husband, went out,
 10 got drunk, fell down a ravine, and got herself all dirty and
 11 hurt and was making those claims. A group of men went with
 12 bats and pipes and beat five of these men, then, to prove
 13 there was no reason for it.

14 If you want another case, the most recent is of
 15 a man being shot, because he was crossing across the yard of
 16 the property of someone who resented the presence of
 17 Mexicans in the community of San Ysidro. And the list,
 18 ladies and gentlemen, could go on and on and on.

19 In my very humble judgment, one of the most
 20 important reasons for so much antipathy toward the
 21 immigrants in this area is the climate that has been created
 22 by certain individuals -- as it was already mentioned
 23 here -- such as the Ex-Mayor of San Diego, Mr. Roger
 24 Hedgecock, by creating groups such as "Light Up the Border"
 25 simply to provoke immigrants coming across. Our neighbors
 26 in Tijuana, that or a local group or some out-of-town groups
 27 that have come here -- such as the so-called FAIR,
 28 Federation for American Immigration Reform -- that have come

1 here holding conferences and meetings instigating hate
 2 against the Hispanics.
 3 Most importantly when this creation of a
 4 negative and destructive polarization of the community has
 5 been created by some politicians and also by some
 6 communities such -- for instance, I would really like to
 7 point out what is the truth -- my City of Encinitas where
 8 its mayor and the members of the City Council, in this
 9 instance, has methodically opposed the presence of the only
 10 Hispanic social service agency in that city, the North
 11 County Chaplaincy, by denying it access time and again, to
 12 any public funds by blocking its efforts to develop
 13 low-income housing.

14 It says here, in this article of the paper I
 15 just picked up last night, Congressman Jim Bates called
 16 Encinitas City Council Members racists for declaring a state
 17 of emergency because migrant workers live in their city.
 18 Later on he adds, the emergencies are, "The undocumented
 19 immigrants are being beaten and harmed because they happen
 20 to be in that area or are going through that area."

21 Or listen to these couple of lines from an
 22 editorial of this local newspaper. We have enough low
 23 income housing. The only people who would go in there would
 24 be a bunch of Mexicans. It brings in the undesirable, the
 25 easy-money people, the people who are on welfare and do
 26 nothing at all.

27 These were the predictable responses that
 28 several Encinitas residents had to the news that a nearby

1 motel might be converted into housing for the homeless.

2 MR. CARNEY: Reverend Martinez, what newspaper
 3 were those articles from?

4 REVEREND MARTINEZ: This is the "Blade
 5 Citizen." I would be happy to give you these clippings,
 6 sir.

7 MR. CARNEY: Thank you. I have to interrupt
 8 you, because we have to get to your associate here, our
 9 Co-Panelist Ms. Skorepa. We have a time problem. Can you
 10 wrap-up your presentation?

11 REVEREND MARTINEZ: I'm just about through. I
 12 was going to say and finally: And continuing with my
 13 friends in Encinitas, now they are threatening to close down
 14 the North County Chaplaincy unless it moves from its offices
 15 saying that it is in a residential area -- that such offices
 16 have been used as offices for the last seven years. And
 17 it's completely surrounded on its four sides by commercial
 18 and industrial businesses.

19 Thank you very much.

20 MR. CARNEY: Thank you, sir.

21 Ma'am?

22 MS. SKOREPA: Chairman Carney, Chairman Pena,
 23 Members of the Commission, thank you for the opportunity to
 24 allow me testify before you today. And thank you for
 25 conducting these most important hearings in this venue.

26 My testimony today will briefly touch on the
 27 following points: the status of the relationship between
 28 the INS, Border Patrol, and customs with community based

1 agencies; the conduct of the Federal Immigration and U.S.
2 Customs Enforcement Agencies relating to use of force,
3 language, and cultural sensitivity, and complaint
4 procedures. And the bulk of my testimony will concentrate
5 on the issue of border violence, hate crimes, and, what I
6 call, immigrant xenophobia that is rampant in our community.

7 My name is Andrea Skorepa. I am the Executive
8 Director of a community-based agency by the name of Casa
9 Familiar that is located in San Ysidro which is located at
10 the border with Mexico. I also chair the City of
11 San Diego's Board on Police/Community Relations. And I was
12 a member of a Blueberry (sic) Ribbon Panel on violence in
13 which I was a chair of the subcommittee on hate crimes and
14 crimes and racism.

15 The bulk of my testimony will center around the
16 xenophobia of community immigrants and Latinos,
17 specifically, regardless of their status. I have chosen
18 this area over the others, because I believe that you will
19 hear much testimony which will specifically address the
20 issues of physical violence and other attended issues. I
21 would like to add my support, however, to the reports that
22 you have already heard and to reports that you will hear
23 regarding border violence.

24 Since I, too, have specific knowledge that the
25 acts do, indeed, occur and all too frequently are treated as
26 isolated incidents instead of us looking at the overall
27 pattern that they paint for us, we can not continue to
28 allow committees such as yours -- and others with a serious

1 back seven generations or are recent immigrants with proper
2 documentation is simply irrelevant, since we are all seen as
3 foreigners in this place. This has created an environment
4 in which civil rights are violated and threatened in an
5 almost cavalier fashion.

6 Our media, under the guise of its
7 responsibility to inform the public has consistently
8 portrayed our people as parasitic, poorly educated,
9 unmotivated, and uninvolved. Undocumented people or
10 "illegal aliens" (as they are commonly referred to) and
11 their children are being blamed for the swelling of our
12 jails, committing a disproportionate amount of crime, using
13 up valuable resources such as hospitals and welfare, as well
14 as being responsible for the overcrowding of our schools.
15 Our young males are increasingly suspected of belonging to
16 violent gangs. The shortage of affordable housing is blamed
17 on undocumented immigrants, because it is mistakenly
18 believed in many circles that they are the only ones who
19 benefit from the housing-assistance programs offered.

20 The fact that the economy is not bright and
21 full of jobs is laid at the feet of so-called hordes of the
22 undocumented who, it is routinely believed, willingly work
23 for substandard wages. The media, both print and
24 electronic, create never-ending stories and items about the
25 so-called negative impacts of immigrants in our area.

26 I cannot remember more than a passing reference
27 to the evidence that also exists to prove that this
28 population puts more into the system than they ever take

1 and responsible interest in this area -- to hear without
2 rebuttal that these reports are not true and that these are
3 isolated incidents and that they are exaggerated or that
4 they are part of some conspiracy by immigrant activists or
5 are designed to sully the good name of the federal
6 enforcement agencies. I'm not here to sully anyone's good
7 name. I'm here, merely, to provide to you the truth and
8 hope that you use that to come to your conclusions and your
9 findings.

10 San Diego's proximity to the border -- its
11 history as a military town and as an area that extols the
12 virtue of being "a native San Diegan," coupled with its
13 politically-conservative orientation -- has made it a city
14 ripe for immigrant bashing. This city is in the throes of a
15 demographic metamorphosis which is changing the complexion
16 of its residential make-up but not its systems and
17 institutions. It has become a fertile breeding ground for
18 xenophobia.

19 We are confronted daily, in almost every area,
20 with a growing anti-immigrant environment. The primary
21 recipients of this growing fear and disaffection is the
22 largest ethnic group in the area. This group is Latino. We
23 are the scapegoat of choice for every negative and social
24 economic condition that area experiences. We are
25 stereotyped by broad-sweeping generalities.

26 The operational reality in San Diego is that
27 all Latinos suffer the consequences of this practice. The
28 fact that any individual may be able to trace his history

1 out. Reference to a person's immigration status is
2 routinely reported, even when this information adds nothing
3 of significance to report.

4 Additionally, and this is important, since the
5 source of this problem is often linked to Mexico and Central
6 America, stories about corruption, crime, and problems of
7 those countries negatively contribute to adding to the
8 xenophobia fear.

9 I brought for you a series -- and I will leave
10 it here -- a series that appeared in the local newspapers
11 last Sunday on Medi-Cal fraud. I would just like to read
12 them for you:

13 Sunday. Medi-Cal use by Mexican citizens has
14 grown progressively, even as California has been forced to
15 reduce spending on the program.

16 Monday. State health officials call the
17 Medi-Cal program by a new name, "Medi-World."

18 Tuesday. A Mexican family's will to save their
19 child from Leukemia led them to the "pipeline" to
20 California's Medi-Cal program for the poor.

21 Wednesday. An ill Mexican boy and his mother
22 set up a household and received treatment in San Diego
23 County after government string-pulling.

24 Thursday. Investigators suspect 300 fraudulent
25 Medi-Cal cases a month may be slipping through the cracks.

26 This is within one week. In the same week -- or
27 actually, a little part of last week, there were two
28 commentaries on the television made by these former,

1 political people in the community in which -- both in which
2 they used illegal immigration as the fulcrum to do there
3 perspectives.

4 In the 1950s, Senator Joe Mc Carthy and his
5 committee on Un-American activities created an atmosphere
6 that anyone or anything that could be in any obtuse fashion
7 linked to the Communist Party were tainted in ways that
8 could affect your livelihood, your life, put your reputation
9 in jeopardy.

10 Well, we, in San Diego, are re-creating that
11 same type of atmosphere, only this time, it isn't the
12 Communist Party that serves as the bogeymen; it is
13 immigrants, illegals, and Latinos, in general.

14 I have another story that I can tell you about
15 how this has affected a person. A significant
16 contributor -- and I agree with Reverend Martinez -- to the
17 rising, anti-immigrant environment are to the so-called
18 citizen groups who portray themselves as advocates of
19 immigration reform and advocates of secure borders. They
20 indignantly repudiate any inference that their volatile
21 rhetoric should be viewed with alarm, by any but the most
22 crazed, immigrant activist or Latino activist as they call
23 people like myself.

24 They hide behind arguments that they are
25 working toward solutions and advocating for residents who
26 are too afraid of speaking out for fear of being labeled
27 "racists" by Latino activists. Their rhetoric, both oral
28 and in print, is, indeed, inflammatory. They refuse to

1 only shades of difference. And so I would like to urge you
2 to do everything that you can to help us in this area.
3 In terms of community-based organizations and
4 their relationship with INS or Border Patrol -- and I don't
5 mean to be flippant -- but there isn't any. And there isn't
6 any real, meaningful relationships with the Border Patrol
7 and community based organizations -- certainly endless. So
8 for community-based organization whose target organizations
9 are Latinos the complaint procedures -- quite simply and,
10 once again, with no disrespect meant -- are an abomination
11 and a joke and must be reformed.

12 I was part of the citizen advisory board on
13 Police/Community Relations. When we set up our review board
14 and complaint procedures and documentation procedures, I
15 mediated for officers. And so we have in San Ysidro -- and
16 I thought you just might be interested -- we have a Border
17 Patrol detention facility in the middle of our town. It is
18 bordered on one side by an apartment building that has over
19 1,000 inhabitants and on the other side by an elementary
20 school.

21 We would like to ask that the Border Patrol
22 remove the detention facility from the midst of our
23 community, because it does nothing for us. We also have the
24 following entities in our community, and our community is
25 small; it's about 25,000 people.

26 We have the Border Patrol; we have the INS; we
27 have the helicopters; we have the customs department; we
28 have alcohol, tobacco, and firearms; we have DEA; we have

1 enter into constructive dialogue, and they prey on the fear
2 and prejudice of others to build their organizations. They
3 pose a threat to civil and human rights of all individuals.
4 I have a series of recommendations that I am submitting
5 written testimony on as to what kind of things can be done
6 to help alleviate them.

7 Latinos, regardless of their immigration
8 status, citizenship, economic or social position, are
9 experiencing a palpable change in their level of acceptance
10 in this city. For some the difference is subtle such as
11 having to become increasingly more tolerant to open
12 hostility directed at an ethnic group of which you are a
13 member, or an apologist, or an interpreter of culture to
14 people who ask questions that they should be thinking twice
15 about asking.

16 For others, the price that is exacted is not so
17 subtle as we experience increased discrimination on the job
18 or become victims of hate crimes. We have a judge in the
19 Alpine case that dismissed -- they were charged with assault
20 and battery, and, in addition to that, they were charged
21 with hate crimes -- with hate-crime statutes. That part of
22 the charge was dropped by the judge, because, in his
23 opinion, he felt that it might have had a chilling effect on
24 behavior. And so that is now on appeal. You will be hearing
25 from the District Attorney's Office who is carrying that
26 appeal.

27 There is no escape from xenophobia, ladies and
28 gentlemen, and from the fear that it produces. There are

1 army units who go in and out of the town dressed in
2 camouflage outfits and in camouflage trucks; we have the
3 California Highway Patrol; we have the San Diego Police
4 Department; we have the San Diego Sheriff's Department.

5 So if there was a genuine desire to get
6 involved with the community, certainly the opportunity
7 exists.

8 Thank you.

9 MR. CARNEY: Thank you both for being here and
10 giving us your presentation. If you have any other
11 documents that you wish to submit, just see one of the staff
12 members.

13 MS. SKOREPA: Sure.

14 MR. CARNEY: Thank you very much.

15 I'm going to turn the chair over to
16 Mr. Pena from Arizona.

17 MR. PENA: I am Manuel Pena. I'm co-chairman
18 for this hearing today. And I want to repeat that the
19 purpose of the meeting is to obtain information on the
20 status of relationships between federal immigration
21 enforcement agencies and local elected officials, minority
22 group populations, and immigrant communities, the conduct of
23 federal immigration and U.S. Customs enforcement agencies
24 relating to the use of force, language, and cultural
25 sensitivity, and the protection of civil rights, the
26 accessibility, adequacy, and effectiveness of existing INS,
27 Border Patrol and U.S. Customs procedures, and information
28 on border violence, generally, as it relates to civil rights

1 and hate crimes that affect immigrant communities in the
2 United States/Mexico border region only.

3 We will now hear from Roberto Martinez.
4 Mr. Martinez, will you introduce your panel?
5 Mr. Martinez, if any of your people need the
6 interpreter, she is here.

7 MR. MARTINEZ: She is going to interpret for
8 us.

9 Chairman Carney, Chairman Pena, thank you for
10 the opportunity to address the distinguished members.

11 This morning I will be presenting some
12 observations that I have, and I have prepared a presentation
13 on the work we are doing on the border and have been for
14 many years. I also have a panel of victims of recent
15 violence by Border Patrol and hate crimes. I think my
16 presentation will clarify many of the questions that have
17 been asked this morning, and I will be glad to respond to
18 any questions afterwards.

19 The American Friends Service Committee has a
20 75-year history of humanitarian aid, advocacy, peace, and
21 social justice issues. Our work reflects Friend's view of
22 the sacredness of each human being. The AFSC has also
23 worked along the U.S./Mexico border for more than 20 years
24 on programs that address health, human rights, and economic
25 development.

26 In the ten years AFSC has been monitoring human
27 and civil rights violations on the U.S./Mexico border by
28 border agents, we have observed protracted periods of

1 However, it is not a solution.

2 The real challenge facing all of us today,
3 especially the Clinton Administration, is how to initiate
4 long term reform within the INS, U.S. Border Patrol, and
5 Customs.

6 Over the last year, internal audits, GAO
7 reports, and congressional subcommittees have all uncovered
8 serious allegations and patterns of misconduct, cover-ups,
9 and corruption in all three agencies, including violations
10 of firearm policies within the U.S. Border Patrol. While
11 the reports did not go far enough to expose the years of
12 human and civil rights violations against undocumented
13 immigrants, they did underscore the need for serious reform
14 within all three agencies.

15 It is inconceivable to me, that for ten years,
16 men, women, and children can be subjected to every kind of
17 abuse imaginable, and no agent or supervisor or sector chief
18 is, or ever has been held responsible, much less removed.

19 As far as we know, no agent has ever been
20 convicted for the killing of an undocumented person, and
21 very few for excessive force. There are very good reasons
22 for that.

23 First of all, no judge or jury will ever take
24 the word of an undocumented person over that of a federal
25 agent.

26 Secondly, victims of physical abuse are often charged with
27 assault on a federal officer in order to cover up the
28 incident, as well as make it as difficult as possible to

1 shootings, beatings, high speed chases, and vehicular chases
2 of undocumented pedestrians that have left dozens dead and
3 injured, including many children.

4 However, the most significant conclusions to
5 emerge during this ten-year period are the existence of a
6 systematic pattern of denial of due process, violations of
7 firearms, and excessive force policies, which like their
8 high speed chase policy, are vague and discretionary.

9 The most constant source of complaints is of a
10 systematic pattern of dehumanizing tactics such as verbal
11 and racial insults, obscenities, humiliation, threats, and
12 sexual abuse as our enlarged fact sheets will illustrate.

13 The United States' Constitution does not
14 differentiate between citizens and non-citizens with respect
15 to applying our laws. Yet, as our cases will clearly
16 demonstrate, constitutional rights and basic due-process
17 procedures are virtually nonexistent in the border region.
18 And threats and intimidation prevent some victims from ever
19 wanting to file a complaint. And even if they wanted to,
20 there is no credible or accessible system for filing a
21 complaint. This lack of accountability sends a message to
22 all federal agents that they can continue to abuse their
23 authority with virtual impunity.

24 The AFSC, along with several national and local
25 organizations and agencies, are promoting and supporting the
26 creation of a civilian oversight at both the federal and
27 local level. Civilian oversight, in our opinion, would be
28 an important first step towards some form of accountability.

1 prove abuse, both in criminal as well as civil proceedings.
2 Victims of abuse have always had very limited opportunities
3 to redress through the courts.

4 The anti-immigrant climate presently sweeping
5 the county promises to make it even more difficult to break
6 this cycle of violence and brutality and hostility.

7 Not only has immigrant bashing and scapegoating
8 become more widespread, we are now reaping the consequences
9 of today in the form of hate crimes and vigilantism being
10 committed against both documented and undocumented workers.
11 Elected officials pushing anti-immigrant bills and
12 scapegoating immigrants for this country's ills, as well as
13 anti-immigrant groups who promote it, must accept direct
14 responsibility for contributing to this hostility aimed at
15 immigrants. Elected and appointed officials should,
16 instead, be providing the leadership against this growing
17 tide of racial intolerance.

18 The victims on this panel, as you will see, are
19 not old, drummed-up cases, as we are regularly accused of.
20 That includes the ones I will read. Some of the victims
21 could not be here today due to circumstances beyond their
22 control. All of these cases typify the kinds of victims we
23 see on a regular basis.

24 We, as a community, must begin to hold the
25 heads of these agencies responsible for the actions of their
26 officers. We cannot allow them to think that we are going
27 to tolerate the officers acting above the law.

28 The problems I have raised today, directly

1 impact our communities. Some of these problems, such as
2 high-speed chases, are public-safety issues that directly
3 affect our families, especially our children. Just look at
4 what happened in Temecula last June.

5 We cannot rely on the government to solve these
6 problems. Through -- The AFSC through the
7 government-monitoring project is helping communities all
8 along the border to help us empower ourselves to protect the
9 rights of our people. Civilian oversight of U.S. Border
10 Patrol is already a reality in El Paso and soon to be in
11 Tucson and could become a reality in San Diego in the near
12 future.

13 The victims here today are intended to show the
14 human side of this issue and to show that they are not -- as
15 Senator Craven said -- that they are not on the lower scale
16 of humanity.

17 Some of the recommendations I will share --
18 And I have become extremely cynical -- over the
19 last few years after having been involved in this kind of
20 work for almost 20 years -- with all levels of law
21 enforcement, including the local and federal, that -- for
22 instance, a complaint process which for us has been
23 ineffective and inaccessible to people crossing the border.

24 Of course, the reduction in firearms is
25 extremely important. Their firepower seems to be growing
26 tremendously, almost to a war footing on the border.

27 The young man, Dario Miranda, who was shot and
28 killed in Tuscon -- in Nogales, was shot with, I think, an

1 And what you see before you up there -- I have also --
2 somewhere here -- a -- I had some cases that I was going to
3 read. Here it is.

4 Just this -- on Tuesday of this week, a young
5 man, Jose Lomeli, was stopped in San Ysidro -- keep in mind
6 he is a U.S. citizen. And this is typical of many of our
7 cases where U.S. citizens and legal residents are being
8 arrested, beaten, and held. And these are -- keep in mind
9 that these are only a fraction of what happens along the
10 border. And when you that many people and close to 1100
11 agents on the border, we are not going to document all of
12 them. But Jose and some of our cases typify the fact there
13 is no due process.

14 They are never asked. And when they are asked
15 if they are U.S. citizens or illegal, they don't believe
16 them; they destroy and confiscate their documents.

17 This happened right on the C. Primara
18 (phonetic) on the pedestrian bridge in San Ysidro. He was
19 on his way to work and -- by the way, he was going to come
20 today, but they wouldn't let him off work to do so -- this
21 was at 5:30 in the morning, and he was stopped by the Border
22 Patrol agent.

23 He was asked where he was going. He was going
24 to work. They asked him where he was from. He said he was
25 a U.S. citizen. They said, "No. You just crossed the
26 border from Tijuana." He showed them his I.D. card, and,
27 believe it or not, it is an I.D. card that looks like a
28 green card, and it's issued by the Immigration and

1 AR-15, if you can believe that. Most of the agents now
2 carry 9-millimeter, 15-round, semi-automatic pistols with
3 hollow-point bullets. They carry M-16s and
4 who-knows-what-else. I understand they now carry stun guns
5 and have police dogs. We have had several isolated
6 incidents with the use of those kinds of weapons on our
7 people.

8 And just the very fact of the extreme injuries,
9 as our charts will show -- at least ten of our victims have
10 been children between the ages of 12 and 17, most of them
11 shot in the back, and most with hollow-point bullets which
12 ended with one bullet causing extreme damage to the internal
13 organs of these children. And several have been
14 incapacitated. So the reduction of firearms would
15 dramatically reduce the amount of human rights violations
16 along the border.

17 We do need higher controls on firearms and the
18 use of excessive force. As I mentioned in my presentation,
19 those policies are extremely vague and discretionary and are
20 always being justified after a shooting as being
21 justifiable, because a person picked up something or thought
22 they had something. But they fire -- we have had agents
23 fire into the back of vans, knowing that there are
24 undocumented people inside and wounding people and nearly
25 killing them. So those have to be tightened up
26 dramatically.

27 I have with me today three people, but -- who I
28 think will illustrate exactly what my presentation is about.

1 Naturalization Service, and it says U.S. Citizen
2 Identification Card.

3 He was told -- he was told that it was false;
4 that he bought it. They kept asking him over and over again
5 where he bought it. And so he said -- the agents told him,
6 "Let's go. You're going with us."

7 And with that, they grabbed his arm, Lomeli
8 pulled his arm back and said, "I am a U.S. citizen. I was
9 born here."

10 They said, "No, you weren't. You just came
11 from Tijuana."

12 When he pulled his arm back, they threw him
13 against the Bronco and then swung him around and hit him as
14 hard as they could on the side of his face with their
15 fists -- one of them did -- and knocked him down. And then
16 he was handcuffed, put in the Bronco, and taken with several
17 other people to the Chula Vista Detention Center. He was
18 questioned over and over again about the little card he
19 had.

20 And they kept asking, "Where did you buy it?
21 How much you did pay for it?"

22 He kept saying, "No. I didn't buy it. This is
23 mine. I came -- I was born here in the United States. This
24 is my country."

25 They kept telling him, "This, is not your
26 country. Mexico is your country."

27 And they took his card and -- he had no other
28 identification of being a U.S. citizen. And he was held

1 from seven o'clock to ten o'clock in the morning. His
2 mother called -- they called his mother. He kept insisting
3 that they call his home to verify he was a citizen.

4 They called his mother and asked her about
5 him -- if he and his other brothers all have those kind of
6 I.D. cards. And where is he? They wouldn't tell her. And
7 they hung up. When she went to the detention center,
8 twice -- and they kept telling her he wasn't there.

9 So finally, she went the border to see if he
10 was going to be turned loose or what was going to happen.
11 She said she was crying all this time. She went to an agent
12 who was standing near the area where they processed them
13 across into Mexico. And she went up to an agent and told
14 him what had happened.

15 And he said, "Well, our people don't treat
16 people like that."

17 So, you know, she went home. And about
18 ten o'clock, he was released after all this harassment and
19 questioning. But this is only one, again, of many. We have
20 had several cases this week of people who have been injured
21 and beaten up.

22 But I would like to now turn it over to my
23 friends, here, who have been helping along with -- we're
24 going to need a translator, because they only speak Spanish.
25 And, then, I will be glad to answer any questions.

26 We'll begin with Hermelindo Sandoval.

27 MR. PENA: Mr. Martinez, are you going to
28 identify each one of your panel members?

1 my family -- I have a wife and a daughter -- and right now,
2 without a job, the way that I am -- because of that person
3 I've -- find myself in a very desperate situation right now.
4 I don't know what to do.

5 The story of what happened to me is very long.
6 Everything that I'm telling you about, I'm telling you in
7 short narrations. But like -- as I say, I don't understand
8 why he beat me up. I don't understand what is going to
9 happen. I just want to tell you what he did to me hurts me
10 know what to do.

11 I think that's all that I want to tell you.

12 MR. PENA: Just one question. Did you file a
13 complaint with anyone?

14 MR. SANDOVAL: Yes.

15 MR. PENA: With whom?

16 MR. SANDOVAL: My attorney is taking all of
17 this regarding the person that beat me up.

18 MR. PENA: All right. Thank you.

19 MR. SILLAS: Just a couple of questions.

20 Were you on the American side?

21 MR. SANDOVAL: I was less than three meters
22 across the American side.

23 MR. SILLAS: And you had crossed over from the
24 Mexican side?

25 MR. SANDOVAL: From the Mexican side.

26 MR. SILLAS: And did you have any documentation
27 with you that would have allowed you to stay in the United
28 States?

1 MR. MARTINEZ: Yes. As we move along, I will
2 identify each one.

3 MR. SANDOVAL: My name is Hermelindo Sandoval.
4 I want to tell you what happened to me on December 23rd. On
5 the 22nd, I was working and -- it was on December 23rd --
6 well, I had an accident. My intention was to come across to
7 this side. I was accompanying a young woman whose name is
8 Ana Maria. We were sitting down when an immigration officer
9 came and he hit me.

10 Because of the way that he hit me, he sent me
11 to the hospital. And I was in the hospital for eight days.
12 On the ninth day, I had a surgery. I had an operation on
13 the pancreas. I was very serious ill. Really -- I would
14 like to show you -- because of the beating that I got from
15 him -- what they did to me. Because the surgery that I
16 had -- because of that --

17 MR. SILLAS: Mr. Chairman, may the record
18 reflect that the witness has shown us a scar. It would
19 be -- appear to be 12 inches long, running from his -- the
20 bottom of his chest through his abdominal section.

21 MR. CARNEY: Thank you.

22 MR. PENA: Thank you.

23 MR. SANDOVAL: After the surgery, I remained at
24 the hospital for one month. I truly do not understand why
25 that person beat me up. I think that he should not have
26 beaten me up, because I think that his obligation was to
27 just take care of the land that corresponds to them. After
28 everything that has happened, now it's very hard for me with

1 MR. SANDOVAL: No.

2 MR. SILLAS: And the officer that hit you, did
3 he use any instrument in doing so?

4 MR. SANDOVAL: The first impacts were with a
5 flashlight.

6 MR. SILLAS: Were there -- go ahead.

7 MR. SANDOVAL: And the following that caused
8 this was with a knee.

9 MR. SILLAS: And was the knee used to hit you
10 in the abdominal area?

11 MR. SANDOVAL: Yes.

12 MR. SILLAS: Was there an accompanying officer
13 with this particular officer?

14 MR. SANDOVAL: Yes.

15 MR. SILLAS: How many?

16 MR. SANDOVAL: There were three officers plus
17 the one that beat me up. There were four.

18 MR. SILLAS: Did any of the other officers
19 participate in the beating?

20 MR. SANDOVAL: He was the only one who hit me.

21 MR. SILLAS: Did any of the other officers
22 attempt to interfere?

23 MR. SANDOVAL: No.

24 MR. SILLAS: At what time of the day or evening
25 was this?

26 MR. SANDOVAL: I'm not sure. But about 3:30 in
27 the morning.

28 MR. SILLAS: And you've indicated you were

1 accompanied with one other person?
 2 MR. SANDOVAL: Yes.
 3 MR. SILLAS: I have no other questions.
 4 MR. PAZ: If I could just find out if he is at
 5 liberty to say who is representing him in his complaint?
 6 MR. SANDOVAL: Yes.
 7 MR. PAZ: Could we find out?
 8 MR. SANDOVAL: It is Attorney Inge Brauer.
 9 MR. PENA: Thank you.
 10 MR. MARTINEZ: This is Margarito Cruz from the
 11 City of Vista.
 12 MR. CRUZ: Well, I want to say, when I was
 13 going to drop off my brother, I was with four other
 14 friends. I was with the four friends, and we were in the
 15 car, and the immigration put the light on us. The friend
 16 that had the car, he stopped. And he told us, I'm going to
 17 stop and get out. We said, yes.
 18 When my brother and I went -- we got out, and
 19 he went to one side, and I went to the other. Well, when I
 20 went in the other direction, there was some American guys on
 21 some motorcycles on the road, and I kept on running. And
 22 then they were following me, and when I stopped to look back
 23 to see if the Immigration was not following me anymore --
 24 and when I stopped and I looked back and -- they came by and
 25 they took out a pipe, and they hit me with the pipe on the
 26 head. And then -- well, I fell. And then I crawled in
 27 order to hide from Immigration.
 28 And the Americans that had hit me, they went to

1 get Immigration and brought them over. And then I hid. And
 2 when Immigration asked me who had hit me, I told them it was
 3 the Americans that were there, and they didn't pay any
 4 attention to me. And -- well, they didn't pay no attention
 5 to me.
 6 They grabbed me from the neck and threw me into
 7 the Bronco. And -- well, then we went to Temecula, and they
 8 had me there for about an hour and I was full of blood.
 9 And then after about an hour, they took me to
 10 the hospital in Temecula. And then from there, they sent me
 11 back to Mexico.
 12 And the Americans were also looking for my
 13 brother, because they already wanted to beat him up. And
 14 then an American woman saw where my brother had gone, that
 15 he had gone underneath a camper. And the guys asked her if
 16 she knew where he was. They asked an American woman, "Did
 17 you see a man running away?" And then the American woman
 18 had seen where he had gone into, but she did not tell them
 19 where he was hiding. Because if they would have found him,
 20 they would have hit him, too. That's all.
 21 MR. PENA: Any questions?
 22 MR. SILLAS: When did this occur?
 23 MR. CRUZ: On the third of this month.
 24 MR. SILLAS: And to your knowledge, were any of
 25 the other persons with you experiencing the same type of
 26 treatment?
 27 MR. CRUZ: No. Just a friend of mine that was
 28 going to call the police when I was hit. Well -- then

1 Immigration came; then he wasn't able to call them.
 2 MR. SILLAS: The injury that you received was
 3 to your head?
 4 MR. CRUZ: The head.
 5 MR. SILLAS: And you were bleeding at the time?
 6 MR. CRUZ: Yes.
 7 MR. SILLAS: That's when the immigration
 8 officers arrived?
 9 MR. CRUZ: Uh-huh.
 10 THE INTERPRETER: He has some pictures here.
 11 MR. SILLAS: I presume we can get part of those
 12 into the record -- or get those into the record.
 13 Were the persons that hit you, were they
 14 present when the police officer -- or the immigration
 15 officers arrested you?
 16 MR. CRUZ: Yes, they were there.
 17 MR. SILLAS: Did they acknowledge that they had
 18 hit you?
 19 MR. CRUZ: Well, when they asked me who had hit
 20 me, I told them that the young man, the American, that
 21 was -- is with him.
 22 MR. SILLAS: Did --
 23 MR. CRUZ: And they didn't pay attention to me,
 24 and they took me.
 25 MR. SILLAS: Did the young man that was with
 26 them deny that he had hit you?
 27 MR. CRUZ: He didn't ask him anything.
 28 MR. SILLAS: Did the young man have with him

1 any evidence -- such as the pipe with him that would
 2 indicate that he had hit you?
 3 MR. CRUZ: No. Because after they hit me, they
 4 left on the motorcycle. And they hid that pipe and the
 5 motorcycle.
 6 MR. SILLAS: Were your discussions with the
 7 officer in Spanish?
 8 MR. CRUZ: In Spanish.
 9 MR. SILLAS: And to your -- in your opinion,
 10 did the officer understand you?
 11 MR. CRUZ: Yes.
 12 MR. SILLAS: Did he speak to you in Spanish?
 13 MR. CRUZ: In Spanish.
 14 MR. SILLAS: And the officers took no action
 15 against the individual American that was there?
 16 MR. CRUZ: He did not do anything. Nothing.
 17 MR. SILLAS: How many Border Patrol officers
 18 were there?
 19 MR. CRUZ: Two.
 20 MR. SILLAS: Thank you.
 21 MS. GARCIA: Mr. Chairman, may I look at the
 22 photographs?
 23 MR. PENA: Yes.
 24 I think Mr. Martinez will make them a part of
 25 the record.
 26 MR. ZAZUETA: Yes. I just had one question.
 27 When did you get medical aid?
 28 MR. CRUZ: That same day Immigration took me to

1 the hospital at about eight o'clock that night.

2 MR. PENA: Thank you.

3 Mr. Martinez, your next witness.

4 MR. MARTINEZ: The next panelist is Agustin

5 Corona.

6 MR. CORONA: My name is Agustin Corona. I

7 want to tell you what happened to me at the border. I've

8 worked here for 20 years. On November -- I don't recall the

9 date -- I was -- it was on the 8th. On November 8th, I was

10 coming in my car in order to cross the border. There were

11 about three or four cars ahead of me.

12 The officers came around with the dog to

13 detect -- to see if the people are carrying drugs. The dog

14 was around my car, going around. And right away one of the

15 officers told me, "Turn off your car," which I did.

16 He tells me, "You're nervous."

17 I said, "No. There is no reason for me to be

18 nervous."

19 And he practically pulled me out. So I got

20 out. He helped me -- he holds me from behind, and I said --

21 I told him, "Don't push me, because I am not a criminal. I

22 know where the office is."

23 He says, "You should not speak, because

24 everything that you say, we're going to use against you."

25 We went to the office and -- it was about 2:00

26 in the afternoon. We went into the office and -- well, you

27 know what the officers do. They checked me all over. They

28 told me, "Give me your wallet."

1 One of the officers called my work and talked

2 with my boss, and he just told him that I was cooperating

3 with them for an investigation.

4 And he told me, "You have to sign this document

5 in order to go to the hospital for some x-rays."

6 And I told them, "I have nothing to hide. I

7 want to cooperate with you. I want to go to work soon."

8 I signed the paper, and it just said about

9 x-rays. The officer called several hospitals, and I think

10 he finally got one where he could take me.

11 And after I filled out the paper, they said,

12 "We are ready to leave."

13 And I said, "I'm not going to pay for this."

14 He said, "Don't worry about that." He said,

15 "We were going to pay."

16 We went to the hospital and from there -- they

17 took me to the hospital handcuffed.

18 And I said, "Don't handcuff me. There is no

19 point."

20 He said, "It was for your safety."

21 I don't know what safety. We got to the

22 hospital where I had the appointment and the officer said

23 "Sign."

24 I said, "How can I sign if I'm handcuffed?"

25 He said, "I'll sign."

26 "But remember that I'm not going to pay."

27 And -- well, we went into the hospital, and

28 they took my pressure, they checked me.

1 And I have my license. I have my green card,

2 the papers for the car. They sat me there. They checked

3 everything. They sat me there -- later on, some more

4 officers came and they said to me, "You're carrying drugs."

5 And I said, "I don't have drugs." I said, "I

6 cross every morning, because I come to see my family that is

7 in Tijuana every day so that I can take my daughter to

8 school, because it is very far away."

9 But they asked me, "why do you cross daily?"

10 And I gave them the explanation. And after

11 that, some more people gathered around. There were about

12 four or five officers. They put me in a room. And they

13 were all watching when they had me take my clothes off. I

14 was embarrassed. But it was even more embarrassing when the

15 five of them said open up from behind and bend over. They

16 did that to me twice.

17 So after that, I got dressed, and they put me

18 back at the office. From there, supposedly, they took me

19 with the DEA officers, but they took me handcuffed to

20 another office right next door.

21 So an officer told me in Spanish, we're not

22 going to be able to let you go now. They are going to have

23 a thorough investigation. It was 4:00 in the afternoon by

24 then.

25 I said, "I have to be to work at three o'clock

26 in the afternoon. I have to make a phone call."

27 And he said, "You cannot make a phone call, but

28 we can get in touch there for you."

1 And I said, "Well, I don't know why they are

2 doing it."

3 But they were right at the door, right there

4 with me. Well -- and I thought they were going to leave me

5 alone, you know, when they x-ray. Anybody -- you know, it

6 wasn't just the x-ray, though. They thought that I had

7 drugs in my stomach.

8 Well -- and I don't know how to explain this,

9 but the doctor examined me, you know, with his finger. But

10 I did not admit that. They took me to the x-rays. The

11 x-rays showed that I didn't have any drugs.

12 And we got -- we were outside. We went outside

13 and they told me -- they just said, "I'm sorry." And I

14 think -- well, I was very mad, because I had only signed for

15 x rays. And they had me for five hours. That's all that I

16 can say, plus I have already been detained three times

17 before but not with this type of check-out.

18 If I had already been detained at the office

19 three times before with a revision at the office, I guess,

20 they already knew my record. That's all.

21 MR. PENA: Thank you.

22 Mr. Sillas?

23 MR. SILLAS: Do you cross the border every day?

24 MR. CORONA: I regularly do at one o'clock in

25 the afternoon.

26 MR. SILLAS: And to your knowledge, do you see

27 the same border officers, more or less?

28 MR. CORONA: Yes. I can recognize the man that

1 was insisting that I go to the hospital.

2 MR. SILLAS: In your crossings, you've seen

3 this individual numerous times?

4 MR. CORONA: I have not seen him lately.

5 MR. SILLAS: But prior to that time?

6 MR. CORONA: Before that time, I had seen him

7 two or three times.

8 MR. SILLAS: I'm sorry. You crossed this time

9 in an automobile?

10 MR. CORONA: Yes, in my car that I had for two

11 years.

12 MR. SILLAS: And what kind of car is it?

13 MR. CORONA: It's a '78 station wagon.

14 MR. SILLAS: Was anybody accompanying you?

15 MR. CORONA: No, nobody. I always cross by

16 myself.

17 MR. SILLAS: Did you observe the officers

18 inspect your automobile?

19 MR. CORONA: No, because I was at the office.

20 MR. SILLAS: When they pulled you out, they did

21 not inspect the car at that time?

22 MR. CORONA: No. They pulled me out. Then at

23 7:00 in the evening, when they let me go, they told me, "You

24 are free, you can go." The car was over there. They did

25 check it, because it was over there where they put it up,

26 and they checked it.

27 MR. SILLAS: Did the dog that was being used

28 react any differently to your car than any of the other cars

1 in the line?

2 MR. CORONA: Yes.

3 MR. SILLAS: In what manner?

4 MR. CORONA: He just go around.

5 MR. SILLAS: He didn't -- the dog did not do

6 that to the other cars in this line?

7 MR. CORONA: No.

8 MR. SILLAS: Just to your car?

9 MR. CORONA: But there is a matter here where I

10 had a day off the day before, and my daughter was at home.

11 And we had gone to eat some tacos, and the next day I saw

12 that they were -- there were traces of meat on the tires. So

13 I don't know.

14 MR. SILLAS: It may have been a hungry dog.

15 MR. CORONA: Well, I think.

16 MR. SILLAS: Do you know -- when you returned

17 to your car, was there any evidence that they had taken out

18 your seats or anything like that? pertaining to the car.

19 MR. CORONA: No, not the seats, but they did

20 check it out.

21 MR. SILLAS: Okay.

22 MR. CORONA: But -- but my thing is, before

23 that time, it had happened three times before.

24 MR. SILLAS: On the other two instances, was

25 there any indication by a dog that would have drawn their

26 attention to your automobile?

27 MR. CORONA: No. No. I would go across fine.

28 One time, an immigration officer told me when I was

1 crossing, "You look nervous."

2 And I said, "There is no reason for me to be

3 nervous." That was the first time.

4 He said, "I'm going to send you to a secondary

5 inspection."

6 I said, "Fine. I know where to go. I've been

7 there many times."

8 I don't know why he got up and said -- he took

9 me over there and said, "Don't speed up the car."

10 And I said, "I won't speed up the car."

11 And we got to where the cars stopped. He told

12 me, "Don't get out. Don't move."

13 And he went in and talked to an officer. I

14 don't know what he told him. He came -- he told me, "Get

15 out of the car."

16 He was mad, too. And he pulled me out, and he

17 also held me from the belt. I said, "Don't hold me from

18 there."

19 He said, "You don't have to talk. Don't say

20 anything."

21 I said, "I'll walk to the office."

22 And the officer was also very mad. And they

23 also put me in the office and they checked everything --

24 they checked me all out. They checked my documents. And

25 that day, I had tennis shoes on. They took off my tennis

26 shoes, and they took out the cover inside.

27 And I said, "I don't use drugs. I don't smoke.

28 Why are you doing this to me?"

1 I only cross because of this and that. Here

2 are all my papers. And he checked me three times like this.

3 And he would press on my stomach, and I would say, "I don't

4 have anything in my stomach."

5 And I told him one time that I have problems

6 with my ulcer. And maybe that's why they think that my

7 stomach is swollen.

8 And the fourth time was the time they detained

9 me for longer. The previous times were for about a half an

10 hour, and they would let me go. But when I think -- if they

11 have a record of me that shows they have done this three

12 times, why do they detain me again?

13 MR. SILLAS: Thank you.

14 MR. PENA: Mr. Paz?

15 MR. PAZ: I just want to know if these two

16 other gentlemen have made complaints and filed complaints

17 with anybody?

18 MR. CORONA: Right now, I have my complaint

19 with

20 Mr. Roberto Martinez.

21 MR. PAZ: Thank you.

22 The other one -- Mr. Martinez, I would like to

23 address this one to you. And, primarily, as we look into

24 the situation, the violation of human rights is definitely

25 something, of course, that is being surfaced.

26 But as time goes on, there is a conflicting

27 situation between the roles and the responsibilities of a

28 patrolman in enforcing our policies and laws in that they

1 conflict or they go into the area of drug enforcement. It
2 would be very, very easy right now for any local enforcement
3 agency to say that the suspicion of drugs becomes the
4 motivating factor to become involved in any kind of
5 treatment of -- such as the victims that we've seen here.

6 What is your perspective in terms of the
7 trafficking of drugs, the importation, the whole drug scene
8 as it relates to, really, human abuses and, of course, the
9 treatment of our people?

10 MR. MARTINEZ: Well, I think we've seen an
11 escalation, not only by border agents, but by local law
12 enforcement, in a joint task force that are not only
13 violating the rights of individuals but the due process, but
14 also in raids on homes, private homes, entering homes
15 without search warrants, just basic due-process violations
16 where nobody is given the benefit of the doubt.

17 I think this is a very typical abuse of
18 someone, who, I think, they could have clarified the matter
19 immediately knowing that he had been stopped two or three
20 times. I think they went over and beyond what they were
21 authorized to do. And they could have checked his car and
22 not found anything and checked his records and not found
23 anything.

24 But we are seeing an increase of abuses by
25 local and federal agents of individuals where, even in
26 San Diego, one individual was shot and almost killed.
27 Where, within the first few minutes, they could have
28 determined that this is not a family, for instance, using

1 it as a pretext to militarize the border, to increase
2 enforcement powers of the Border Patrol and local law
3 enforcement. And I think results of that are surfacing
4 almost every day when people are being shot and killed,
5 homes trashed, and people harmed.

6 MR. PENA: Mr. Zazueta?

7 MR. ZAZUETA: Let me just follow-up on that.

8 Mr. Martinez, you mentioned you've worked in
9 this area for 20 years. And you say it's escalating. It's
10 increasing.

11 MR. MARTINEZ: Yes.

12 MR. ZAZUETA: Why?

13 MR. MARTINEZ: Well, I think for many reasons.

14 Again, I have to attribute a lot of this to the kind of
15 atmosphere that we are functioning under -- law enforcement
16 is functioning under.

17 Those charts up there show that
18 institutionalized racism has existed for as long as I can
19 remember. I'm a fifth generation Chicano. My family comes
20 from the border of Texas. They escaped. They left Texas
21 and came to California in 1915 to escape racism and violence
22 against them. And I, myself, grew up with this. I used to
23 be arrested and picked up by Border Patrol and police, even
24 though I hardly spoke Spanish.

25 Today, almost 30 years later, I'm defending
26 people for the same reasons and the same problems. So the
27 only thing I can attribute it to is selected law enforcement
28 racism and institutionalized violence. I don't think it's

1 drugs or involved in drugs or smuggling of any kind. But
2 they carry it as far as they can. And people are injured,
3 abused, and children are psychologically damaged for the
4 rest of their lives.

5 But I think the increase of powers of the
6 Border Patrol are going to begin to surface as abuses in the
7 checkpoints as well as on the border.

8 MR. PAZ: I just want to go a step further,
9 because I'm not quite clear with your response.

10 I'm looking to see whether sometimes using
11 drug surveillance for inspection of drugs becomes a cop-out,
12 an unrealistic reason for really finding out whether they
13 are in this country illegally or not.

14 MR. MARTINEZ: Well, I guess -- it's hard to
15 say. I mean, you know, it's -- we have -- we already have
16 the national guard on the border. We have agencies already
17 that are supposed to be doing that.

18 And I think that the fact that they are finding
19 some drugs along the border shows that there is some
20 crossing. But at the same time, I think they are using the
21 drug war as a pretext for increasing Border Patrol and law
22 enforcement agencies on the U.S./Mexican border where they
23 are not finding any.

24 A recent documentary on T.V. showed that
25 \$4 billion is being spent every year on the war on drugs,
26 but they haven't been able to justify that in terms of
27 uncovering widespread drug trafficking on the border.

28 And I think it's a cop-out that they are using

1 ever really, you know -- I think it will always be there,
2 personally.

3 The only thing we are seeing now is more kinds
4 of vigilantism and racism against victims like Margarito,
5 the Alpine case that was referred to today, and -- but it
6 runs a gamut in both -- both in federal agencies.

7 There are different kinds of racism and
8 violence within law enforcement. A lot of it is racism,
9 given the kind of terminology and the racial slurs that are
10 being used by white agents. But we also have a new
11 phenomenon called "Tejanos." At least 50 percent of the
12 Border Patrol agents in San Diego, I think, are Latinos.
13 And individuals here, and many that come to me, all use the
14 term "Tejanos" when referring to the uses used by Latino
15 agents.

16 In fact, some of them use -- even use racial
17 slurs against Mexicans. They don't like to be referred to
18 as Chicanos, Mexican, or whatever. They like to be called
19 Tejanos, and they are very clear about that. And this is
20 just more than a coincidence, because I hear this all the
21 time.

22 So we have those two phenomena in the Border
23 Patrol and other federal agents. I think a lot of it has to
24 do with the training that they get. It is a
25 paramilitary-type training in Glynco, Georgia, which it's
26 actually an us-versus-them type of mentality that they come
27 out with. And the kind of arms they are given, the kind of
28 mandates they are given -- as Dave Valladolid mentioned

1 earlier -- that they have an impossible task. All the
2 fences in the world, all the fences they want to put there,
3 and all the enforcement they put on the border is not going
4 to stop the flow of people coming into the country looking
5 for jobs. And to think so, I think, is ludicrous.

6 But I think it's the combination of all of
7 these things, plus frustration that causes this kind of
8 violence against undocumented people.

9 But in cases like Hermelindo and others, I
10 think it's just a propensity for violence within these
11 agents, and they take it out on them. There is no reason.
12 They have no excuse. They can subdue people that just stay
13 in their vehicles easily without having to submit to the
14 kind of extreme violence and intentional injuries and even
15 deaths that's being perpetrated on unarmed civilians.

16 And we mentioned earlier that 99.5 percent of the people
17 crossing the border are unarmed civilians coming to look for
18 work.

19 But it's almost like for many of them -- or for
20 too many of them, the American dream ends in death and
21 violence, and there is no reason for it.

22 MR. ZAZUETA: Thank you.

23 MR. PENA: Ms. Garcia?

24 MS. GARCIA: I think having that kind of anal
25 inspection is probably incredibly intrusive, and we know
26 that there has to be reasonable suspicion based on specific
27 articulable facts to make that kind of intrusion.

28 Was Mr. Corona advised and told -- or were you

1 advised and told what those specific, articulable, objective
2 facts were?

3 MR. MARTINEZ: I can't answer that.

4 Agustin would say that -- Mrs.

5 MS. GARCIA: Were you told, sir, specifically
6 why you were being inspected in the fashion that you were?
7 And I'm referring to both the x-ray and the inspection with
8 the finger.

9 MR. CORONA: They told me that they thought I
10 had drugs in the stomach.

11 MS. GARCIA: And did they tell you facts which
12 led them to believe that?

13 MR. CORONA: I don't understand. Well,
14 because of the dog that had stopped at the car, focusing on
15 the car.

16 MS. GARCIA: Did they tell you why the alert by
17 the dog at your car led them to believe that you had drugs
18 in your stomach, sir?

19 MR. CORONA: I don't know. Because when I was
20 at the office, they saw my stomach. And I had a -- what is
21 it called? For the eyes, because I work with heat and my
22 eyes turn red. And they were also asking me why my eyes
23 looked so red. And I had that medication, because when I
24 leave, I put that on, and I also put in eye drops.

25 MS. GARCIA: Is that it, sir? Or was there
26 anything else told to you why they were making this kind of
27 inspection?

28 MR. CORONA: No.

1 One time they told me that my car had been
2 reported. So I told them, tell me who is the person that
3 reported me.

4 MS. GARCIA: Okay. But that relates to your
5 car. Again, sir, I guess there is nothing else they told
6 you in regard to why they believe you had drugs inside of
7 your own body?

8 MR. CORONA: They did not tell me why. They
9 just examined me. And they did not tell me why they
10 examined me.

11 MS. GARCIA: And another question, sir, you
12 lost, I think, about five hours of work. Is that correct?

13 MR. CORONA: I did not lose five hours because
14 I start at 3:00.

15 MS. GARCIA: How many hours of work did you
16 lose, sir?

17 MR. CORONA: Well, they stopped me at two. At
18 four o'clock when I was with the DEA agents, I told them to
19 please call my work, because I was going to lose my job if
20 they detained me.

21 I do not smoke. I do not use drugs. In the
22 glove compartment in my car, there is a bank account. All
23 my work checks are there. I have the time card that I need
24 to punch at my work. And so I was telling him there is no
25 reason for you to detain me. I'm giving you proof of the
26 fact that I -- the fact that I work and the reason why I
27 need to cross every day.

28 MS. GARCIA: And what time were you able to

1 report to work? is really my question.

2 MR. CORONA: At 7:00.

3 MS. GARCIA: Okay. Thank you.

4 MR. PENA: Mr. Carney?

5 MR. CARNEY: Mr. Martinez, I noticed
6 in one of the charts up there that you had a young man,
7 Julian G., who said he was a legal resident who was
8 detained, his social security card was torn, and he was
9 deported. Is that case -- or is there a case pending or
10 some complaint?

11 MR. MARTINEZ: Yes.

12 MR. CARNEY: Where is that? What is the status
13 of that situation right now?

14 MR. MARTINEZ: Well, we've gotten so many cases
15 in a row that we're, right now, preparing the complaints and
16 referring them to the proper attorneys for -- to handle each
17 individual case.

18 He is a legal resident and he was, again,
19 denied any kind of due process. He was not explained
20 anything. He was punched and beaten and arrested, taken to
21 the detention center where he claims they beat him and
22 punched him some more and he said he was held illegally.

23 MR. CARNEY: Who stopped him?

24 MR. MARTINEZ: The Border Patrol, and this was
25 also in the San Ysidro area.

26 MR. CARNEY: I have nothing further. Thank
27 you.

28 MR. MARTINEZ: I have a case now -- at M.C.C.

1 right now who also crossed illegally. He was beaten very
2 seriously and basically had the same injuries as Hermelindo
3 who is still having serious problems.

4 But in the case that I mentioned earlier where
5 they put charges on them to cover up the beating, he was
6 facing three to five years in jail, but they got him to
7 accept a plea bargain to a misdemeanor. They reduced it to
8 six months and sentencing was 90 days where he had already
9 had two months in M.C.C. When he finishes his
10 30 days, he will be deported, again, the victim becoming a
11 suspect as a result of a severe beating by a Border Patrol.

12 This is typical of what really happens. And most
13 of those cases, we know how many people have been serving
14 time. And we do know of many that serve up to three years,
15 because they were either shot or beaten and they were
16 charged with assaulting an officer, whatever.

17 So this is a very common practice.

18 MR. CARNEY: Are those people you're referring
19 to as being the victims that are then becoming the
20 defendants, are those people prosecuted by our State or
21 Federal Courts?

22 MR. MARTINEZ: Federal Court.

23 MR. PENA: Mr. Sillas, do you have a question?

24 MR. SILLAS: No.

25 MR. PENA: Mr. Martinez, do you intend to enter
26 these charts into the record?

27 MR. MARTINEZ: I will give you copies of them.

28 MR. PENA: All right.

1 MR. MARTINEZ: There are more specs that we
2 have of the increase of women crossing the border that we
3 are now in the middle of researching through or -- of the
4 validities, because of the definite pattern of the sexual
5 abuse rate of women on the border in detention centers and
6 other areas. There are agents now serving time for rape of
7 undocumented migrant women.

8 So this is an area that is a growing concern to
9 us that has been developing before our very eyes, and it's
10 shocking statistics that is growing out of this study.

11 MR. PENA: Would you copy these reports and
12 hand them over to one of our staff people?

13 MR. MARTINEZ: Certainly.

14 MR. PAZ: Could I request that we leave them
15 through the duration of this hearing?

16 MR. MARTINEZ: Sure.

17 MR. SILLAS: Mr. Martinez, I do have a
18 question.

19 In your 20 years of being involved with this
20 issue, have you come to an opinion as to whether or not
21 persons who have been identified by the Border Patrol as
22 persons, who are here without documents, are treated
23 differently once that has been determined by the Border
24 Patrol than persons who are not -- or persons who have
25 documents and are citizens?

26 MR. MARTINEZ: That used to be the case. Any
27 more, there is not much distinction being made between
28 documented, undocumented citizens. Like the case of Jose

1 Lomeli, who, as a U.S. citizen, was beaten and punched the
2 same as anybody else. And he was denied any rights to
3 explain where -- about his citizenship.

4 They ignored the mother's pleas, denied her the
5 access to even know where he was. She had no idea where he
6 was.

7 MR. SILLAS: Thank you.

8 MR. PENA: Thank you.

9 Mr. Martinez, if you have any additional
10 information or other reports that you wish to submit, would
11 you do that within the next ten days?

12 MR. MARTINEZ: Yes.

13 MR. PENA: I would like to thank your panel.

14 The committee will stand in recess until

15 12:45.

16 (The luncheon recess was taken at 12:00)

1 San Diego, California; Friday, April 16, 1993; 12:45 p.m.

2
3 MR. CARNEY: Good afternoon, ladies and
4 gentlemen. We're resuming the joint meeting of the
5 Arizona/California committees to the United States
6 Commission on Civil Rights. And again, to restate the
7 purpose of this meeting is to obtain information and views
8 relating to Civil Rights issues impacting the communities
9 along the United States and Mexico border.

10 Participants have been requested to address the
11 following issues:

12 A) Perceptions on the status of relationships
13 between federal immigration enforcement agencies (INS,
14 Border Patrol, U.S. customs) and local elected officials,
15 minority group populations, and immigrant communities

16 B) Views and information on the conduct of federal
17 immigration and U.S. Customs enforcement agencies relating
18 to use of force, language, and cultural sensitivity, and the
19 protection of civil rights;

20 C) Information on the accessibility, adequacy, and
21 effectiveness of existing INS, Border Patrol, and U.S.
22 Customs complaint procedures for receiving, investigating,
23 and resolving allegations of misconduct;

24 D) Information on border violence, generally, as
25 it relates to civil rights; and hate crimes specifically
26 affecting immigrant communities in the United States/Mexico
27 border region.

28 This meeting is not designed to address

1 immigration policy or economic impacts. The focus is on the
2 issues directly relating to the administration of justice.

3 At this time we would ask Mr. Ben Seeley,
4 Mr. Jack Mc Goldrick, and Muriel Watson to step up to the
5 table and have a seat.

6 Before you begin, you may chose whoever wishes
7 to start first. And for purposes of assisting the court
8 reporter here, if anyone has a prepared statement, could you
9 kindly leave a copy of that with the court reporter when you
10 leave. She is having problems sometimes with Spanish names
11 and surnames, et cetera, and it would facilitate her
12 operation if you can do that for us.

13 MR. SEELEY: I'm Ben Seeley, and I am the
14 Southern California Program Director for the Federation for
15 American Immigration Reform. And thank you for inviting
16 me. As you know FAIR is a national advocacy group for
17 immigration control and reform, and we don't really get into
18 law and order or civil rights abuses, per se. So basically,
19 I will -- if you don't mind, I will just make a little
20 statement and answer any questions.

21 I have a lot of personal views about what
22 you're talking about. But from the standpoint of FAIR --
23 FAIR has always said and has been saying since 1979, that
24 the best way to avoid these kinds of things in law and
25 order, civil rights abuses, human rights abuses, and all of
26 the things that get tangled up and receive the lion's share
27 of the media coverage could be best prevented if we did a
28 better job of stopping the source of the problem at the

1 border.

2 At the border you have situations where you
3 have lots of people coming into the United States from all
4 over the world by the millions that -- 90 percent or so are
5 very honest people looking for a better way of life.

6 You also have a percentage of people down there
7 that are -- with some capitalizing on this sorry
8 situation -- and making a lot of money and doing whatever it
9 takes to get the job done to make that money.

10 It's FAIR's opinion that if our federal
11 government did what it was mandated to do -- if it lived up
12 to the terms of the 1986 immigration reform control act, we
13 would not be sitting here today talking about things like
14 this, or, if we were, it would not be as highly visible.

15 I don't think that I can readily add much to --
16 I have perceptions, and I think -- if you don't mind -- I
17 will answer. I've seen a lot and I have witnessed a lot and
18 I have heard a lot, because we are community based here.
19 And my office is open for anybody.

20 And as an immigration reform and control group,
21 we get a lot of labels thrown at us that we don't really get
22 involved in. And we find ourselves, many times, ducking the
23 classification of a right-wing, racist group and things like
24 that. And it's just not our agenda.

25 Our agenda is based upon what are reasonable,
26 acceptable levels of legal immigration. And then we don't
27 feel like there is any reasonable or acceptable level of
28 illegal immigration.

1 We are a very generous company. We allow in
2 more people legally than most of the nations put together
3 and recently remained with that.

4 We have prepared a statement, a document called
5 "Ten Steps to Securing Our Border" that I will be glad to
6 leave you. But if those things were followed, I just don't
7 think the problems would be as they are today. And I just
8 don't know what else I could add to the fact that we are not
9 a civil rights abuse group.

10 We are a population control group. We think
11 that we have limits. We think that our immigration should
12 be based upon national policy and national goal. And I
13 disagree with a lot of the things that are being said about
14 it.

15 But those are some of the personal feelings and
16 some are FAIR's position, and I would be much better off if
17 I just responded to questions.

18 Thank you.

19 MR. CARNEY: There does not appear to be any
20 questions.

21 Whoever has elected to be next --

22 MR. MC GOLDRICK: I'm Jack Mc Goldrick.
23 Mr. Chairman and committee members, it is a pleasure to be
24 here. I'm actually representing two organizations today,
25 the San Diego Crime Commission and the Coalition for
26 Immigration Law Enforcement know as C-FILE.

27 I feel, and I believe most people would agree
28 with me, there is a direct relationship between crime and

1 civil rights violations. Where there is a large amount of
2 lawlessness and crime, there are naturally large numbers of
3 alleged Civil Rights violations. For

4 The last forty-seven years, the Federal
5 Government has not kept its commitment to the citizens of
6 San Diego County. That commitment was to provide a secure
7 and controlled border between the United States and Mexico.
8 The U.S. Government has never provided the resources
9 necessary, in either manpower or equipment, to enforce laws
10 of the United States, and the result is chaos. The 1986
11 Immigration Reform and Control Act was intended to restore
12 order and legality to the immigration process. It
13 accomplished neither of these objectives. The reason is
14 simple: Congress did not provide the funding for the law it
15 created. They promised to provide 6,000 Border Patrol
16 agents. Today, there are two-thirds of that figure.

17 Each year one and a half million immigrants
18 enter this country illegally in just a 14-mile section of
19 the border between the Pacific Ocean and the Otay Mountains.
20 With approximately 90 Border Patrol agents covering this
21 14 miles, they apprehend about one-third of all illegals
22 attempting to cross.

23 This means we still have one million transients
24 moving into San Diego each year. You can see the immense
25 pressure that the Border Patrol operates under. Each agent
26 arrests more criminals in one week than the average police
27 officer does in ten years.

28 Yet with all this pressure, the Border Patrol

1 has only one complaint in every 7,200 arrests. Probably no
2 other police department can approach this record. With all
3 this criminal activity, it has been 28 months since anyone
4 was shot by a Border Patrol agent.

5 Law enforcement reduces civil rights
6 violations. We need only to look at the new fence that was
7 constructed at our border within the last couple years.
8 This one element has done more to protect the civil rights
9 of Mexican citizens than any other single factor.

10 Prior to the construction of the fence,
11 Mexicans were murdering, raping, robbing, and assaulting
12 other Mexicans on U.S. territory every night of the week.
13 Once the line was drawn and enforcement was moved to the
14 fence, the no man's land of easy victims disappeared and a
15 major portion of the crimes were reduced.

16 There is a large, criminal element along the
17 masses of illegals who have no regard for anyone's civil
18 rights. To give you some idea of the magnitude of the
19 problem, 70 percent of the crimes committed in San Ysidro --
20 that's the section of San Diego next to the border -- and
21 40 percent of the crimes committed in downtown San Diego are
22 committed by illegal aliens. Eighteen to twenty-five
23 percent of our jails now contain illegals.

24 The citizens of San Diego County can no longer
25 tolerate or afford the problems caused by an uncontrolled
26 border. A tremendous increase in crime, civil rights
27 violations, drug traffic, health services, education,
28 unemployment, welfare, disease, and homelessness are the

1 just a revolving door. As I stated earlier, the Border
2 Patrol manpower allows them to apprehend only one out of
3 every three who make the attempt. Those that are caught are
4 returned to Mexico to try it again. Of course, the odds are
5 with them. Is this the way to enforce the laws that
6 Congress has created? As part of our agreement with Mexico,
7 the U.S. should insist that Mexican citizens be repatriated
8 to the distant areas they left to come north.

9 Somehow we must let the powers of government,
10 concentrated within the beltway of Washington, D.C., know
11 how serious the border problems have become and what can
12 happen when there is complete disregard for U.S. law. The
13 Border Patrol is responsible for 8,000 miles of U.S. border,
14 but 50 percent of all the problems occur in just 14 miles of
15 border here in San Diego. And less than 1 percent of all
16 the problems are there. You don't have to be a military
17 expert to figure out where you should put your resources.

18 In summary, I would like to suggest that the
19 U.S. Government should do four things: Provide the
20 additional Border Patrol officers needed to enforce U.S.
21 law; require that Mexico repatriate its citizens to their
22 inland homes; provide a foolproof Social Security card to
23 prevent forgery and violation of U.S. Employment Laws; and
24 fourth, diligently enforce employer sanctions against those
25 who knowingly hire illegal aliens.

26 Thank you.

27 MR. CARNEY: Thank you, Mr. Mc Goldrick.

28 Ms. Watson?

1 results. State and Local Governments can no longer afford
2 the burden of illegal immigration and the problems it
3 creates.

4 The solutions are simple and the price
5 insignificant in comparison to the real cost of an
6 uncontrolled border. In fact, most of the resources are
7 available. It just takes the will and direction to set them
8 in motion.

9 The Free Trade Agreement will help the Mexican
10 economy over a long period of time, but there is no proof
11 that the border cities will gain anything but more problems
12 including alleged civil rights violations. What attraction
13 will there be to work south of the border for 50 cents to
14 one dollar an hour when north of the border you can make
15 sixteen to twenty times that amount? The U.S. Government
16 must enforce employer sanctions so that the U.S. law will be
17 respected, and illegals will be deterred from coming across.

18 The majority of Hispanic citizens of the
19 United States support a controlled border. Don't be misled
20 by small Hispanic groups that say we benefit by an open
21 border, because they have no facts to support it. The
22 belief that all enforcement attempts are in vain is flawed.
23 More Border Patrol agents will greatly decrease the number
24 of illegal crossings and deter others from making the
25 attempt. In addition, the crime will decrease, and the
26 border will be less dangerous for both U.S. citizens and
27 immigrants alike.

28 You must remember that the present border is

1 MS. WATSON: Yes.

2 Good afternoon, Mr. Chairman and panel members.

3 MR. PENA: Mr. Chairman, I think we should
4 enter into the record whether the San Diego Crime Commission
5 is an arm of City Government or County Government.

6 MR. MC GOLDRICK: No, it is not.

7 MR. COOPER: Can we also request the source of
8 some of the statistics that you gave there? Or is that
9 included in your remarks?

10 MR. MC GOLDRICK: Yes. They come from the
11 Border Patrol. I was looking to see the -- Peter Nunez is
12 back in town, and he was the Assistant U.S. Secretary to the
13 Treasury for Enforcement. He recently lost his job with the
14 new administration, and he is back here in town. He was a
15 U.S. Attorney also here in San Diego.

16 MR. CARNEY: Mr. Mc Goldrick, your agency -- or
17 your organization is not attached to any governmental
18 agency. Is that correct?

19 MR. MC GOLDRICK: That's true. It is a private
20 Citizens Organization.

21 Sorry Muriel.

22 MS. WATSON: No problem.

23 MR. CARNEY: Ms. Watson?

24 MS. WATSON: Thank you.

25 Good morning -- or afternoon now.

26 Mr. Chairman and Panel Members, my name is
27 Muriel Watson, and I live in Bonita, in San Diego County. I
28 want to thank you for this invitation and the opportunity to

1 participate in this fact-finding process.
 2 Since I founded the Light Up the Border program
 3 this is exactly one of the many goals of that program,
 4 besides lights, roads, and fences, that is to look into the
 5 tragedy of the conditions that exists along the U.S./Mexico
 6 border.

7 My perceptions and the impact of illegal
 8 immigration upon local communities reach back for many
 9 years. Ironically, in April of 1973, I presented a paper to
 10 the San Diego County Board of Supervisors and requested that
 11 they inquire of the Federal Government why the Border Patrol
 12 was being overwhelmed in their ability to prevent the flow
 13 of illegal immigrants and the immediate impact on this
 14 county.

15 There was an immediate response, dead silence.
 16 No one in any official position wanted to talk about the
 17 obvious situation. The local papers had to announce the
 18 violence that was taking place along the international line.
 19 And the local police set up a special squad that worked with
 20 the Border Patrol Agents to protect the people involved from
 21 the bandits and the smugglers. This unit was disbanded
 22 after several months, because it was too dangerous for the
 23 police. A book was written about the experience called
 24 "Lines and Shadows" by Joseph Wambaugh. It presented the
 25 horror of competition and violence among the smugglers and
 26 hapless victims.

27 That was in 1979. The results of the book
 28 bought a few "Oh my's" but nothing was done about the busy

1 the Border to bring attention, if we could, about the
 2 horrors taking place in the dark canyons along Dairy Mart
 3 Road. This was a San Diego Street that was not being
 4 patrolled by the police but only responded to the crimes
 5 that were reported to them.

6 I inquired about permission necessary to park
 7 along the road and received the information that it was
 8 within the law to park our cars on a San Diego Street so
 9 long as we did not block the flow of traffic.

10 We held several "light-ups" with the
 11 cooperation of many concerned citizens who came and sat in
 12 their cars during the twilight hours, and when the sun went
 13 down, turned on the headlights for approximately 30 minutes
 14 and left the area in an ordinary fashion. The intent was to
 15 demonstrate for the public the dark and foreboding
 16 environment of Dairy Mart Road and illustrate the almost
 17 impossible task of protecting anyone who ventured into the
 18 area.

19 This peaceful action seemed to break the code
 20 of silence surrounding the mission of the Border Patrol, and
 21 it became the focus of local talk shows, especially the
 22 Roger Hedgecock show. This host encouraged the people to
 23 talk about the situation, and Mr. Hedgecock even attended
 24 several of the "light-ups."

25 Our local Congressman took up the project and
 26 brought the Department of Defense, the Army Corps of
 27 Engineers and the National Guard into the fray and proceeded
 28 to build roads for the Border Patrol and place a fence along

1 trade of smuggling and its side effects except for more
 2 silence on the part of elected officials and many
 3 community-based organizations and even the communities such
 4 as San Ysidro and Imperial Beach as well as the northern
 5 communities heavily impacted by illegal aliens seeking work
 6 along the roads and parkways.

7 During the 1980s, there was much discussion
 8 about the Immigration Reform Act being considered by
 9 Congress. And in 1986, that Act was finally passed with
 10 generous packets of amnesty for aliens which protected their
 11 civil rights as residents of the United States.

12 The Immigration Service went to great lengths
 13 to seek out those aliens that they felt had equity and
 14 opportunities to file for the Congressional amnesty.
 15 Federal officers were overwhelmed with the amnesty response
 16 and so community organizations were put into place to make
 17 sure all persons eligible were served.

18 Once the open season set up by Congress for
 19 amnesty was over, the flow appeared to slow down for a
 20 period of a few months. But in 1987, the influx of illegal
 21 aliens began to grow with the increase in violence along the
 22 International Boundary, especially in the very porous area
 23 of Dairy Mart Road. Once again, the option of silence took
 24 hold. And the reports of rape, robbery, and murder came in
 25 one-column-inch articles in the local papers as the usual
 26 police reports.

27 In November of 1989, I asked friends, family,
 28 and neighbors to join with me on a program of Lighting Up

1 the International Line which curtailed the flow of drugs in
 2 a most dramatic fashion.

3 Lights were put into place and more lights are
 4 now on the agenda. This effort is primarily focused on the
 5 smugglers who ply their trade in the dark and abuse their
 6 customers, which I view as a method of protecting all the
 7 persons who find themselves in that particular area of the
 8 International Line.

9 The building of the fence has all but
 10 eliminated the stones being thrown at the U.S. Border Patrol
 11 and brought a semblance of calm and protection to all
 12 involved.

13 This is not to say that the flow of illegal
 14 aliens has slowed and, in some instances, the smugglers in
 15 their zeal to make their money encouraged aliens to use our
 16 freeways and the Port of Entry to crash through the thin
 17 green line to get into the United States.

18 With the breaking of the code of silence
 19 surrounding illegal aliens, more elected officials are
 20 getting involved. Universities have set up study groups and
 21 have submitted reports to the community. All of this is
 22 geared to factual information about the border cities and
 23 the impact of illegal immigration for the benefit of all
 24 concerned, so that appropriate emphasis and procedures can
 25 be determined to finally face the problem.

26 Thank you.

27 MR. CARNEY: Mr. Erler?

28 MR. ERLER: Yes. I have a question for any of

1 the three of you, if you would care to respond. We've heard
2 for other witnesses here today that the primary cause of
3 border violence is the xenophobia and racism of the American
4 people, but you seem to give a different view. Do you agree
5 that that's the principal cause --

6 MS. WATSON: The violence that has been going
7 on -- In 1979, the book "Lines and Shadows" was published by
8 Joseph Wambaugh. It documents the violence that was going
9 on there along Dairy Mart Road.

10 The violence was there; it was reported every
11 day, as I say, in little teeny, tiny one-inch-column
12 articles concerning illegal aliens that drowned, illegal
13 aliens that were shot, women who were raped. It was all
14 significantly there, but nobody raised their voices.

15 And in 1989, when I started Light Up the
16 Border, it was to protest the silence surrounding that
17 violence. So we did not create the violence. We put the
18 attention on the violence.

19 And I might add that according to police
20 statistics, 87 percent of the violence in one year's time
21 along that particular area was curtailed. So we didn't
22 bring the violence. The violence was there, but nobody
23 wanted to talk about it, but we did.

24 MR. SEELEY: I think that living in
25 San Ysidro and filming in that area for five and a half
26 years, that I would have seen some violence. It's very --
27 it's very rare. In fact, I've been out there with people
28 from opposing points of view on the subject and none of us,

1 as far as I know, have ever seen an act of violence. I've
2 seen some rocks thrown.

3 But the point I want to make is, you have a
4 situation in an area where there is a high -- a high
5 representation of criminal activity which brings on the
6 violence in that area. The high speed chases you've read so
7 much about is that -- in my estimation the -- by the media
8 have been misrepresented.

9 The Temecula accident was one that got a lot of
10 national coverage. It was irresponsibly covered. And so I
11 blame a lot of this on media and sensationalism. There
12 is -- the violence that you're going to see out there is
13 things that would happen wherever there are a lot of
14 criminal activity.

15 MR. CARNEY: Mr. Sillas?

16 MR. SILLAS: If I understand your comments,
17 Ms. Watson, it's your position that your activity here has
18 reduced the violence. And the victims of the violence
19 before were those persons crossing the border from Mexico to
20 the United States.

21 MS. WATSON: Primarily what was reported in
22 the paper is that the reports would say, two undocumented
23 aliens were found stabbed and their bodies were picked up by
24 the police and identified. These kinds of acts of violence,
25 two or three times a week, were in the paper. And if you
26 didn't look for it, it was missed; nobody paid any
27 attention.

28 MR. SILLAS: So that the tightening up of the

1 border would eliminate that type of violence?

2 MS. WATSON: Yes; because if you went down
3 there to see -- have you been on Dairy Mart Road?
4 Of course, the flood has wiped it out -- but previous to the
5 flood in January, Dairy Mart Road went right off I-5 Freeway
6 and proceeded five miles west to the ocean. Along that way
7 were canyons and hills and gullies and open fields.

8 And at night, when the sun went down, there was
9 absolutely no spillage of light from either city, whether it
10 be Imperial Beach or Tijuana. And it was in total darkness.
11 It was just like a shade came down. And in that total
12 darkness, by admission of the aliens themselves, they were
13 put upon by bandits and sometimes they suspected that the
14 smugglers who brought them across actually turned on them to
15 rob them.

16 MR. SILLAS: So to the extent that the border
17 tightened up, it protected those persons from the elements?

18 MS. WATSON: I firmly believe that, yes,
19 indeed.

20 MR. SILLAS: We've heard this morning incidents
21 where the violence seemed to come from persons on this side
22 of the border, Border Patrol, and in one instance --

23 MS. WATSON: Yes, I heard that too.

24 MR. SILLAS: To what extent do you believe that
25 the tightening of the border may have an impact on that type
26 of violence?

27 MS. WATSON: Well, let me just say, I don't
28 believe the violence that we've talked about and the anarchy

1 that exists along that International Line stemmed from the
2 law enforcement officers themselves. I believe the criminal
3 activity involved created its own situation.

4 MR. SILLAS: I understand. I understand your
5 position, but --

6 MS. WATSON: Right.

7 MR. SILLAS: Now --

8 MS. WATSON: With the lights, yes. With the
9 lights, the National Guard scraped quite a few -- about
10 123 miles worth of roads along there which was inaccessible
11 for the patrol and made it difficult for them to work.
12 Those roads are in, the fence has gone up --

13 MR. SILLAS: I don't mean to interrupt you,
14 but I would like you to respond to the question, if you can.

15 MS. WATSON: All right. Repeat the question.

16 MR. SILLAS: My question is, to what extent, if
17 any, do you believe that the activity that you just
18 described in terms of what has been done on the border -- to
19 what extent, if any, has that activity diminished any type
20 of violence on this side of the border, either by American
21 citizens or border agents?

22 MS. WATSON: Well, see, I find it very
23 difficult to answer that question, because I don't know of
24 claims of violence perpetuated by citizens or law
25 enforcement officers. All I know is that the overall
26 violence in the first year that Light Up the Border
27 existed -- it was brought down by 87 percent, according to
28 police crime statistics.

1 MR. SILLAS: I understand.

2 MR. MC GOLDRICK: I would like, if I can --

3 there were isolated incidences of Americans taking advantage

4 of Mexicans who were crossing the border, but they were

5 completely isolated. Prior to the building of the fence,

6 the crime rate there was so tremendous that the San Diego

7 Police Department formed the Border Intervention Crime Unit,

8 and they finally got about 12 officers that volunteered to

9 go in and hide in the those canyons at night to protect

10 their Mexican citizens. Most of that problem -- they still

11 have the border intervention unit, but the crime that was

12 committed previously has basically gone away. And these

13 were crimes by Mexicans against Mexicans.

14 MR. SILLAS: I understand.

15 The thrust of what I'm trying to get

16 information on has to deal with the activity on this side of

17 the border as it pertains to anyone's residence, a person

18 that inhabits on this side of the border, and to what extent

19 any activity on this side fringes upon those individuals'

20 rights. You had made the comment earlier that a high crime

21 rate increases the violation of civil rights.

22 MR. MC GOLDRICK: That's true, yes.

23 MR. SILLAS: By that comment, civil rights

24 being a violation of the person's rights, your premise,

25 then, is that high crime area automatically brings on that

26 kind of activity?

27 MR. MC GOLDRICK: That is true.

28 MR. SILLAS: You also stated that an increase

1 it, and say there will be a light-up at such and such a

2 time, but that is the extent of it. But the response is

3 always overwhelming.

4 MR. ZASUAETA: On the membership organizations,

5 are most of your members Angelo?

6 MR. SEELEY: Mine; yes.

7 MR. MC GOLDRICK: I would say ours is fairly

8 well diverse. I would say that, perhaps, the minority is

9 represented in the community, as far as that goes, yes. As

10 I said, Peter Nunez, is of Spanish descent, and he was a

11 member of it prior to going into government service.

12 MR. SEELEY: I have to be honest, yes, they

13 are. We would love to have more representation; we are

14 working on it. We don't have any direct percentages right

15 now, but it's increasing.

16 And one of the things that is helping us quite

17 a bit -- FAIR, that is -- is that when this council -- the

18 Latino council report came out, and it's basically the point

19 of views on immigration, illegal, and otherwise, was almost,

20 you know, strictly amongst the Hispanic population -- I hate

21 to use this word but I have to in this situation -- they

22 found out that their feelings were just like anybody else's.

23 And so it showed that there wasn't a big wedge

24 between ethnicities and races on this issue. This is an

25 all-American issue, bar none, and we realize that. I mean,

26 I do have, like -- Manuel Parsons is a Chicano, and he is

27 member. And our membership is growing and we very

28 desperately need all races and ethnicities, because we feel

1 in law enforcement reduces the civil rights violation.

2 MR. MC GOLDRICK: That's also true, because it

3 eliminates the crime and the effort to cross the border

4 illegally. All that is taken back, and it could be a very

5 calm area if there were proper enforcements in that

6 particular area.

7 MR. SILLAS: To what extent -- if you have an

8 opinion -- to what extent do you believe the high,

9 increased, law enforcement presence has reduced civil rights

10 violations on this side of the border?

11 MR. MC GOLDRICK: Well, I think the Border

12 Patrol can probably answer that better than I can. But I

13 certainly talked to them a number of times, and that's why I

14 was able to bring up the point that once the fence was there

15 and once they were -- the line was drawn so that this no

16 man's land was not available where they could take advantage

17 of these citizens, all of this violation of civil rights and

18 crime has diminished considerably.

19 MR. SILLAS: Thank you.

20 MR. CARNEY: Mr. Zazueta?

21 MR. ZAZUETA: Your organizations are mainly

22 membership organizations; right?

23 MR. SEELEY: Correct?

24 MR. MC GOLDRICK: Yes, that's true.

25 MS. WATSON: Not mine, no. I do not have any

26 organization with members. The only time that the concerned

27 citizens that come to sit in their cars and turn on their

28 headlights is when I ask for it -- go on the air and ask for

1 like this is a real big U.S. problem.

2 MR. ZAZUETA: Thank you.

3 MR. CARNEY: Ms. Watson, Mr. Mc Goldrick, and

4 Mr. Seeley, I would like to thank you for your presence here

5 and for your participation. If you have any supplemental

6 information you wish to have us review, would you just leave

7 it with one of the staff members.

8 Thank you.

9 MR. CARNEY: Mr. Gustavo De La Vina, Ronald J.

10 Dowdy, James Turnage, JR., Ralph Paige, Rudy Camacho, and

11 William Esposito. I don't know if there are enough chairs

12 there for all of you here.

13 Gentlemen, have you determined in what order

14 you're going to go -- who is going to start first?

15 MR. DE LA VINA: Why don't we just go by the

16 agenda.

17 MR. CARNEY: Okay. Mr. De La Vina?

18 MR. DE LA VINA: Thank you, Mr. Chairman, panel

19 members.

20 My name is Gustavo De La Vina. I am the chief

21 patrol agent for the San Diego Border Patrol. I appreciate

22 the invitation of being able to speak to you this morning.

23 I would like to give you an overview of the San Diego Border

24 Patrol before I specifically address the questions submitted

25 by the panel.

26 First of all, the San Diego Border Patrol is

27 the largest sector of the INS in the United States. Now

28 this is based on the volume. To give you an example of the

1 volume that the San Diego Border Patrol is dealing with, I
2 will refer to the statistics from 1990. This is when I came
3 in, and I can address these readily.

4 Since 1990, fiscal year 1990, to the present,
5 which covers a period of three and a half years, the Border
6 Patrol in San Diego has arrested 1.8 million illegal aliens
7 in the San Diego area. The last year, the Border Patrol in
8 San Diego arrested over one half million illegal aliens in
9 the San Diego area.

10 This fiscal year -- and our fiscal year starts
11 in October -- from October to yesterday, a period of six
12 months, we have arrested over one quarter of a million
13 people entering illegally in San Diego. Last month, we
14 arrested over 61,000 people entering, again, in the
15 San Diego area. This month, the first 16 days -- or, say,
16 15 days of April, there were over 27,000 arrests. And last
17 night, we arrested 1,472 people within a 24-hour period
18 attempting to come into San Diego.

19 If we predict -- and I think I can do that
20 pretty handily -- the remainder of this fiscal year, which
21 terminates in September, we're looking at approximately
22 another one quarter million arrests from now to September
23 which would give us for the year a little over 500,000 or
24 close to 600,000 illegal aliens that we have handled in the
25 San Diego area.

26 Since 1990 to, let's say, the end of September
27 of 1993, which is a four-year period, the Border Patrol in
28 this particular sector would have handled in excess of 2.2

1 regard.

2 Unfortunately, with the large volume -- for
3 example, as I mentioned, last night, there was close to
4 1,400 arrests. Unfortunately, mixed into that big
5 population, we have other profiles that the Border Patrol
6 agent has dealt with:

7 One, you're dealing with a smuggler of aliens.
8 This is known as the "coyote." The coyote is a person that
9 has complete disregard for human life. He is a smuggler of
10 the people that he is bringing in. He is exposing them to
11 all kinds of dangers, all kinds of hazards, all kinds of
12 risks. He is telling them to run across the freeway, jump
13 out of vehicles. He does not want to be arrested.

14 Then, we're also dealing with the narcotics
15 smuggler. The narcotics smuggler is a person that
16 definitely does not want to be arrested and will normally
17 fight, use weapons, et cetera, to protect his load.

18 In addition to that, another profile coming in
19 from Mexico, we're looking at the juveniles. By that, we
20 are referring to the juvenile gang members.

21 We are also dealing with those that are
22 reentering to commit burglary -- primarily between the ages
23 of 18 and 22 -- commit burglary, auto theft, pilfering,
24 breaking and entering. We're also dealing with those that
25 are alcoholics and those that are engaged or, let's say,
26 that are on drugs. You've got your drug addicts that we're
27 dealing with.

28 I do this with approximately 1,000 Border

1 million illegal aliens in the San Diego Border Patrol
2 sector. In addition to dealing with illegal aliens and
3 apprehensions, arrests, detentions, transportation, we're
4 dealing with narcotics. For the 1990 to the present figure,
5 we have seized over 233 million dollars worth of narcotics
6 coming into the San Diego area. To kind of put it in a
7 nutshell, 50 percent of all the apprehensions nationwide
8 occur right here in San Diego and occur by the men and women
9 of the United States Border Patrol in the San Diego Border
10 Patrol sector.

11 MR. SILLAS: Is that 50 percent of narcotics
12 arrests or --

13 MR. DE LA VINA: No. Illegal aliens. 50
14 percent of all illegal alien apprehensions that occur -- or
15 are occurring here in the San Diego area. I guess -- I know
16 I'm throwing a lot of figures at you, because I'm telling
17 you that San Diego is the largest and this is based on
18 volume. You can equate this to populationwise. In a
19 four-year period, we have handled -- we have arrested,
20 populationwise, in comparison to two cities the size of
21 San Diego. People that we are dealing with coming in from
22 Mexico as well as other countries fit various profiles.

23 We are dealing with those that are coming in to
24 seek employment, those that are coming in to join family
25 members. These are your workers, your elderly, women,
26 children, and they don't appear to be a problem. They
27 understand what the rules are and the processes, and we
28 don't anticipate -- or we don't have a major problem in that

1 Patrol agents that are assigned to the San Diego sector.
2 That covers 7,000 square miles and 66 miles of international
3 border. That equates -- given days off, given the holidays,
4 and what-have-you -- to approximately, at any given time in
5 a 24-hour period, less than 100 Border Patrol agents in the
6 Border Patrol sector in San Diego.

7 Now, this is a huge volume of people that we're
8 dealing with. I think I can safely say that there is no
9 police agency, locally, state, or federal, that deals with a
10 volume of arrests and detentions that we're dealing with.
11 And I'm probably -- maybe stretching it a little bit, but I
12 don't think that there is no other police agency in the
13 world that is dealing with the masses of people entering one
14 particular area like we have here in San Diego.

15 I would address, now, some of the questions
16 that have been submitted to me by the panel. And I'll start
17 off with the community outreach efforts.

18 Either myself, my staff, or members of Border
19 Patrol in various locations throughout that 7,000 square
20 miles have participated in one form or another. For
21 example: in community outreach efforts, have attended the
22 San Ysidro Revitalization Project, the San Diego Human
23 Relations Commission, San Diego Wind and Sea Program,
24 Neighborhood Watch Program, Citizens Revolting Against
25 Pollution, the NAACP, local schools.

26 We have participated in D.A.R.E. Programs,
27 given presentations. And two of our stations have adopted a
28 school in the San Ysidro area. Have a liaison with elected

1 officials; have regular meetings with the members of the
 2 City Council, members of the County Board of Supervisors,
 3 elected school district officials, members of the State
 4 Legislature -- and that includes Senators and Assemblymen,
 5 members of the Congress of the United States, the County
 6 Sheriff.

7 Community based and minority group populations:
 8 This again is my participation as well as my staff,
 9 primarily myself in some of these activities. I met with
 10 chiefs' men (phonetic). This is an organization of
 11 businessmen from both sides of the border; with LULAC, which
 12 is the League of United Latin Americans; with MALDEF,
 13 Mexican/American Legal Defense Fund. This is a group which
 14 promotes the legal rights of Mexican Americans.

15 I have done Radio Hispana, which is a Spanish
 16 language radio station, in which I have responded to
 17 call-ins from the public regarding the Border Patrol, from
 18 both sides of the border, from Tijuana as well as San Diego.

19 Channel 12, the XEWI T.V. in Tijuana. This is
 20 a Tijuana-Based, Spanish language T.V. station in which I
 21 have addressed issues of concern from the Tijuana community;
 22 the NAACP; the National Association of Advancement of
 23 Colored People.

24 There is an ongoing attempt to increase the
 25 recruitment of attention to black officers on the Border
 26 Patrol; CRLA, the California Rural Legal Assistance; the
 27 Migrants Rights Association; and the ACLU. We have chaired
 28 panels; the American Civil Liberties Organization.

1 receive is taken extremely seriously. Procedure -- I think
 2 that Mr. Paige will follow up on -- is that every complaint
 3 received is referred to the Office of Inspector General for
 4 investigation. He will make a determination of what goes to
 5 civil rights, a division in the Department of Justice in
 6 Washington, D.C.

7 If that is the case, the FBI will become
 8 involved in doing the investigation, recommendations are
 9 made, are returned back to the Civil Rights Division and
 10 then at that point, a determination will be made whether
 11 they will come for criminal prosecution under the United
 12 States Attorney or whether it will be referred for
 13 administrative action under my jurisdiction.

14 Our last question that was submitted to me was
 15 the border violence, the Border Patrol especially as
 16 relating to data on hate crimes;

17 The Border Patrol does not have data regarding
 18 border violence in general. The agencies which do are the
 19 San Diego Police Department and the San Diego Sheriff's
 20 Office. Similarly, the Border Patrol does not have data
 21 regarding hate crimes, specifically the immigrant
 22 communities in the U.S./Mexican Border region, and I will
 23 refer you to the above city agencies.

24 I can tell you one thing: that the installation
 25 of the border fence along the 14-mile corridor -- corridor
 26 from the Pacific Ocean to the San Ysidro mountains has
 27 dramatically reduced the incidents of violence directed at
 28 illegal aliens as well as Border Patrol agents. What we're

1 These meetings are held in order to establish
 2 and maintain lines of communication with particular special
 3 interest groups to promote an understanding of each others
 4 position.

5 Question 'B' is: In addition to the training
 6 conducted by the Border Patrol Academy at the San Diego
 7 sector, this is our training locally, in addition to the
 8 national training. The San Diego sector has ongoing
 9 training in:

10 One, ethics, which is the promotion of an
 11 understanding of what is acceptable in professional conduct
 12 and what is not; development of a sensitivity to perceptions
 13 and misconceptions which makes sense to the community in how
 14 they play roles they daily encounter.

15 Two, use of force. The law and policy
 16 involving the use of force includes recognizing discretion
 17 as a possible alternative to confrontations which are
 18 avoidable.

19 Three, constitutional rights.

20 Four, at the present time, we are currently
 21 developing a training program based upon the Department of
 22 Justice; community relation covering publication; principals
 23 of good policing; avoiding violence between police and
 24 citizens, that we, hopefully, will initiate within the
 25 following two months.

26 This -- question 'C' is on the process for
 27 receiving investigations:

28 Number one, every complaint allegation that we

1 dealing with in San Diego is an extremely voluminous border
 2 of illegal aliens, illegal entries. And it's an extremely
 3 busy place.

4 Thank you very much.

5 I have submitted training reports to you of the
 6 training that we do, also an operation profile, a list of
 7 agencies as well as community programs that we are involved
 8 with, as well as itineraries of who we meet and who we talk
 9 to, and what panels we have been on. All that is in the
 10 record.

11 Thank you very much.

12 I'm here to answer any questions that you might
 13 have.

14 MR. CARNEY: Dr. Erler?

15 MR. ERLER: Yes.

16 Mr. De La Vina, in the briefing sheet that we
 17 received here, it says that there is one complaint filed for
 18 every 17,000 apprehensions. Is that a correct figure?

19 MR. DE LA VINA: That is -- it's my
 20 understanding that that is at the national level. Locally,
 21 what we're capturing in our statistics is, one allegation
 22 for every 7,000 people under arrest. At the national level,
 23 I believe, that is one out of every 17,000. Locally, we
 24 receive one allegation for one -- let's say, one out
 25 of every 7200 arrests.

26 MR. ERLER: Can you tell me how that compares
 27 to other law enforcement agencies?

28 MR. DE LA VINA: Yes, sir. I think that -- in

1 attempts to capture this statistic it's very difficult to
2 do. But in just -- let's say rule of thumb, you can take a
3 look at some of your larger metropolises or, say, larger
4 cities, L.A., New York, I think that this record is well --
5 well above any of the other local or, let's say, state
6 police agencies across the United States. And I can assure
7 you, it falls a lot better than in Mexico.

8 MR. ERLER: Let me ask you one other question:
9 We heard this morning from other witnesses that the
10 indiscriminate firing of weapons by Border Patrol agents is
11 common and, as a matter of fact, quite frequent.

12 Is this true? And can you tell me when the
13 last time that a Border Patrol agent fired a weapon?

14 MR. DE LA VINA: Yes, sir. The last use of
15 deadly force by one of our agents in the San Diego area was
16 in November of 1990. That's over 29 months ago.

17 MR. ERLER: So, then, the allegation that the
18 indiscriminate firing of weapons, that it was a common
19 event, is simply not true?

20 MR. DE LA VINA: I think there was a great deal
21 of violence prior to 1990, that has been testified to,
22 where I was out on the line -- and I came in in 1990 -- when
23 I would go out to visit -- the fact is, I had a
24 congressional delegation visiting with us on the border
25 where one of the illegal aliens was shot by a bandit. We
26 got to see that in reality. There was pretty much a
27 fire-fight just about every night out there.

28 MR. ERLER: What has changed things since 1990?

1 also, is it true, as we heard the other witnesses say, that
2 the complaint procedures are so complex and arcane that no
3 Border Patrol agent is ever punished or reprimanded for
4 their actions?

5 MR. DE LA VINA: The complaint system that is
6 tracked by the office of Inspector -- General. Our
7 complaint system, it -- it varies. It varies a lot in that
8 we are getting into -- I think we're at the most -- the
9 complaint -- some of the complaints that I am receiving now
10 have been due to verbal abuse, which, you know, we're
11 working on the verbal-abuse aspect.

12 The complaint system as to where not to be --
13 we have initiated a policy where every detainee, every
14 person that has been arrested, when they are returned back
15 to Mexico is returned on the border to a Mexican official
16 which they can clearly make, and they do, any allegations
17 against our agents. That's one of the processes that every
18 person who is arrested here is turned over to a Mexican
19 official.

20 In addition to that, we have expanded our
21 facilities, our detention facilities, where we have an
22 office that is made available to the Mexican Consulate. And
23 they are there at eight o'clock every morning to receive any
24 type of complaint or what-have-you.

25 Thus, we are dealing with all types of efforts
26 in that regard to alleviate the complaint system. In
27 addition to that, there are groups on the Mexican side, as
28 well as on the United States side, that they -- they have

1 MR. DE LA VINA: Since 1990, we have initiated
2 a couple of processes. The one I came up with, as well as
3 staff -- and we came up with the fence.

4 The problem we were seeing beforehand is there
5 was no demarcation in the border. We were seeing thousands
6 of people literally loitering and milling about the United
7 States within 100 to, let's say, 150 yards on the United
8 States side. Our agents attempted to move these people back
9 into the Mexican side of the border also resulting in, let's
10 say, altercations, verbal abuse, physical abuse.

11 On both sides, our agents were attacked. At
12 that point, they were losing approximately fourteen
13 windshields due to rock attacks per month. Incidents
14 involving injuries to both our agents, assaults against our
15 agents, bandits preying on illegal aliens, was completely
16 out of control.

17 The fence, in cooperation with the BETA group
18 which is a Mexican based group, the initiation of lights,
19 and strategies and enforcement, has reduced the violence
20 almost by 70 percent. I can assure you that for those of
21 you that have lived here in San Diego those years were
22 terrible.

23 Prior to my coming here, there was
24 approximately -- I think there were nine murders -- nine
25 homicides attributed to this zone on the international
26 lines. Since 1990 to the present, there has been none.

27 MR. ERLER: Can you also tell me if the
28 frequency of complaints is increasing or decreasing? And

1 that. We receive a great many complaints, ourselves, which
2 are addressed immediately.

3 MR. ERLER: Thank you.

4 MR. CARNEY: Ms. Garcia?

5 MS. GARCIA: I have several questions for
6 Mr. De La Vina.

7 First of all, sir, I want to know if you're
8 familiar with the audit of the firearms policy and practices
9 by Border Patrol by the Office of Inspector General in
10 September of 1991?

11 MR. DE LA VINA: Yes, ma'am, I am.

12 MS. GARCIA: And you're aware, I guess, of the
13 inadequacies and criticisms pointed out in the particular
14 audit?

15 MR. DE LA VINA: Yes, ma'am.

16 MS. GARCIA: And you're aware that, in regard
17 to firearms policies and procedure, the finding by the OIG,
18 itself, was that the policies were inadequate for officers
19 on leave or detail to qualify during that quarter; the use
20 of nonlethal force; requiring full-time commitment for
21 firearms instructors; maintaining inventory system of
22 weapons, and several others, I guess. And they found that
23 one-third of the shootings that they sampled violated the
24 inadequate firearms policy that was in place.

25 Can you tell me what has been done in your
26 sector in regard to these particular findings?

27 MR. DE LA VINA: The -- on the inventory aspect
28 alone, we have a computerized system that handles that type

1 of situation. We are aware of where every weapon is,
2 et cetera. Our recording process for a -- to say discharge
3 of a firearm, our track -- I mean, this is a violation if
4 it's not reported.

5 And you have to understand that working right
6 on the border -- you have San Ysidro several yards away,
7 then you have the City of San Ysidro and Imperial Beach.
8 They are basically right in our backyard as far as the
9 border is concerned. You're pretty much in a fishbowl. If
10 a firearm is discharged, we know about it.

11 An agent normally will report that or -- that's
12 the rules and regulations that we have there. In our
13 training, all agents must qualify. I have got to go
14 qualify, as much as -- in a sense that I don't have the
15 time, and I am not carrying a weapon right now, I can assure
16 you. But the range officer does not let me escape. I have
17 to qualify quarterly.

18 We keep track of all shootings. We keep track
19 of our weapons. We keep track of our training. We do quite
20 a bit of night training as well as day training. We do
21 familiarization with other type of weapons. We're looking
22 at it. We are always trying to look for new ideas, ways to
23 improve our firearms policy.

24 MS. GARCIA: Sir, in Tucson -- I don't know,
25 you may have heard back in December -- a Border Patrol agent
26 was tried and acquitted of murder charges. Within the trial
27 proceedings, five to six Border Patrol agents testified
28 under oath that it was common practice of Border Patrol to

1 shoot in the air, warning shots, and that that was very
2 common, almost on a daily basis, one of the agents
3 testified. And they also testified that it was just as
4 common not to report those shootings of the warning shots.

5 What can you tell me about that, sir, given
6 your direct -- contradictory testimony today that that
7 doesn't occur when the agents testified under oath that
8 that's what, in fact, occurs on a daily basis?

9 MR. DE LA VINA: Well, in all fairness the
10 Chief of the Tucson Sector is here, and, perhaps, he would
11 be better to address that. To tell you, from the San Diego
12 aspect of it, indiscriminate warning shots -- we have a very
13 congested area, if it is occurring. And I'm hopeful that it
14 is not, then we have a problem. It has not been reported to
15 me in that regard. I do have quite a bit of accidental
16 discharges and things of that nature that are reported
17 immediately.

18 You've got to understand one thing with the
19 scenario that I've mentioned to you, which is, basically, we
20 turn over every illegal alien that we are apprehending to a
21 Mexican official. And I can assure you that if we were
22 doing that, they would immediately go to the Mexican
23 Consulate. We would hear about it real quickly.

24 MS. GARCIA: And lastly, sir, I want to ask you
25 a little bit about the complaint procedure. I don't know if
26 you're aware that the Civil Rights Commission did an
27 in-depth study of this service back in 1988 and published
28 this particular document, "The Tarnished Door." Are you

1 familiar with that?

2 MR. DE LA VINA: 1980? I'm not sure. I
3 probably have seen the document. That was a long time ago.
4 Do you have anything more current than that?

5 MS. GARCIA: No. I want to refer back to this
6 particular document. And as I read the findings and the
7 recommendation by the civil rights commission in 1980, it
8 appears to me -- and correct me if I'm wrong -- that the
9 only significant change from then to 1993, is that
10 supervision of this agency is under the Office of Inspector
11 General, versus the Office of Professional Responsibility.
12 And that's the only significant change I see, even though
13 the Civil Rights Commission gave your agency a number of
14 recommendations for change in regard to the complaint
15 procedure.

16 MR. DE LA VINA: That is correct. We're
17 presently under the Office of Inspector General which is
18 under the Department of Justice, an independent agency for
19 the United States Border Patrol. As to the reason for that,
20 there appears to be a national issue. I can address
21 anything locally, you know, here.

22 But that appears to be a national issue, and, I
23 think, perhaps, Mr. Paige who is from the Office of
24 Inspector General might be able to address that a little bit
25 better than I.

26 MS. GARCIA: Is that the only change, though?

27 MR. DE LA VINA: Oh, no. There --

28 MS. GARCIA: Are you aware of any changes in

1 regard to the complaint procedure from 1980 to the present?

2 MR. DE LA VINA: Basically not -- no. The
3 complaint procedure is primarily an allegation. We refer it
4 to the Office of Inspector General. The Inspector General,
5 then, makes a determination whether it is a civil rights
6 violation.

7 If it falls in that category, they do the
8 investigation. If at that point, a determination is made,
9 it becomes a -- it goes to the Civil Rights Division in
10 Washington, D.C., which involves the Federal Bureau of
11 Investigations to conduct the investigation.

12 At that point, they make their findings known
13 to the Civil Rights division. At that point they will
14 either go for a criminal prosecution, which will be referred
15 to the United States attorney, or they will refer it for
16 administrative -- appropriate administrative action.

17 MS. GARCIA: Are you aware of any prosecutions
18 that resulted after a person complained, here, in your
19 sector?

20 MR. DE LA VINA: Yes, ma'am.

21 MS. GARCIA: And can you tell us what those
22 were?

23 MR. DE LA VINA: I fired a Border Patrol agent
24 for the sustaining of physical abuse, yes, ma'am.

25 MS. GARCIA: I'm talking about prosecution.
26 Maybe you misunderstood. I'm talking about criminal
27 prosecutions.

28 MR. DE LA VINA: No. The only one in the three

1 years that I have been here, has been a civil rights
2 violation which has concluded its trial -- I believe it was
3 last month. And the findings by the 12-men jury was that --
4 it didn't have a finding of guilt.

5 MS. GARCIA: Okay.

6 MR. DE LA VINA: But that's the only one I know
7 of.

8 MS. GARCIA: And as to the details about the
9 complaint system, is that better to be asked of the Office
10 of Inspector General or yourself?

11 MR. DE LA VINA: I don't quite understand.

12 MS. GARCIA: I have some questions in regard to
13 the complaint procedure. Is that best for the Office of
14 Inspector General's representative or yourself?

15 MR. DE LA VINA: Is this best for them or for
16 us? I don't --

17 MS. GARCIA: My question is, should I ask this
18 of you or should I ask this of them?

19 MR. DE LA VINA: No. I think it would be
20 better asked -- I can tell you what I am doing locally. But
21 as far as the policies and whatever, it would probably be
22 best from the Office of Inspector General.

23 MS. GARCIA: Thank you.

24 MR. CARNEY: Ms. Julien?

25 MS. JULIEN: A point of clarification also on
26 the complaint process. You gave us some statistics. Could
27 you explain at what point in the process a complaint becomes
28 one of those statistics? In other words, what is it that a

1 person has to do in order to become --

2 MR. DE LA VINA: Once he makes it, it doesn't
3 matter whether he says that he was pushed, whether he says
4 that he was verbally abused. It doesn't matter. We take
5 them all.

6 MS. JULIEN: In what manner? Is this a written
7 complaint? Is it one that's forwarded from your office? At
8 what point does it become a statistic?

9 MR. DE LA VINA: It -- once it becomes the
10 allegation, once we receive it, that is counted -- whether
11 it be frivolous, whether it been sustained, we count that as
12 a complaint. If it's not received by us, we capture those
13 statistics that are coming to us.

14 It could be coming from the Mexican Consulate.
15 It could be coming from the Sheriff's Department. It could
16 be coming from other areas of -- special interest groups, et
17 cetera, that are receiving complaints, and those are being
18 filed directly to the Office of Inspector General, a lot of
19 times to FBI. But anybody -- if you've got a complaint,
20 we're taking it.

21 MR. CARNEY: Mr. Paz?

22 MR. PAZ: Thank you.

23 Mr. De La Vina, this morning we had testimony
24 with a couple of agencies -- and perhaps it is mentioned in
25 this list of agencies -- that you have created some public
26 relations. One, of course, is the Rural Legal Assistance,
27 and the other one is the Chicano Federation.

28 MR. DE LA VINA: Yes.

1 MR. PAZ: Could you -- how would you
2 estimate -- how would you describe your relationship with
3 these two organizations in your credibility as Border
4 Patrol?

5 MR. DE LA VINA: Well, I think I am the
6 greatest, but I don't know how they look at it. I've met
7 with Claudia Smith from the Rural Aid. I think that
8 we're -- she has called on several occasions, and we've
9 taken care of the situations. As far as the Chicano
10 Federation, I haven't heard from them at all, sir.

11 MR. PAZ: I got the feeling this morning that,
12 perhaps, they do not necessarily go to you primarily,
13 because the complaints are not processed or they never
14 really get some feedback as to where they are. Is that a
15 general feeling? Or is that a real feeling?

16 MR. DE LA VINA: I wish they would have at
17 least tried. If they would have -- there has not been one
18 instance, that I can recall, in the three years that I have
19 been here, where I have received a complaint from the
20 Chicano Federation. Whereas I have received and have acted
21 on ones -- for example, the American Friends Service
22 Committee -- where they called, and we've taken action on
23 that.

24 But as far as the Chicano Federation, I haven't
25 received anything from them. I think that would be an
26 unfair assessment on their part that I'm not willing to
27 listen to when I am willing to listen to these other
28 organizations.

1 MR. PAZ: The other question that came up this
2 morning by some testimony as to -- One thing that has become
3 a theme throughout the hearings since that, is the
4 involvement of narcotics or dealing with the narcotics
5 operation into this country.

6 And the question that I've asked is, of course,
7 the perspective that you might have as to what impact does
8 it have in dealing with the human rights of illegal aliens
9 as they come in here. Because, sometimes, that becomes the
10 reason that you initiate some degree of enforcing powers.
11 What is your perspective on this issue as it relates to
12 narcotics?

13 MR. DE LA VINA: The -- basically on the
14 narcotics -- the problem with the narcotics issue is that
15 narcotics smugglers like to mingle with the illegal aliens
16 or the population itself. Fortunately, the detection of the
17 narcotic movement is a lot easier than, let's say, the
18 illegal aliens coming across.

19 What we're dealing with -- when I'm dealing
20 with narcotics, I'm dealing with 500 pounds of marijuana,
21 1,000 pounds of cocaine, where concealment becomes very
22 critical and very obvious to our agents. So, basically,
23 we're going to know who we're dealing with, and it's not a
24 situation where we're having a mix, for example, where they
25 are carrying small amounts.

26 The narcotics that I'm seizing at this point is
27 in big bulk. The unfortunate situation is that they like to
28 blend into the illegal alien population, the women and

1 children, what-have-you. But we're able to detect that. I
2 don't think that is an issue as far as the amount of force
3 or unnecessary force or the type of operation that is
4 needed.

5 MR. PAZ: Do you see a conflict of interest in
6 terms of law enforcement dealing with the enforcement of
7 illegal narcotics and illegal migration?

8 MR. DE LA VINA: Absolutely not, sir.
9 Basically, you can't separate one from the other, primarily
10 that you're dealing with the International Border. And I
11 would like nothing better than to have a zone designated
12 only for narcotics smugglers. My job would be a lot easier
13 as well as our agents, but unfortunately that is not the
14 case.

15 Everything coming across the border,
16 technically, is the jurisdiction of the Border Patrol,
17 illegally, I'm speaking. Thus, we're there, and we're
18 catching a lot of narcotics, catching a lot of illegal
19 aliens. You really can't separate one from the other. The
20 focal point is that they are all coming in from Mexico.

21 MR. PAZ: And lastly, back to idea of the
22 complaints. I'm a little bit confused in terms of the
23 numbers, and I'm still confused as to what happens to a
24 complaint once it gets to you and it comes back to the
25 person who would like to have an answer. This morning, we
26 had the privilege of listening to three victims --

27 (Reporter interruption.)

28 MR. PAZ: -- we went ahead and listened to

1 It's more of -- you know, you mentioned to me
2 three gentlemen made a complaint. Well, I can tell you that
3 I've arrested -- last night, I arrested 1,400 people, and
4 I'm not aware of any complaint.

5 So it doesn't happen all the time, but when it
6 does happen, we want to make sure that it is investigated.
7 And the best people to do that are those that are not the
8 closest to it.

9 And that's why the Office of Inspector General
10 or the FBI are what I strongly recommend for us to continue.

11 MR. PAZ: Thank you.

12 MR. CARNEY: Mr. Sillas?

13 MR. SILLAS: I have a couple of questions for
14 clarification. You indicated that 50 percent of the arrests
15 or apprehensions occur here -- 50 percent of the total
16 percent are on the national level. What percentage of
17 officers do you have of the total work force of your Border
18 Patrol agents?

19 MR. DE LA VINA: About 20 percent.

20 MR. SILLAS: So, if I understand it, then,
21 20 percent of your work force of the Border Patrol accounts
22 for 50 percent of the arrests on a national level?

23 MR. DE LA VINA: That's about right.

24 MR. SILLAS: I understand you don't have
25 anything to do with the allocation of resources?

26 MR. DE LA VINA: No. I wish I did.

27 MR. SILLAS: But we just wanted to enter that
28 into the record.

1 three victims, of course, indicating -- illustrating their
2 confrontations with the Border Patrol members in the past
3 few months. And, of course, we're going to be interested in
4 what happens to the complaint.

5 But as you notice, here, to my right, there are
6 some charts here that illustrate some degree of activity
7 having to do with complaints and -- shall we call them
8 "abuses" towards illegal aliens -- and you started wondering
9 that is one in so many thousands. Is there a feeling,
10 perhaps, that -- what do you follow up on a complaint once
11 it leaves your office? Does it get lost there?

12 MR. DE LA VINA: No, sir. We have to receive
13 the outcome of that complaint one way or the other, whether
14 it will be in the form of a criminal prosecution or in the
15 form of an administrative action. That will be taken by me.

16 Thus, I guess, my question is -- is, you know,
17 I would like to know what type of complaint this was? What
18 was the involvement? And what was the category? Were they
19 involved in any type of activity? You have so many
20 things -- that's because the Border Patrol does not
21 investigate itself because it's just -- because there are so
22 many sides to these things -- was there resistance? Was
23 there resistance in the arrest? What were the
24 circumstances? et cetera.

25 That's why I like the present system where
26 we're out of it. I would prefer, much better, that the FBI
27 or the Office of Inspector General review the complaints in
28 all our allegations.

1 You gave us statistics dealing with the number
2 of arrests over the years.

3 MR. DE LA VINA: Yes, sir.

4 MR. SILLAS: Is there any statistic, that you
5 have, that would give some information to us in terms of the
6 number of times that a person is arrested?

7 MR. DE LA VINA: Yes, sir. There was a study
8 that was conducted in 1989, which was a recidivism study.
9 That is where some computer systems, what-have-you -- every
10 person that was arrested up to 50,000 was tracked for a
11 possible reentry after being returned back to Mexico. This
12 was for, I believe, a 30-day period of time. 50,000 people,
13 30 days. They were fingerprinted -- it was before my time.

14 MR. SILLAS: All right.

15 MR. DE LA VINA: But it was a tracking system.
16 The recidivism rate that resulted at the end of the study
17 was that 18 percent were re-apprehended, which means that
18 approximately 80 percent either went back to Mexico, or they
19 clearly got through. So we missed a lot.

20 MR. SILLAS: We had some testimony this morning
21 that indicated -- or the premise being -- that when you
22 tighten up the border, you're able to apprehend more people.

23 MR. DE LA VINA: That's correct.

24 MR. SILLAS: Also that the persons, then, that
25 you apprehend go back to Mexico and return.

26 MR. DE LA VINA: That's correct, too, sir.

27 MR. SILLAS: And that the statistics, then,
28 are -- although significant, may be merely -- you're

1 apprehending the same individual. So that the number of
2 people that are actually involved, or engaged in attempting
3 to cross the border, are less than the number of people that
4 you're apprehend--or that your statistics show that you
5 apprehend.

6 MR. DE LA VINA: I think that would have been a
7 valid argument or valid point several years ago alleging
8 where there was no visual, or, let's say, have anyone really
9 take a measure as to what was, in essence, eluding, leading
10 to the arrest.

11 A situation was created a little over a year
12 ago on Interstate 5, near the San Ysidro border entry,
13 where, technically, people were winding up in the median in
14 the middle of the highway as a refuge, or what-have-you.
15 Our policy is that we do not pursue people into the highway.
16 We do not work the highways. Thus, it becomes a refuge for
17 them, in a manner of speaking.

18 I think that the statistics, either locally or
19 from the police department or from Caltrans, would indicate
20 that we were arresting, let's say, a thousand on the line.
21 You would see close to a thousand on the freeway which is --
22 it's obvious that once they are on the freeway, they have
23 made it. We're not -- I wasn't chasing them.

24 Thus, from a visual standpoint, yeah, we are --
25 those that we are catching, we do return. And we probably
26 catch quite a few. But we are missing more than we are
27 catching, sir. And that is obvious from the count that we
28 are seeing on the freeways. We catch 2,000. I know that of

1 that 1,000 that I have counted on that freeway -- that's a
2 year ago -- was 1,000 that were clearly in the United States
3 on their way to Los Angeles.

4 MR. SILLAS: I'm not sure you addressed my
5 question.

6 MR. DE LA VINA: I'm pretty good at that.

7 MR. SILLAS: And I compliment you.

8 MR. DE LA VINA: I understand what you're
9 saying, and I'm not trying to be facetious. What I'm
10 trying to say, in essence, is people are going to reenter
11 and they are going to reenter until they get in one way or
12 the other. So, you know, we may catch this person one time.
13 We catch him tonight; he will probably be back tomorrow.

14 MR. SILLAS: I guess -- to shortcut this, would
15 it be a fair statement to say that of the 2.2 million
16 persons or -- the 2.2 million apprehensions that you project
17 that you will make by the end of this fiscal year, does not
18 equate to 2.2 million people?

19 MR. DE LA VINA: I think over a period of time,
20 yes. What I'm saying is that the people that we're catching
21 are going to keep trying to get in. If we we catch
22 2.2 -- let's say, 2.2 million that were actually caught, in
23 addition to those that have clearly gotten away, that
24 2.2 will continue to make it until they make it in.

25 MR. SILLAS: I understand that. My question
26 is, 2.2 million apprehensions does not mean that those are
27 2.2 separate individuals?

28 MR. DE LA VINA: Eighteen percent recidivism

1 rate, yeah, you can -- we catch them twice. If you catch
2 them twice, you're not going to see them after the third
3 time. It would matter, sir, because it is -- what I'm
4 trying to say is the 2.2 million are 2.2 million contacts,
5 whether that person was using a false name or not.

6 What I'm trying to tell you is that out of that
7 2.2 million, that person that has been caught one time, he
8 may be caught a second time. By the third time, we don't
9 know where he went.

10 MR. SILLAS: I understand. But it is a fair
11 statement that the 2.2 million apprehensions that you've
12 made does not equate to the 2.2 separate individuals?

13 MR. DE LA VINA: It could. There is no way of
14 tracking that unless I had fingerprints.

15 MR. SILLAS: Okay. Let me move on to another
16 item here.

17 You, very articulately, described the profiles
18 of the persons that come across. And I believe you stated
19 that those that seek employment or attempt to join families,
20 those persons who you -- from your perspective -- aside from
21 apprehending them, they don't create the kind of problem for
22 you that other profiles have that you have described.

23 What percentage of those persons that you
24 apprehend fit the profiles of those seeking employment and
25 the joining of their families?

26 MR. DE LA VINA: I think that -- and I can't
27 say that because of -- I've been criticized quite a few
28 times -- and this is on a wide scale. It's on a -- let's

1 say, on a yearly scale. I would say that anywhere between
2 85 percent to 90 percent are coming over for jobs or to join
3 a family member. You've got from 10 to 15 percent that are
4 involved -- and that's not every night -- but on a general
5 basis about 10 to 15 percent that are involved in criminal
6 activity.

7 MR. SILLAS: I need you to clarify something
8 for me. You stated that the last time that you were aware
9 that an officer or agent used his gun was in November of
10 1990.

11 MR. DE LA VINA: In deadly force.

12 MR. SILLAS: In deadly force.

13 MR. DE LA VINA: That's correct. That's where
14 an alien was -- or an illegal alien or narcotics smuggler
15 was killed by a Border Patrol agent.

16 MR. SILLAS: That does not mean that since that
17 time that any agent has fired a shot?

18 MR. DE LA VINA: No, sir. We have been shot at
19 quite a few times. And we have returned fire in that
20 respect.

21 MR. SILLAS: Do you have any kind of statistic
22 that -- for the amount of times your agents used their
23 weapons?

24 MR. DE LA VINA: Very seldom. But I don't have
25 'X' number of times or, let's say, like, 20 or 30 or
26 what-have-you. It's infrequent. So, normally, when we use
27 our weapons, it's going to be in self-defense or defense of
28 another person.

1 MR. SILLAS: So that if an agent of yours was
2 to fire, for example, one shot in the air, in what manner
3 can you, as an administrator, find out about that?

4 MR. DE LA VINA: Either through his partner --
5 which is a requirement. If he doesn't -- he, technically,
6 has got to report it. If he doesn't, those that are with
7 him, agents that are with him, that -- the person who might
8 have made the -- or the person that is being apprehended
9 would make the process. It's -- the responsibility is his.
10 I don't have a way of tracking that. There is no way for
11 us -- I'm not checking these weapons when they come in.

12 MR. SILLAS: So it's a self-reporting process?

13 MR. DE LA VINA: Basically. That's the way it
14 should be.

15 MR. SILLAS: In dealing with administrative
16 action, there is a variety of things you can do as the
17 administrator in terms of punishment, I take it. One you
18 have mentioned already is you can terminate?

19 MR. DE LA VINA: Yes.

20 MR. SILLAS: There is, I suspect, suspension,
21 days off.

22 MR. DE LA VINA: That's correct.

23 MR. SILLAS: There are written reprimands and
24 oral reprimands.

25 MR. DE LA VINA: That's correct.

26 MR. SILLAS: Since 1990, when you first came on
27 board, to 1993, you've exercised your right to terminate an
28 individual on one occasion?

1 violation of, let's say, impropriety of civil rights,
2 what-have-you -- it, normally, doesn't reach
3 that category -- it goes into suspension.

4 MR. SILLAS: All right. Then, I take it, oral
5 reprimands in this kind of category would be nil?

6 MR. DE LA VINA: Very much.

7 MR. SILLAS: Thank you.

8 MR. CARNEY: Mr. Zazueta?

9 MR. ZAZUETA: Mr. De La Vina --

10 MR. DE LA VINA: Yes, sir.

11 MR. ZAZUETA: -- this morning, there was some
12 testimony made whether you were or were not favorable to
13 Citizen Advisory Committees. Are you or are you not
14 favorable?

15 MR. DE LA VINA: We're at the present time --
16 for the last -- approximately, about a month now, we are in
17 the process of evaluating and may be initiating a Civilian
18 Advisory Board for the San Diego Border Patrol. And this is
19 being discussed with the national headquarters at this
20 point. But we're moving in that direction, yes we are.

21 MR. ZAZUETA: You are --

22 MR. DE LA VINA: I am in favor of it.

23 MR. ZAZUETA: You are in favor of it?

24 MR. DE LA VINA: Of an advisory board.

25 MR. ZAZUETA: Do you have a time line?

26 MR. DE LA VINA: If this thing should
27 materialize, I would think that within the next six months.

28 MR. ZAZUETA: Are you familiar with the term

1 MR. DE LA VINA: Yes.

2 MR. SILLAS: Have you ever exercised your power
3 to suspend any of your border agents?

4 MR. DE LA VINA: Yes, I have.

5 MR. SILLAS: On how many occasions?

6 MR. DE LA VINA: Oh, three, four, somewhere
7 in that -- three, four, five times, somewhere in that.

8 Involved in a -- there are various types of --

9 MR. SILLAS: Yeah, I know. Let me just --

10 MR. DE LA VINA: -- for example, if it's AWOL,
11 if it's --

12 MR. SILLAS: I'm just focusing, now, on a
13 violation that --

14 MR. DE LA VINA: A violation that would fall
15 into that -- about three or four times.

16 MR. SILLAS: And what is the maximum time that
17 you have suspended an agent for that?

18 MR. DE LA VINA: Forty-five days.

19 MR. SILLAS: And the minimum time?

20 MR. DE LA VINA: I believe that was after we --
21 it went to the administrative aspect of it -- I believe it
22 was 30 days, 50 to 30 days --

23 MR. SILLAS: And you --

24 MR. DE LA VINA: -- depending on the degree of
25 the -- let's say, the allegation.

26 MR. SILLAS: And how many written reprimands
27 have you rendered in this period of time?

28 MR. DE LA VINA: Very few. If it's involving a

1 "Tejanos"?

2 MR. DE LA VINA: Yes, I am.

3 MR. ZAZUETA: What does that conjure up?

4 MR. DE LA VINA: A person that was either born
5 or living in Texas.

6 MR. ZAZUETA: In the patrol and works in the
7 patrol?

8 MR. DE LA VINA: A person that either was born
9 or lives in Texas -- or went through Texas.

10 MR. ZAZUETA: Thank you.

11 MR. CARNEY: Mr. Dowdy?

12 MR. DOWDY: Yes, sir.

13 Is this microphone on?

14 MR. CARNEY: I hope so.

15 MR. DOWDY: Well, I'm not nearly as articulate
16 as Chief De La Vina, but I would like to thank you for
17 inviting me to join the panel today. I have some remarks.
18 And I have submitted to, already to, Mr. Dulles more
19 extensive information, for the written record. In the
20 invitation letter, I was asked to specifically address four
21 questions: Some dealt with the mix of national and local
22 agency policy, where, appropriately in my written
23 submission, is composed of a combination of headquarters and
24 local responses to maximize the usefulness of that document
25 for this committee.

26 As you're all very much aware, the upcoming
27 vote on the Free Trade Agreement between Mexico, Canada, and
28 the United States has generated an increased interest in

1 border issues. It is in everyone's interest to ensure that
2 agencies working on the border carry out our
3 responsibilities in a professional manner.

4 My agency, the United States Border Patrol, has
5 primary jurisdiction between the United States ports of
6 entry. Our mandate is to interdict persons and/or
7 contraband attempting to enter into the United States
8 between the ports of entry.

9 My sector in Tucson, Arizona, has the
10 responsibility for approximately 281 linear miles of border.
11 Like Chief De La Vina, those who we come in contact with run
12 the full range from "easy" to "feel-sorry-for" to "hardened"
13 criminals. Our sector is composed of approximately 303
14 sworn personnel and approximately 47 support personnel.

15 As is the case with any uniformed law
16 enforcement agency, we receive complaints from the public
17 regarding the conduct of our officers. Some of the
18 complaints are valid. Some complaints are the result of
19 misunderstandings, misconceptions, and sometimes a lack of
20 accurate information. Some complaints are fabrications by
21 persons with little personal knowledge of the facts
22 surrounding an incident. Some complaints stem from
23 philosophical differences.

24 There are persons and groups in the
25 United States who believe there should be no borders and
26 that immigration laws should not be enforced or even exist.
27 No matter how well we do our job, persons who share this
28 belief would be dissatisfied.

1 Unfortunately, a few of these groups resort to
2 a variety of tactics to discredit the agency, sometimes even
3 making false allegations. Nevertheless, all of these
4 allegations, we take seriously. All of these allegations
5 have to be investigated.

6 The Border Patrol has its share of problems, my
7 sector included. We're not perfect. We recruit officers
8 from the human race, despite what some of our detractors
9 believe, and despite our best efforts to do a thorough job
10 of screening, we do wind up with a few bad officers.

11 However, I can tell you that as a top agency
12 manager, we do not condone wrongdoing on the part of our
13 officers. We do everything we can to assist the Office of
14 Inspector General or other involved agencies to investigate
15 allegations of wrongdoing. We serve the public. And it is
16 not in the public's interest to have officers performing
17 their duties in less than a legal and professional manner.

18 The Border Patrol is funded with public monies,
19 and we enforce laws passed by the public's elected
20 representatives and we are held accountable through a
21 variety of processes.

22 We, in the Border Patrol, are fully aware that
23 a large part of our success is dependent on how the public
24 views us and whether we do our job. Public service is a
25 public trust, and we, as a agency, cannot afford to lose the
26 confidence of the public we serve.

27 There are systemic problems. The Office of
28 Inspector General does not have sufficient personnel to

1 always investigate matters as quickly as they or we would
2 like. They have representatives here who have responded to
3 your invitation, and they can very ably speak for
4 themselves. I would like to say, however, that they are
5 professional fact finders. With the resources they have,
6 they do an excellent job.

7 I'm very proud of the men and women of the
8 United States Border Patrol and especially those in the
9 Tucson Sector. As you will read in the written material I
10 have submitted for the record, they are responsible citizens
11 like yourselves who happen to be highly trained,
12 professional law enforcement personnel.

13 They also involve themselves in trying to
14 improve their community through a variety of
15 community-oriented projects. They have a hard and dangerous
16 job and for the most part, a thankless one.

17 As I mentioned before, we have our share of
18 personnel problems, but the majority of our Agents are
19 honorable people who, on a daily basis, eagerly live up to
20 the trust the American people have placed in them. I'm here
21 today representing them and assuring you we want to fully
22 cooperate with this Commission and help to use you as a
23 resource to help us make the Border Patrol better.

24 In closing, I would like to, again, thank the
25 committee for inviting me here today. And at this time, I
26 would entertain questions. Many of the operational and
27 allegation report criteria that have been addressed in
28 Chief De La Vina's testimony are matters of national level

1 policy and are the same or similar in my sector. And with
2 that in mind, I would be glad to respond to your questions.

3 MR. CARNEY: Mr. Pena?

4 MR. PENA: Chief Dowdy, did your office request
5 cross-certifications in Arizona with peace officers?

6 MR. DOWDY: My office did not request
7 peace-officer status certification, initially. It was put
8 on the bill but not at our request. It was also taken out
9 of the bill before it was passed but not at our request.

10 MR. PENA: Are you speaking about the bill that
11 was just passed yesterday?

12 MR. DOWDY: I'm not aware of the bill that was
13 passed yesterday, sir. I was speaking previously about one
14 of the federal laws where they made peace officers of the
15 state of Arizona.

16 MR. PENA: You did not request it initially.
17 But are you -- do you know who might have?

18 MR. DOWDY: I do not know, initially, where
19 that request came from after the first bill was passed. And
20 the Border Patrol was specifically not on there. At that
21 point, we made inquires as to whether or not the Border
22 Patrol might be covered under that. But I was not aware of
23 a bill that passed yesterday.

24 MR. PENA: What purpose would it serve to have
25 your people certified as deputy sheriffs of some Santa Cruz
26 County?

27 MR. DOWDY: Primarily, what would be served is,
28 in particular, in the Tucson Sector in southern Arizona --

1 we work in very remote areas -- our offices review the other
2 law enforcement departments, or small cities in small
3 counties -- I'm referring to the number of personnel in
4 their law enforcement agencies -- the department of public
5 safety personnel are few and far between.

6 Consequently, frequently, when involved in law
7 enforcement actions and, particularly, critical situations,
8 both our officers and any of the officers, that I have just
9 mentioned, find themselves in situations where the nearest
10 backup or nearest available assistance is not a member of
11 their own agency, then we become interdependent. I believe
12 that that would be the primary benefit in the dual role of
13 assistance, when necessary.

14 MR. PENA: Are you aware of the nonviability
15 provision in the bill --

16 MR. DOWDY: No, sir.

17 MR. PENA: -- that your forces would be not
18 liable for breaking and entry into a home for -- in search
19 of an illegal alien?

20 MR. DOWDY: I have not read that bill. I am
21 not aware of that provision, no, sir.

22 MR. PENA: I don't have any more questions.

23 MR. CARNEY: Ms. Garcia?

24 MS. GARCIA: Yes. I just have a couple
25 questions.

26 As I understand it, I guess, initially the
27 Border Patrol mission was to detect, detain, and deport
28 individuals without permission of INS to be here. And

1 preferencing it by -- again, stating that Border Patrol
2 agents testified under oath that that was a very common
3 practice.

4 MR. DOWDY: Yes ma'am. That testimony, of
5 course, has certainly aided or -- not aided, but has opened
6 the door to an additional investigation. I would like to
7 point out, for the record, that that testimony did not
8 indicate that Border Patrol management and supervisors were
9 aware of those shots, but rather that with the knowledge
10 that those were prohibited actions, those actions were being
11 done.

12 We're very interested in that. We do not
13 condone it. We do not tolerate it. And there is still an
14 ongoing investigation with regard to information that came
15 to light during the investigation during that trial.

16 MS. GARCIA: And one last question. Although
17 our focus here is not of corruption issues, you know --
18 agents that are involved in drug trafficking, themselves --
19 I would state that if agents are utilizing abusing drugs,
20 they might tend to easier violate rights of the individuals
21 that they're dealing with. Specifically, what has your
22 agency done in regard to the investigations of any
23 allegations of drug use by your agents in this regard?

24 MR. DOWDY: All such allegations are referred
25 immediately to the Office of Inspector General for
26 investigation. In addition, a couple years ago, our agency
27 had implemented a random drug testing where officers will
28 report for duty at the beginning of their normal shift and,

1 apparently, in the last few years, that mission has been
2 expanded to include drug interdiction.

3 My question to you is -- again, in the trial of
4 Michael Elmer, he testified that although he was responsible
5 for drug interdiction, that he was never trained at all in
6 regard to drug interdiction. Can you tell us anything about
7 that in regards to any training -- given that they've been
8 given this mission and responsibility -- what kind of
9 training has the Border Patrol received?

10 MR. DOWDY: Yes ma'am. That testimony -- well,
11 I didn't read that and was not in court. If that's what he
12 said, that is inaccurate. Before Border Patrol officers can
13 receive the cross-designation, if you will, of Title 19,
14 from U.S. Customs Service and Title 21, from the Drug
15 Enforcement Agency, there is a mandatory cross-designation
16 training that goes ahead of the letter of designation. You
17 must first sift through the training that was developed in
18 conjunction with the federal law enforcement training center
19 and the agencies involved.

20 MS. GARCIA: And can you tell us, sir, in
21 regard to the issue of -- and I know it's a hot issue here
22 in Arizona -- the issue of the warning shots and all that
23 we've heard in regard to those testimonies of warning shots
24 being a very frequent occurrence.

25 MR. DOWDY: I'm sorry. I understand you want
26 to know about warnings shots, but would you give me the
27 first part of the question again?

28 MS. GARCIA: Well, the first -- I think I am

1 with no prior knowledge and without their supervisors having
2 prior knowledge, are told to report for drug testing.

3 MR. CARNEY: Mr. Paz?

4 MR. PAZ: Mr. Dowdy, I wonder if you would
5 share with us the type of firepower that is available to
6 Border Patrolmen for their use. This morning, we had
7 testimony that, perhaps, there is a variety of firepower at
8 different levels being asserted by the Border Patrolmen and
9 their use.

10 What can you tell us about what is available
11 for them to use within the boundaries of your policies?

12 MR. DOWDY: You're correct, sir. There is a
13 wide variety of policy, depending upon the training and
14 qualifications to begin with. No officer is supposed to be
15 issued any weapon that he or she has not qualified with in
16 the most recent quarter. And the variety of weaponry
17 available, depending upon the assignment and the perceived
18 need on the shift basis, ranges from a .357 magnum sidearm
19 to an M-16 .2 to .3 caliber, full, automatic rifle. The
20 shotguns in between are Mini 14s. There are a wide variety
21 of weapons available.

22 MR. PAZ: Thank you.

23 MR. CARNEY: Mr. Zazueta?

24 MR. ZAZUETA: Chief Dowdy, in Texas, El Paso,
25 and in Phoenix, there have been some recent issues developed
26 between the Border Patrol and the high schools. I see here
27 in the California testimony that they're working very
28 closely with the high schools in a cooperative manner.

1 Are there any such programs in your area?
 2 MR. DOWDY: Yes, sir, there are. As a matter
 3 of fact, following the second high school incident, we
 4 entered into a memorandum of understanding with the Phoenix
 5 Union High School District.

6 There was a third incident sometime after that
 7 in which we felt that the memorandum of understanding had
 8 not addressed that issue, because it had not been foreseen,
 9 although the school officials said, well, they had foreseen
 10 that. Border Patrol personnel who helped hammer out that
 11 agreement, said we hadn't foreseen it.

12 But we have another meeting scheduled this
 13 coming Monday, specifically to re-address that memorandum of
 14 understanding, to tighten it up, to ensure that
 15 misunderstandings, misconceptions of that nature do not
 16 occur in the future. And we also have a meeting -- and I
 17 believe that's a public forum where they are expecting about
 18 250 people at that last high school, Carl Haden (phonetic),
 19 coming up on the 21st, which I will attend that meeting.

20 MR. ZAZUETA: Thank you.
 21 MR. DOWDY: Yes, sir.
 22 MR. CARNEY: Mr. Sillas?
 23 MR. SILLAS: Do you have the -- Mr. De La Vina
 24 provided us with some statistics of arrests and percentages
 25 and so forth. Do you have that type of information
 26 available?

27 MR. DOWDY: I did not present any such written
 28 record, no, sir. What, specifically, would you like to

1 MR. SILLAS: Are the statistics breakdown, or
 2 the percentage breakdown that Mr. De La Vina shared with us
 3 the experience of the -- the types or the profiles of the
 4 persons apprehended where he indicated between 85,
 5 90 percent of those apprehended fitted the profile of
 6 seeking employment or trying to join families? Would that
 7 percentage hold true in your area?

8 MR. DOWDY: Yes, sir. I was making notes as
 9 Chief De La Vina was talking, and I believe that our
 10 statistics are very comparable in that regard.

11 MR. SILLAS: Thank you.

12 MR. PAZ: Mr. Chairman, may I --

13 MR. CARNEY: Certainly.

14 MR. PAZ: I have to take advantage of the
 15 opportunity to meet you and ask for your opinions about the
 16 steel fence in Nogales.

17 Is that really a deterrent in trying to cure
 18 the problem that you face?

19 MR. DOWDY: The intent of reinforcing the
 20 existing fence with the steel landing in that -- as
 21 Chief De La Vina has pointed out, they have a much larger
 22 problem than we have. But we have had a tremendous success
 23 with that. And it was those successes that have caused us
 24 to feel that that might be a worthwhile project.

25 In addition -- the answer to your question,
 26 sir, is "yes." Now, if I may explain why.

27 Particularly the City of Nogales, we have
 28 worked with the City Police Department and the

1 know? And I'll do my best.

2 MR. SILLAS: Can you tell us what percentage of
 3 the arrests, on a nationwide basis, your unit accounts for?

4 MR. DOWDY: No, sir. I do not know what
 5 percentage. Last year, my officers apprehended just under
 6 71,000 undocumented aliens.

7 MR. SILLAS: And how many officers do you have?

8 MR. DOWDY: We have approximately 303.
 9 Approximately 75 of those have been hired within the last
 10 year and have not yet completed their one year's
 11 probationary service.

12 MR. SILLAS: Are you of the opinion that if you
 13 had more officers, you would be able to have a higher number
 14 of apprehensions?

15 MR. DOWDY: Within the Tucson area
 16 responsibility, sir, it's quite different from San Diego.
 17 We have very few heavy-border, populated areas. What we
 18 consider "heavily populated" doesn't compare with San Diego,
 19 and we have vast experiences.

20 We have a very barren border. I believe that
 21 if we had more officers, our apprehensions would go down,
 22 because after two or three times of being apprehended, I
 23 think they will go and try it somewhere else.

24 And I believe our area could more easily be
 25 controlled because of the differences in our terrain: the
 26 heat, the high population, the easy access to smugglers,
 27 routes of egress in the border that they do not have in our
 28 area that they have in the San Diego area.

1 Santa Cruz County Sheriff's Department. In the manual
 2 search of the last three years of the City Police
 3 Department, crime records indicate 4,069 crimes in the City
 4 of Nogales: rape, arson, burglary, theft, armed robbery,
 5 auto theft.

6 Approximately 75 percent of those were
 7 committed within two blocks of the international border.
 8 Santa Cruz County Jail's population, I have been informed
 9 last week, is 85 percent from Mexico -- it's largely for
 10 those crimes. Santa Cruz County Jail does not house persons
 11 for immigration violations.

12 So, all we hope to do with the reinforcements
 13 of the fence is to cause those that are bound and determined
 14 to enter and commit those types of crimes to make it
 15 difficult enough, hopefully, to push them out into a less
 16 populated area so that our limited number of Border Patrol
 17 personnel can be more effective in detecting and preventing
 18 their entry. And certainly to get them out of the very
 19 congested downtown area so, that at a minimum, our
 20 enforcement efforts will be safer for everyone involved,
 21 including our officers.

22 MR. PAZ: I would like to call your
 23 attention -- when you refer back to Santa Cruz County, the
 24 editorial for a newspaper article by Jaime Guillar
 25 (phonetic) what -- I don't know if you read about it --
 26 having this reaction to the steel fence. His father was a
 27 captain in the Department of Public Safety and a local
 28 sheriff. And Jaime alludes to having the steel fence,

1 because he feared the abuse that was occurring by Border
2 Patrolmen. Perhaps, it would be something for you to look
3 into.

4 MS. GARCIA: One last question.
5 Since you have been in your position,
6 Mr. Dowdy, how many officers or agents have been disciplined
7 internally, and how many have been prosecuted criminally?

8 MR. DOWDY: I do not have that statistic
9 readily available. I hadn't anticipated that question. But
10 as I listened to Chief De La Vina, I think that he's been
11 lucky, because I have given more 30- and 60-day suspensions
12 and fired more people than he has, it sounds like.

13 We have criminally prosecuted -- of course, you
14 mentioned Michael Elmer who was acquitted by a jury, but
15 that was a criminal prosecution -- two agents for their
16 involvement in drug activity.

17 We've prosecuted Armando Garcia for stealing
18 money from the undocumented aliens that were in custody.
19 That is just a few, that I can think of. I'm sorry. I
20 don't have specific numbers.

21 MS. GARCIA: Do you know of any that have been
22 prosecuted for violence -- because the other agents are for
23 stealing and trafficking and drugs, and the other one for
24 stealing money -- and other than Michael Elmer, do you know
25 of any other agent that has been prosecuted for violation of
26 civil rights on another human being?

27 MR. DOWDY: Within my sector, I did not. There
28 have been justice department and OIG investigations into

1 such allegations but no prosecutions.

2 MR. CARNEY: Senator Pena?

3 MR. PENA: Now that the bill has passed the
4 Arizona legislature on cross-certification -- and I'm sure
5 that the governor will sign it in the next few days -- are
6 you authorized in your position to certify or designate
7 sheriff deputies as Border Patrol agents?

8 MR. DOWDY: I am not authorized to do that. We
9 do not have the power to delegate that authority.

10 MR. PENA: Thank you.

11 MR. DOWDY: Yes, sir.

12 MR. CARNEY: Mr. -- Thank you, Chief Dowdy.

13 Mr. Turnage, you've given us a statement, and I
14 think all of us have read it or least gone through most of
15 it. I -- in the interest of time -- I am charged with
16 keeping this thing on track timewise, and I'm going to ask,
17 if you have no objection, can we just ask questions?

18 MR. TURNAGE: Certainly.

19 MR. CARNEY: Mr. Zazueta?

20 MR. ZAZUETA: On your total quality management,
21 is that a pilot project? Or is that throughout the Border
22 Patrol?

23 MR. TURNAGE: Well, I'm -- Well, I am with the
24 district office of INS. We are all part of the INS family,
25 but the uniform Border Patrol is a separate, discrete part.
26 If you picture a pyramid, I'm at one corner and the Border
27 Patrol chief is at the other corner. We both report to the
28 same boss. As far as the direct office is concerned, this

1 is a -- we are a prototype site for TQM purposes.

2 The immigration service has -- has gotten and
3 undergone a good deal of training in both the districts and
4 Border Patrol sectors for TQM, and we're moving smartly into
5 it.

6 MR. ZAZUETA: Now, is this a pilot project?
7 Will this be expanded if it's successful?

8 MR. TURNAGE: Yes, sir, absolutely. And, in
9 fact, it will be expanded -- it is being expanded, period.
10 And we are just looking for the best way to incorporate it
11 into INS.

12 MR. ZAZUETA: Thank you.

13 MR. CARNEY: Are there any more questions of
14 Mr. Turnage?

15 If I'm not mistaken, Mr. Paige is not here but
16 Mr. King is.

17 MR. PAIGE: No. I am Mr. Paige.

18 MR. CARNEY: Mr. Paige, I'm sorry.

19 MR. PAIGE: Mr. King is also here. He is
20 sitting in the audience in the second row. Mr. King is the
21 special agent in charge of our Tucson field office of the
22 Office of Inspector General, and I'm the special agent in
23 charge of our San Diego office.

24 I want to thank the commission for inviting me
25 to participate in this fact-finding meeting. The U.S.
26 Department of Justice, Office of Inspector General has broad
27 responsibility for auditing and investigating fraud, waste,
28 abuse, and criminal misconduct by Department of Justice

1 employees and within Department of Justice programs. To
2 accomplish its mission, the OIG is organized into three
3 operational divisions: Audit, Inspections, and
4 Investigations.

5 As has been mentioned by the two chief patrol
6 agents of the Border Patrol, the FBI has primary
7 responsibility for investigating allegations of criminal
8 civil rights violations, whether they're committed by state,
9 local, or federal officials.

10 However, the Department of Justice, Office of
11 Inspector General maintains an important role as a
12 clearinghouse or a place of receipt for all allegations of
13 misconduct against Department of Justice employees. This
14 includes allegations of use of excessive force, physical
15 abuse, or other civil rights violations which are made
16 against U.S. Border Patrol or other INS employees along the
17 Southern Border.

18 For a little bit clearer of an understanding of
19 this process, I would like to kind of walk you through the
20 complaint process.

21 The Office of Inspector General receives its
22 complaints from a variety of sources. Many times, we
23 receive the allegation from the Border Patrol itself. That
24 is, an undocumented alien in custody of the Border Patrol
25 will make a complaint to a supervisor or other Border Patrol
26 officer, who, in turn, will transmit that complaint, usually
27 through Border Patrol Management to the OIG. And that
28 usually happens on the same day that the complaint is made.

1 We will also receive allegations through the
2 Mexican Consulates, various immigrant rights groups, such as
3 the American Friends Service Committee, occasionally from a
4 Senator or a Congressman's Office or directly from abused
5 individuals themselves.

6 Every complaint that the OIG receives is
7 documented. Even if it's a vague or frivolously-seeming
8 allegation, it is documented. Once a complaint form is
9 prepared, and immediately available supporting documentation
10 is obtained from the Border Patrol or other sources, the
11 complaint form is then telefaxed to the U.S. Department of
12 Justice Civil Rights Division in Washington.

13 Attorneys in the criminal section of the civil
14 rights division will review that complaint. The Civil
15 Rights Division Attorney will make a decision whether to
16 have the FBI, or on rare occasion the OIG, investigate that
17 complaint with a view toward possible criminal prosecution
18 if the alleged acts can be proven, or the attorney will make
19 a decision to refer the complaint back to the OIG for
20 disposition.

21 I won't presume to try to identify the specific
22 criteria that the Civil Rights Division uses to determine
23 whether a matter may be prosecutable or not. It's the
24 attorneys job. But just generally speaking, the Civil
25 Rights Division looks at the seriousness of the allegation.

26 If the Civil Rights Division elects to have the
27 FBI further investigate the matter, the OIG, here, in
28 San Diego will notify the local FBI Office immediately and

1 several complaints, a single agent who has had several
2 complaints made against him over a period of time, we can
3 now track this information. And where a particular
4 complaint that we get today on its own merits might, in the
5 past, have not been investigated or may be referred to INS
6 rather than investigative by the IG's office. If this
7 person has a history of this type of complaint, we may
8 elect -- even though the merits of that particular new
9 incident wouldn't normally merit it -- to go ahead and
10 investigate the issue or see that it is investigated. And
11 certainly, we provide that information to the FBI or the
12 Civil Rights Division while we are evaluating and
13 investigating complaints.

14 Another initiative that is recently in our
15 El Paso field office -- which I know is a little bit out of
16 the area of the California/Arizona Commission -- but they've
17 undertaken a pilot project to investigate all civil rights
18 allegations that come in regarding the INS or the Border
19 Patrol, regardless of the caliber of that allegation, as
20 long as the FBI is already decreeing to look into it. And
21 this is a hundred and -- excuse me -- 90-day pilot project
22 that is ongoing right now. That concludes my remarks.

23 MR. CARNEY: Mr. Sillas?

24 MR. SILLAS: From the time that you initiate --
25 from the time your office receives a complaint, is there a
26 deadline process for it to be completed -- the investigation
27 to be completed --

28 MR. PAIGE: No, not -- yes, I understand your

1 provide them with whatever information has been developed up
2 to that point.

3 If the Civil Rights Division returns the
4 complaint to the OIG, we will evaluate the complaint and
5 either refer it to INS' own internal audit unit in
6 Washington for further administrative inquiry, file it for
7 information, or, on occasion, conduct an administrative
8 investigation ourselves. I should point out that if the
9 matter is referred back to INS for investigation, that the
10 INS must report back to the OIG on the results of their
11 inquiries and what, if any, administrative or disciplinary
12 action was taken. We're primarily a reactive, fact-finding
13 investigative body.

14 In the proactive area, the OIG does conduct
15 periodic integrity awareness briefings with border personnel
16 and employees of other INS elements. If the duties of the
17 INS audience involve arrests and/or detention of aliens or
18 others for immigration law violations, or the supervisors of
19 such employees, we, particularly, stress the use of force
20 issues in these briefings: physical abuse, sexual abuse,
21 other civil rights-related issues.

22 We've also had some other initiatives that
23 we've taken in this area. One, in particular, has been a --
24 well, the Office of Inspector General has had an automated
25 complaint tracking system since 1990. This system is --
26 since every complaint that we get is documented and entered
27 into this system, this system is enabling us to build a
28 historical database where, if we have an agent who has

1 question.

2 MR. SILLAS: -- if you understand my question?

3 MR. PAIGE: We have a process that
4 investigations are supposed to be completed within 60 days.
5 For a variety of reasons, many investigations -- and anybody
6 who has done criminal investigations can tell you that you
7 can't always control the flow of the investigation, the
8 availability of witnesses, and so on and so forth. Many
9 investigations take longer than that. If you get into a
10 criminal prosecution mode with indictments and so on, it can
11 take considerably longer.

12 MR. SILLAS: Are there instances where an officer has
13 been -- a complaint has been filed against him and the
14 department feels that the allegation is serious enough, that
15 pending the investigation, that the officer ought to be
16 placed on leave with pay?

17 MR. PAIGE: That's not our call.

18 MR. SILLAS: Whose call is that?

19 MR. PAIGE: That would be the employing
20 agencies call, the Border Patrol, INS, whatever we're
21 talking about.

22 MR. SILLAS: Do you know of any instances where
23 that has occurred?

24 MR. PAIGE: Yes.

25 MR. SILLAS: And in those instances, is there,
26 then, a heavier emphasis to have the 60-day deadline met?

27 MR. PAIGE: The case that I know about normally
28 occurred at the time that the officer was indicted.

1 MR. SILLAS: We have heard this morning that
 2 complaints indicating that once a complaint is made that a
 3 great deal of time passes before any information is brought
 4 back to the complainant. And in some instances, no
 5 information has ever been brought back to the complainant in
 6 terms of whatever has occurred. Do you care to address that
 7 issue?

8 MR. PAIGE: Sure. We don't have a mechanism
 9 to -- or a policy that requires us to notify the complainant
 10 of the results of the investigation. Plus, if you get into
 11 the disciplinary-action area, which is really the purview of
 12 the employing agency, we're not always aware, ourselves,
 13 what discipline was taken in a case.

14 MR. SILLAS: If your testimony is -- and I
 15 understand it to be -- that every complaint that is received
 16 is investigated?

17 MR. PAIGE: No, that's not my testimony.

18 MR. SILLAS: That's not your testimony?
 19 Every complaint received is looked at?

20 MR. PAIGE: Yes.

21 MR. SILLAS: And a determination is made
 22 whether to investigate or not?

23 MR. PAIGE: Yes.

24 MR. SILLAS: And you assure us that every
 25 complaint received is looked at. If the perception of
 26 people outside of your system is that the complaints are not
 27 looked at, what would you suggest as a way of offering the
 28 perception of the people from the outside?

1 When I say "your," meaning the Department's attention from
 2 the Canadian border as opposed to those numbers that are
 3 brought to your attention from the Mexican border.

4 MR. PAIGE: I don't know of any such statistics
 5 that exist, but I believe with our complaint system that we
 6 have now, that we probably could determine such statistics.

7 MR. SILLAS: Do you have any information to
 8 give us in terms of the number of apprehensions
 9 percentagewise that are made on the Canadian border in terms
 10 of the total number on a national basis?

11 MR. PAIGE: Well, my sense would be that the
 12 total number of complaints that the IG Office receives are
 13 much higher on the southern border. There are many more
 14 Department of Justice employees employed on the Southern
 15 Border than on the Northern Border. And I believe that they
 16 make many more arrests, apprehensions here than on the
 17 Northern Border.

18 MR. SILLAS: Do you have an opinion as to
 19 whether or not complaints that might be received from the
 20 Canadian border deal with a violation of civil rights on the
 21 same ratio as they are dealt with here on the Mexican
 22 border?

23 MR. PAIGE: I'm sorry. I just don't have any
 24 information on that.

25 MR. SILLAS: Could you direct this body to the
 26 person or the division within your department that you think
 27 might have this kind of information?

28 MR. PAIGE: I think our investigations division

1 MR. PAIGE: Well, I think it would be difficult
 2 for the Office of Inspector General to report back to the
 3 complainants, because we are just a fact-finding body. Even
 4 the reports that go to the agency do not contain
 5 conclusions. We let the facts of the investigation, the
 6 results of the investigation, speak for themselves. I think
 7 if that perception is going to be addressed, it would have
 8 to be done through INS agency policy to -- some kind of
 9 policy to notify complainants of the results of the reports.

10 MR. SILLAS: In the instances, however, when
 11 you receive a complaint and it's looked at and the
 12 determination is made not to do anything further, that is
 13 communicated back to the particular agency?

14 MR. PAIGE: Yes.

15 MR. SILLAS: And if there is an investigation
 16 then an investigative report is returned?

17 MR. PAIGE: Yes.

18 MR. SILLAS: You deal also, I take it, with
 19 complaints that occur along the Canadian border.

20 MR. PAIGE: Well, the Office of Inspector
 21 General would. But my particular office, here, in San Diego
 22 would not, no. We have another office in San Francisco.

23 MR. SILLAS: That would deal with the Canadian
 24 border?

25 MR. PAIGE: Yes, sir.

26 MR. SILLAS: Do you know if there are any
 27 statistics that your department has that would indicate the
 28 number of complaints that are brought to your attention?

1 headquarters could probably provide you with that
 2 information.

3 MR. SILLAS: Thank you very much.

4 MR. CARNEY: Ms. Garcia?

5 MS. GARCIA: Yes.

6 Mr. Paige, I guess, in looking at complaint
 7 procedures and processes for other law enforcement agencies,
 8 whether police departments or sheriff departments, they have
 9 pretty much established complaint procedures. And critical
 10 elements of those complaint procedures are -- actually, the
 11 fundamental one is public awareness of the complaint
 12 procedure and imposition of time limitations. There is a
 13 standard complaint form, information of the process given to
 14 the complainant, a response being given back to the
 15 complainant, a standard being adopted as to what is standard
 16 and what is not, all of these issues. Can you tell me in
 17 regard to OIG, how many -- what you have to do to make sure
 18 that these are taken care of as well as that the public has
 19 an awareness that there is a complaint procedure --

20 MR. PAIGE: Well, we have --

21 MS. GARCIA: -- and so on and so forth?

22 MR. PAIGE: Well, we have publicized the Office
 23 of Inspector General hotline which is an 800 number which
 24 people can call complaints in to.

25 MS. GARCIA: And where do you publicize that?

26 MR. PAIGE: It's primarily publicized in other
 27 Department of Justice facilities and publications.

28 MS. GARCIA: In other words, it goes out to

1 government personnel and in English. Is that correct?

2 MR. PAIGE: Yes.

3 MS. GARCIA: What about to the community? What

4 efforts do you or the Border Patrol agents make so that the

5 public is aware that there is a actual process in place to

6 take care of the complaints?

7 MR. PAIGE: We don't have one.

8 MS. GARCIA: Do you have a uniform complaint

9 form?

10 MR. PAIGE: Yes, we do.

11 MS. GARCIA: And what form number is that? Do

12 you know?

13 MR. PAIGE: Yes. That would be the OIG 3.

14 MS. GARCIA: OIG 3?

15 MR. PAIGE: Right.

16 MS. GARCIA: And how long has that been in

17 existence?

18 MR. PAIGE: Since the IG -- Well, shortly after

19 the IG Office came into being, I would say sometime in 1989.

20 MS. GARCIA: How many investigators do you have

21 in relation, I guess, to the population?

22 MR. PAIGE: Well, here, in San Diego, I have

23 11 investigators. Tucson, I believe -- and Bill will

24 correct me if I am wrong -- has 7 investigators.

25 MS. GARCIA: Okay. And what annual reports do

26 you compile? And who do you supply those to on a yearly

27 basis?

28 MR. PAIGE: Our principal report is our

1 semi-annual report to Congress. And this, as the name

2 implies, is done twice a year and sent to Congress. The

3 report covers October 1 through March 31, and then the

4 second report of the year will cover April 1 through

5 September 30.

6 MS. GARCIA: And who are your investigators?

7 In other words, where do they come from? Are many -- as

8 we've been told -- many Ex-Border Patrol agents that become

9 OIG investigators?

10 MR. PAIGE: I have some. I believe 3 or 4 of

11 the 11 worked at one time or another in the the Border

12 Patrol.

13 MS. GARCIA: And are they assigned to the same

14 region where they worked as a Border Patrol agent?

15 MR. PAIGE: They might be.

16 MS. GARCIA: And do you see a potential

17 conflict with that, sir?

18 MR. PAIGE: No, I don't.

19 MS. GARCIA: You don't see a conflict where

20 they are now in a position of investigating fellow

21 colleagues that they worked with in that same sector?

22 MR. PAIGE: They work for a completely

23 different agency now. They are not answerable to the Border

24 Patrol or the INS in any way.

25 MS. GARCIA: Okay.

26 MR. PAIGE: I don't see any conflict.

27 MS. GARCIA: Are you aware, sir, that the Civil

28 Rights Commission in 1980 made a series of findings and

1 recommendations in regard to the complaint procedure of INS?

2 Are you aware of those?

3 MR. PAIGE: No, actually I'm not.

4 MS. GARCIA: If we, I guess, make a copy for

5 you, you would be willing to look at those and maybe respond

6 to each one of the recommendations as to what has been done

7 between 1980 and today's date?

8 MR. PAIGE: Well, I would certainly be more

9 than happy to look at it. In fact, I would like to look at

10 it, but any response that would be made would have to be

11 done on a national level. I don't think I wouldn't be in a

12 position to speak for the Inspector General's Office as a

13 whole, as to how they would like -- Well, first of all, to

14 assess how the recommendations have been addressed since

15 1980 and what action we might be willing to take at this

16 time to improve that process.

17 MS. GARCIA: Okay. So the Office of Inspector

18 General in Washington D.C., is the individual that we should

19 inquire of in regard to that question?

20 MR. PAIGE: Yes, I would say so.

21 MS. GARCIA: Okay. And, sir, are you aware of

22 the -- I guess -- the firearms audit report that was

23 compiled by the Office of Inspector General --

24 MR. PAIGE: Yes, I am.

25 MS. GARCIA: -- in 1991?

26 MR. PAIGE: Yes.

27 MS. GARCIA: And I understand that the findings

28 are pretty negative in regard to the Border Patrol's use of

1 firearms. Is that correct, sir?

2 MR. PAIGE: I would say that report is critical

3 of the Border Patrol's Firearms Policy, yes.

4 MS. GARCIA: And are you aware of what -- if

5 there has been any changes in regard to anything that has

6 been pointed out, here, in this report?

7 MS. PAIGE: No, I'm not. I'm not -- I want to

8 point out I'm not saying that there haven't been any. The

9 report was done by our audit division. INS -- the way the

10 audit process works, the INS must respond to the audit

11 report and must reply as to what actions they are taking to

12 resolve the findings of the audit report. And I'm not aware

13 of exactly what those might be, but I'm sure INS, at their

14 headquarters level, could tell you.

15 MS. GARCIA: And one last question, and I guess

16 it goes back to my first question in regard to the complaint

17 form. How do you believe, sir, the community that would

18 have complaints in this particular area in regard to Border

19 Patrol abuse -- if there is a complaint procedure and people

20 aren't aware of it -- what changes do you believe have to be

21 made so that the community is aware of what to do if they

22 are abused by Border Patrol personnel or other federal law

23 enforcement?

24 MR. PAIGE: Well, the vast majority of the

25 people that are -- who make these types of complaints are

26 people that are, generally, in custody or at least,

27 temporarily, at the port of entry when they make the

28 complaint.

1 Generally, most of the majority of the
 2 complaints we get are through the INS or the Border Patrol,
 3 themselves. And I believe there are adequate mechanisms --
 4 and I believe Chief De La Vina explained some of those --
 5 with the opportunity to speak to the Mexican Consulate and
 6 so on, before they are returned to Mexico to have those
 7 complaints brought to our attention.

8 Certainly, if there is a perception that the
 9 community at large is not aware of a mechanism to make
 10 complaints, I believe we could take steps to publicize, in
 11 the Hispanic community or other communities, the
 12 availability or the access to the Inspector General's
 13 Office. And we would be willing to do that, I believe.

14 MS. GARCIA: And I know I said that was my last
 15 question, but this is truly my last question.

16 Are you aware that there is a bill that is
 17 going to be introduced to establish an Immigration and
 18 Enforcement Review Commission because of the problems that
 19 we've discussed today and we'll discuss tomorrow.

20 And what is your position on that?

21 MR. PAIGE: I'm not that familiar with the
 22 bill. I've heard about it, but I haven't studied it. I
 23 would hesitate to comment on it.

24 MS. GARCIA: Thank you.

25 MR. CARNEY: Mr. Cooper?

26 MR. COOPER: Just one -- really, just one
 27 question. This is disconcerting when I have to look toward
 28 the mike and try to look at you out of the side of my head.

1 If you dealt with this question while I was out of the room,
 2 then you can just skip it.

3 The IG Justice Department recently testified
 4 before Congress that the INS "frequently" and -- I guess the
 5 disturbing word is frequently -- fails to act on cases of
 6 official misconduct, substantiated that -- that have been
 7 substantiated by the OIG.

8 And I'm wondering if you're familiar with that
 9 testimony. And, if you are, would you care to comment?

10 MR. PAIGE: I am familiar with the testimony.
 11 In fact, I have supplied the commission with a copy of
 12 that -- of Mr. Hankinson, the Inspector General's testimony
 13 before the house subcommittee.

14 I think, in the past -- first of all, you have
 15 to recognize that Mr. Hankinson's testimony was in a larger
 16 context of all categories of misconduct within the INS, not
 17 only civil rights relating matters. And I'm not sure that
 18 if you broke it down by types of misconduct that what he
 19 said would necessarily apply. It may well apply, but I'm
 20 not sure.

21 MR. COOPER: What percentage, for example,
 22 would apply?

23 MR. PAIGE: I don't know. I am trying to think
 24 anecdotally of cases that I'm personally familiar with.
 25 Most of the cases that come to my mind where INS discipline
 26 was not taken or was -- somehow didn't seem to measure up --
 27 In that context, at least, anecdotally, I cannot think of
 28 any civil rights related matters.

1 MR. COOPER: You can't think of any?

2 MR. PAIGE: No.

3 MR. COOPER: All right.

4 MR. CARNEY: Mr. Zazueta?

5 MR. ZAZUETA: One little question.

6 MR. CARNEY: Okay. Mr. Zazueta?

7 MR. ZAZUETA: Yes.

8 There's been quite a bit of testimony this
 9 morning on the complaint process that there is a lot of
 10 problems, fear -- a lot of fear, a lot of miscommunications,
 11 no communications, language problems, and no trust in the
 12 complaint process.

13 What are you doing to improve this perception?

14 MR. PAIGE: Well, I suppose we weren't really
 15 aware of the perception, because we get plenty of
 16 complaints. They are all handled in the same -- in a
 17 consistent and fair manner. And they are all looked at with
 18 a view toward approvability and seriousness. And I -- I
 19 think it is a misperception. People can come to us with
 20 complaints with the expectation of complete confidence with
 21 no fear of retribution whatsoever.

22 Thank you.

23 MR. CARNEY: Mr. Sillas?

24 MR. SILLAS: Does your department treat the
 25 complaint differently if there is a complaint, also by the
 26 officer, indicating that the party was resisting arrest?

27 MR. PAIGE: No.

28 MR. SILLAS: So that the complaint -- let's

1 say, by a person who was apprehended alleging the civil
 2 rights violation -- if that person is also charged with
 3 resisting arrest or engaging in a physical encounter with
 4 the arresting officer, that is not viewed any differently
 5 than you would view the civil rights violation?

6 MR. PAIGE: Well, each complaint is analyzed on
 7 its own merits. Now, if an individual -- we're still going
 8 to document their complaint and perhaps, follow, up on it.

9 But, obviously, if an individual is charged
 10 with assault on an officer, he is going to certainly have
 11 ample opportunity through criminal process -- if he's
 12 formally charged with a criminal charge for assault -- to
 13 make his case. And if he is found not guilty of that
 14 charge, we will certainly look at that complaint.

15 But it becomes difficult because, we could be
 16 investigating his counter-complaints, so to speak, which
 17 could immensely complicate the criminal prosecution if that
 18 individual was charged with assault.

19 MR. SILLAS: One of the things that we heard
 20 this morning was that the victim, in due time, becomes the
 21 defendant in a criminal matter. And from what you stated I
 22 gathered -- and I don't mean to put words in your mouth --
 23 but if, in fact, there is a criminal complaint file against
 24 the individual who filed also a civil rights complaint, that
 25 you may want to wait the outcome of the criminal case before
 26 you proceed with the full course investigation.

27 MR. PAIGE: That's correct, yes.

28 MR. SILLAS: Are you concerned that this type

1 of counter-action on the part of an arresting officer by
 2 filing a complaint alleging a resisting arrest, in effect,
 3 can delay the investigation on the civil rights matter?
 4 MR. PAIGE: Well, the mere filing of a
 5 complaint by the officer that the -- or a mere statement by
 6 the officer or even a complaint by the officer that the
 7 individual who is claiming his civil rights were violated
 8 was resisting arrest is not enough to put a stop to the
 9 process. If the criminal charges are actually filed against
 10 the individual, yes, we would probably delay our inquiry.

11 MR. SILAS: Thank you.

12 MR. CARNEY: On that note, Mr. Paige, do you
 13 contend that a civil rights violation may occur and the
 14 individual who is the victim of that could be a defendant in
 15 a criminal action as well?

16 MR. PAIGE: Well, I don't think -- if --

17 MR. CARNEY: For example, if an individual is
 18 arrested, say, for resisting arrest, and subsequent to that
 19 he is, you know, administered a beating.

20 MR. PAIGE: Okay. That's a different
 21 situation. And as I tried to point out, each complaint has
 22 to be evaluated on what, exactly, the allegation is, what
 23 the circumstances were. And under that kind of
 24 circumstance, that's a somewhat different case.

25 MR. CARNEY: What I'm trying to get at is the
 26 mere fact that an individual has a criminal complaint filed,
 27 or an indictment, or whatever, does not necessarily mean
 28 that there is no validity to the accusation that is made

1 level, as well as supervisor and managerial positions.
 2 A brief synopsis of the San Diego District is,
 3 we, basically, encompass all the ports of entry between
 4 San Ysidro and Andrade, California. Last year, the numbers
 5 of people that came through our facilities was 190 million
 6 pedestrians and persons in vehicles as well as approximately
 7 28 million conveyances. That is including: commercial
 8 vehicles, buses, car traffic, a variety of different
 9 conveyances.

10 As was brought up earlier, the NAFTA -- for
 11 potential ratification of the NAFTA agreement, it will,
 12 obviously, bring more activity to the commercial and
 13 passenger and tourism business to the border area. And we
 14 feel that it's been because of the initiation of a variety
 15 of different training programs, addition of human resources
 16 as well as facilities, that custom services stand in a very
 17 positive position to accept those challenges. I'll stop my
 18 statements now, and I will be happy to answer any questions
 19 from the committee.

20 MR. CARNEY: I guess there are no questions. I
 21 do have a couple myself, but --

22 Is the customs agent at the border station, is
 23 he involved in the apprehension, the actual act of
 24 apprehending an individual?

25 MR. CAMACHO: Sir, the men and women under my
 26 jurisdiction are the uniformed officers. And they are the
 27 customs inspectors, the customs enforcement officers, and
 28 canine officers, and, of course, the import specialists on

1 against the officer?

2 MR. PAIGE: Oh, absolutely not.

3 MR. CARNEY: All right. Thank you, Mr. Paige.

4 Mr. Camacho, Mr. Esposito, if you have prepared
 5 statements -- because of our time problems, I apologize to
 6 you. Can you summarize those beginning with Mr. Camacho?

7 MR. CAMACHO: Very quickly, sir. Thank you.

8 We appreciate the opportunity to be here before
 9 the committee and see so many familiar faces from Arizona.
 10 It's not the first time, nor hopefully will it be the last
 11 time that we have the opportunity to come before the
 12 committees.

13 In express, I think there are a lot of the good
 14 things that are going along the U.S./Mexican Border in a
 15 proactive type of approach. In the interest of time, I'll
 16 go briefly -- go over many of the outreach programs that
 17 U.S. Customs is involved in, not only the San Diego district
 18 but all along the U.S./Mexican border, as well as a lot of
 19 the issues which I've heard come up repeatedly again.

20 One is professionalism training and those types
 21 of issues related to officers presence, operations and,
 22 activities with individuals. I think they are very
 23 important.

24 I think that -- as we get into the
 25 question-and-answer period, I might -- we can provide that
 26 information to you on the professionalism training, the
 27 level of training provided to our officers, now, at all
 28 levels: the entry level, the senior level, the inspector

1 the commercial side of the house, as well as the support
 2 personnel. And, yes, they do come into direct contact with
 3 the apprehension of individuals either whether they be
 4 smugglers, fugitives from justice, federal, state, and
 5 local, international in scope, yes, on a daily basis.

6 MR. CARNEY: And do they leave, in a pursuit
 7 situation, their station in order to apprehend these
 8 individuals?

9 MR. CAMACHO: Absolutely not. Our vehicles
 10 that we have been using at the ports of entry are using the
 11 maximum amount of their mileage and gasoline and fuel
 12 expenses driving East and West. And by that I mean we use
 13 our vehicles -- our marked units -- at the ports of entry
 14 for our support and safety issues, our support in
 15 controlling crowd control, and vehicular control, and those
 16 types of issues.

17 MR. CARNEY: Would it be a fair statement to
 18 say that instead of the customs agent getting into a pursuit
 19 situation, it would be more the Border Patrol officer?

20 MR. CAMACHO: Again, I do not have jurisdiction
 21 over the customs agents. The customs inspectors and canine
 22 enforcement officers, yes. That would be a true statement.
 23 It would be custom agents, Border Patrol, state and local,
 24 those types of other entities that we have longstanding
 25 relationships with.

26 MR. CARNEY: Okay. Thank you.

27 Ms. Garcia?

28 MS. GARCIA: I have just one quick question.

1 Mr. Camacho, are you liable for destruction of
2 property at the border -- and I'm referring here to
3 vehicles, for instance -- that your agents believe contain
4 drugs, and as a result, they tear the entire car apart and
5 nothing is found. Is your agency liable? And do you
6 routinely compensate those individuals for the destruction
7 of their property?

8 MR. CAMACHO: Each case is an individual case.
9 I think what we have right now is a variety of different
10 hi-tech equipment available to us. So the circumstances and
11 the instances of tearing apart a vehicle, as you say, are
12 very few and very far between.

13 With the canine efficiency that we have
14 available to us, the hi-tech and different types of
15 hand-held equipment that is utilized for examinations, those
16 situations are really, for the most part, a thing of the
17 past.

18 The time involved in an examination has been
19 drastically shortened. Our abilities to get in and get out
20 very intrusively have been improved, and this, I, also,
21 speak on the passenger processing side as well as the
22 commercial side.

23 MS. GARCIA: Is there compensation at times,
24 though, for destruction of property or is that just a --

25 MR. CAMACHO: There is a federal tort claim
26 provision and that's -- Each case is looked at and, again,
27 goes back to the presumption if, in fact, there has been any
28 negligence on the part of the agency.

1 And that's really the deciding factor whether
2 there was any crucial damage done to any personal property.
3 That's decided by our Consul.

4 MR. CARNEY: Thank you, Mr. Camacho.

5 Mr. Esposito?

6 MR. ESPOSITO: I'll try to summarize my
7 remarks.

8 The FBI is the primary investigative agency in
9 the Federal Government to look at the violation of civil
10 rights laws. Our investigations are conducted on the
11 guidelines that we set in cooperation with the Department of
12 Justice in Washington, D.C. The majority of our civil
13 rights investigations are based on complaints reported
14 directly to the FBI by victims or a third party.

15 Once a complaint is received, the complainant
16 or the victim is interviewed as soon as possible. Then the
17 investigation is, thereafter, conducted in certain time
18 frames. And our time frame in the FBI is 21 days.

19 Each case is supervised closely by my office.
20 Then it's sent to Washington where, then, it is reviewed and
21 sent over to the Department of Justice for their review.

22 We break down civil rights case in three
23 categories: the hated crimes of racial violence which is a
24 group such as the Ku Klux Klan, the white supremacist
25 groups, et cetera. Then, we have a second category called
26 Police Brutality Matters and the third category called the
27 voluntary servitude and slavery.

28 Nationally, 85 percent of the FBI cases fall

1 within the category of police brutality. And the San Diego
2 region is no different than the national figures.

3 We have over approximately, 6,000 civil rights
4 complaints received by the FBI each year. Approximately
5 one half of those involve active investigations. And 50 to
6 60 of those go to the grand jury for potential indictments.

7 In 1992, we had 110 individuals who were
8 convicted of civil rights violations nationally. In the
9 San Diego region, some of the things that -- I arrived here
10 in September of 1992. I have a number of agents that work
11 for me, but I have three full-time agents assigned to civil
12 rights investigations in this area, all of whom are
13 bilingual and speak the Spanish language.

14 Some of the other items that we have done here
15 in San Diego since my arrival is, I've met with every Chief
16 of Police in the area, including the people on this panel
17 and discussed our civil rights jurisdiction.

18 I've tried to reach out to many community
19 groups as I've been able to get to, to explain our civil
20 rights process. And with the idea being if, maybe, they
21 understand the process, that maybe, they, know what
22 procedures to follow.

23 All press releases and interviews done out of
24 my office are done in both English and Spanish now. We have
25 contact with Spanish TV and radio stations and the
26 newspapers, so that we can get articles out to them,
27 especially in this area.

28 We've changed the policy in this office. And

1 now, we respond to all Border Patrol shootings after working
2 with Mr. De La Vina. Civil rights cases opened -- are
3 opened also on the direct liaison with the Consul General's
4 Office. And I have met with the Consul General here,
5 Enrique Loeza.

6 In count, we have 22 investigations ongoing in
7 the San Diego region, and I cover both San Diego County and
8 Imperial county, and approximately 80 percent of those are
9 law enforcement, brutality-type cases.

10 Any questions?

11 MR. ZAZUETA: I have one.

12 MR. CARNEY: Mr. Zazueta?

13 MR. ZAZUETA: We had testimony this morning
14 that the civil rights cases have been escalating. Have you
15 found this lately?

16 MR. ESPOSITO: No. They pretty much stayed
17 normal, at least the figures that were given to me in this
18 area. Matter of fact, they have dropped considerably, I'm
19 told, in the last year and a half, and I believe that is
20 because of the construction -- on the federal level --
21 because of the wall that Mr. De La Vina has talked about.

22 MR. CARNEY: Mr. Sillas?

23 MR. SILLAS: You indicated that the civil
24 right complaints come directly from the public or from third
25 parties. And I presume that meant other agencies?

26 MR. ESPOSITO: Yes.

27 MR. SILLAS: What percentage of the complaint
28 that you investigate that pertains to civil rights come from

1 the other agencies?

2 MR. ESPOSITO: I don't have those figures. But

3 most -- People can call us directly, and that's what we

4 espouse. We don't have to wait for a complaint. We can see

5 an article in the newspaper. We can hear about a report on

6 TV or on the radio. And we can open an investigation based

7 on that alone.

8 MR. SILLAS: I understand. In prior testimony,

9 we heard from your panel that the indication was, the

10 complaint is viewed and received. Then a determination is

11 made as to whether or not an investigation is to commence.

12 I was trying to get to see what correlation there is

13 between -- when the decision is made for an investigation.

14 I presume, then, it goes to your office for the

15 investigation?

16 MR. ESPOSITO: That's correct. Usually, the

17 procedure that happens -- at least, in this district,

18 because we have a good liaison with the Office of Inspector

19 General -- is that even though it's supposed to go through

20 the Department of Justice, then come back to us from the

21 Department of Justice, they will usually notify us that

22 there is a complaint.

23 MR. SILLAS: Okay. But you have no statistic

24 to give the committee in terms of the number of complaints

25 that ultimately wind up in an investigation, percentagewise,

26 from the Inspector General's Office?

27 MR. ESPOSITO: I do not.

28 MR. SILLAS: In your interviews -- or in the

1 violation of a criminal act?

2 MR. ESPOSITO: Right. Criminal, civil rights

3 laws.

4 MR. SILLAS: Thank you.

5 MR. CARNEY: Thank you.

6 Mr. Esposito, gentlemen, thank you for your

7 participation and cooperation in this forum.

8 Mr. de La Vina?

9 MR. DE LA VINA: Yes.

10 Mr. chairman, I would like to extend an

11 invitation, if it's appropriate, to yourself and the panel

12 members to see how we deal with border issues, to invite you

13 to a tour of the border of our operations. That is a

14 standing offer. If you decide to do that, you can contact

15 Mr. Dulles, and he will contact me. And we will set up a

16 border tour for you.

17 MR. CARNEY: Thank you very much, sir.

18 That concludes your participation. And thank

19 you, again.

20 MR. CARNEY: Mr. Roache -- Sheriff Roache and

21 Mr. Stamper.

22 (Brief recess.)

23 MR. CARNEY: We are going to resume our

24 hearing, and we would ask that you be quiet, please.

25 We have Chief Norman Stamper from the San Diego

26 Police Department and Sheriff Roache from the San Diego

27 County Sheriff's Department. And we are going to begin with

28 Chief Stamper.

1 conducting of your investigations, do you interview the

2 patrol officer who the complaint has been filed against?

3 MR. ESPOSITO: Yes, we do.

4 MR. SILLAS: What kind of rights does that

5 officer have, in your interview?

6 MR. ESPOSITO: The same rights as any citizen

7 has under the constitution.

8 MR. SILLAS: He can refuse -- or she can refuse

9 to answer the questions?

10 MR. ESPOSITO: Yes. And they have a right to

11 an attorney. And oftentimes, we deal with attorneys.

12 MR. SILLAS: In California's law pertaining to

13 the police officers who -- where an investigation is being

14 conducted as it pertains to their conduct on an

15 administrative process, they are required to respond to

16 those questions unless there is a crime involved. Does any

17 type of federal -- similar practice occur in your

18 investigations?

19 MR. ESPOSITO: Every investigation we conduct

20 is a criminal investigation. Only after it is declined upon

21 by the Department of Justice in Washington, D.C. or the

22 U.S. Attorney's Office, then the agency will have that avail

23 to take administrative action. We do not take

24 administrative action against any federal or local law

25 enforcement officers.

26 MR. SILLAS: So the investigations you are

27 involved in are investigations where, at least, it would

28 appear if the allegation is true, that there has been a

1 MR. STAMPER: Thank you very much.

2 I am here representing Police Chief Bob

3 Burgreen whose retirement party is tonight.

4 MR. CARNEY: Moments away.

5 MR. STAMPER: Sheriff Roache indulged me and

6 let me go first. And I will keep my remarks brief, and I

7 will be happy to respond to any questions that you may

8 have.

9 The San Diego Police Department has a

10 long-standing policy that makes it clear that our police

11 officers are neither required nor permitted to enforce

12 immigration laws. There are two reasons why we have taken

13 that position. The first is that we see the enforcement of

14 immigration laws as beyond the scope of a municipal police

15 department's responsibilities. The second is out of

16 sensitivity to our commitment to development and maintain

17 the best possible relationship with San Diegans of color

18 and -- particularly Latinos -- given our proximity to the

19 border.

20 We do, however, target undocumented -- or

21 criminal activity on the part of undocumented persons

22 living, working, or visiting San Diego. And we,

23 specifically, work with customs and INS in an operation

24 called Operation Alliance, which is intended to deal with

25 the drug problem in close proximity to the border.

26 We have one sergeant and two detectives out of

27 our 1,850 sworn police officers assigned to that detail. We

28 also have a very strong and positive relationship with the

1 Border Patrol in San Diego.
2 The statements that I made earlier should not
3 be construed as criticism of the other agency, but rather a
4 recognition of our functional and jurisdictional
5 responsibilities.

6 It is particularly important, I think, to point
7 out that we have actually united with the Border Patrol in
8 what is called the Border Crimes Intervention Unit.

9 The BCIU, probably the third generation of the
10 work that was originally begun and dramatized and, perhaps,
11 romanticized by Joseph Wambaugh in the book called "Lines
12 and Shadows" is comprised of police officers and Border
13 Patrol agents who worked together on this side of the border
14 as a team to prevent, wherever possible, murder, robbery,
15 and rape in the hills and canyons between Tijuana and
16 San Diego.

17 The BCIU has been extraordinarily successful in
18 reducing those crimes. We also have, I think -- although,
19 it's, perhaps, beyond the scope of your official inquiry --
20 a wonderful relationship with our counterparts in Mexico
21 who work what is called the BETA team.

22 We have been working with the BETA team, now,
23 for several years. We have created a common communications
24 linkage. We worked together in establishing policies and
25 procedures and in carrying out mutual-training activities.

26 We have been extremely impressed with the
27 competency, the diligence, and the cooperation that we have
28 received from members of that BETA team.

1 Senor Valenzuela is here, and I believe he will
2 be discussing in the next panel the operation of the BETA
3 team. But it is literally a transborder operation that is
4 intended to reduce violent crime in the hills and canyons of
5 the border region of Tijuana and San Diego.

6 You also had asked us to respond to the hate
7 crimes pictured in the border area. In the last six months
8 of 1992, we recorded 10 hate crimes, 9 of which were
9 racially motivated. The breakdown of the race or ethnicity
10 of those 9 victims would be 4 Latino, or Hispanic, victims,
11 3 whites, and 2 African-Americans. We have had no hate
12 crimes in that same region this year, to date.

13 I, also, must point out, in closing, that our
14 reporting mechanisms don't allow us to, pinpoint,
15 specifically in the Southern Division of our police
16 department whether these crimes took place right at the
17 border or, perhaps, inland, east or west from the
18 border-crossing area.

19 That does conclude the prepared remarks, if you
20 will, that I had. I would be happy to answer any questions
21 that you may have.

22 MR. CARNEY: Chief Stamper, what is the
23 jurisdictional boundary of San Diego City Police, to the
24 South that is?

25 MR. STAMPER: Well, right up to the border.
26 San Diego -- if you're not familiar with our geography -- is
27 a little bit unusual. We have two cities and some
28 unincorporated area between the central area of the City of

1 San Diego and the southern area of our city. We're a
2 400 square-mile city. And our responsibilities end where
3 Jim's picks up to the east -- I'm not sure exactly at what
4 point. I think it's about nine miles into the
5 unincorporated area that the Sheriff actually patrols.

6 MR. CARNEY: Thank you.

7 I think it's time for you to exit.

8 MR. STAMPER: Thank you.

9 I appreciate your excusing me.

10 MR. CARNEY: Thank you for coming. We
11 appreciate your cooperation.

12 MR. STAMPER: Thank you.

13 MR. CARNEY: Sheriff Roache?

14 MR. ROACHE: Thank you.

15 Good afternoon. It's a pleasure to address you
16 today regarding our relationship with federal immigration
17 and border law enforcement agencies.

18 The proximity of my jurisdiction is in the
19 busiest border entry point in the world, Tijuana. It makes
20 a close-working relationship essential and imperative in
21 today's world. I am pleased to report that the degree of
22 cooperation between our agencies, both state, local, and
23 federal, is probably better today than it has ever been in
24 the history of this country.

25 In order to enforce the law along the 75-mile
26 border, the INS, the Border Patrol, and U.S. Customs all
27 utilize the San Diego Sheriff's Department as a coequal in
28 addressing the problems we face. From illegal immigration

1 to drug smuggling, our law enforcement efforts are better
2 coordinated than ever before.

3 An excellent example of this is the widely
4 reported incident involving a vigilante baseball bat attack
5 by a group of whites against migrant workers in Alpine, a
6 small mountain community in the eastern portions of San
7 Diego county. Intelligence from the INS and Border Patrol
8 was combined with our own investigative methods,
9 encompassing both sides of the border. Numerous individuals
10 were arrested and charged with assault with a deadly weapon
11 as well as other hate crimes.

12 We have developed several formal and informal
13 linkages to facilitate our mission. Here are some examples
14 of those linkages:

15 The "Sheriff's International Liaison."

16 The Sheriff's International Liaison interacts
17 on almost a daily basis with personnel from INS and our
18 peers in the criminal justice system in Baja California.
19 The Liaison is in a position to assist both U.S. and Mexican
20 law enforcement agencies in requests for help in criminal
21 investigations involving victims and suspects from both
22 sides of the border. This task could not be successful, as
23 it has proven to be, without the assistance of the INS.

24 The Sheriff's Imperial Beach Station, which is
25 adjacent to the Mexican border, requires personnel from the
26 Sheriff's station and the Border Patrol to work closely
27 together. Help is often provided when in need for
28 assistance and cover for an immediate response. Although,

1 each agency has its own distinct mission, function, policy,
2 and procedures, as Chief Stamper indicated, we're well aware
3 of our functional and jurisdictional distinctions.
4 Nonetheless, our close proximity in overlapping
5 jurisdictions require that we have, at least, semi-informal
6 interplay.

7 The Sheriff's Street Narcotics and Gang Detail
8 has received Federal High Intensity Drug Trafficking Area
9 grant funds to support an interagency effort in combating
10 the flow of drugs into the United States. This effort is
11 governed by national drug policies as coordinated by the
12 Director, Operational Alliance/Southwest Border High
13 Intensity Drug Trafficking Area. Participating agencies
14 include the Border Patrol, the Imperial County Sheriff's
15 Department, as well as ourselves, with follow-up
16 investigative assistance from the Operation Alliance Office
17 in San Ysidro.

18 The Sheriff's Department has participation in
19 Operation Alliance along with the San Diego Police
20 Department and other agencies. We have assigned tenure
21 investigators to that operation. The task force consists of
22 personnel, as I indicated, from drug enforcement
23 administration, U.S. Customs, San Diego Police Department,
24 and the San Diego Sheriff's Department. And their focus is
25 on the interdiction and investigation of drug smuggling
26 across the United States/Mexican border. This is a very
27 highly-effective task force, an example of a multiagency
28 approach to a very complex, time-consuming and

1 brought into the investigation to quickly assist us.
2 The result was an excellent closure in this
3 case. Arrests occurred in a very short period of time.
4 Prosecutions are under way, and we are hopeful that we will
5 have successful convictions.

6 In conclusion, the San Diego Sheriff's
7 Department has developed an excellent relationship with our
8 Federal counterparts along the border. We believe the
9 outcome of that relationship is better protection of the
10 civil rights for all individuals who find themselves within
11 our jurisdiction. I'll be happy to answer any questions you
12 may have.

13 MR. PENA: Thank you, sir.

14 Are there any questions for Sheriff Roache?

15 Thank you very much.

16 MR. ROACHE: One thing I may point out to you
17 as an afterthought, an inevitable byproduct of some of the
18 conversations you heard earlier about the intensified effort
19 on monitoring and controlling illegal immigration from the
20 coast into Otay mountain, putting up the barrier and
21 intensive work along that area, as I foretold about
22 two years ago, would result in an increasing flow of illegal
23 immigrants and contraband and illegal activity further to
24 the east of San Diego County into the area where I have
25 jurisdiction.

26 And the area is a very rural, rough, difficult
27 terrain. And I anticipated that this would occur some two
28 years ago when there was first discussion about putting up a

1 resource-intensive problem.

2 The Sheriff's Department has also assigned two
3 deputies to the U.S. Customs Air/Marine smuggling unit,
4 here, in San Diego. Again, because of the rapport and
5 cooperation that exists between our agencies, this effort
6 has been implemented to combat a very persistent problem:
7 continuing an influx of the smuggling of drugs into San
8 Diego County by aircraft and waterborne vehicles.

9 Turning to the issue of hate crimes, this
10 department is San Diego's top law enforcement agency with
11 regard to the training of hate crimes. We remain the only
12 local agency with a comprehensive, hate crimes, training
13 bulletin and training procedures. And we actually retrained
14 our entire, sworn patrol contingent one year ago on this
15 very issue.

16 Reports of racially-motivated hate crimes along
17 the border within the Sheriff's jurisdiction are rare. This
18 does not mean that these crimes do not occur.

19 Unfortunately, actual reporting by undocumented
20 aliens of crimes we term "hate crimes" is infrequent. Our
21 jurisdiction along the border is quite rural. And illegal
22 immigrants are often victimized, and our deputies never hear
23 about it.

24 However, in the Alpine case, we became
25 immediately aware and took a very aggressive stance on that
26 case. Additional detectives were put into the community.
27 Intelligence was gathered on both sides of the border.
28 Federal agencies such as the Border Patrol and INS were

1 border fence. And as I thought would occur, my people have
2 been telling me in the last six or seven months that they
3 have seen a noticeable increase in illegal immigration in
4 that area as well as what appears to be increasing violence
5 and criminal activity.

6 MR. PENA: Thank you. If you have a prepared
7 statement, I would like to a copy of that.

8 MR. ROACHE: Yes, sir.

9 MR. PENA: Thank you very much for being with
10 us.

11 MR. ROACHE: Sure.

12 MR. PENA: Javier Valenzuela, Operativo BETA
13 Secretaria De Gobernacion, Tijuana.

14 MR. VALENZUELA: Good afternoon.

15 I appreciate the invitation by the Civil Rights
16 Commission of the United States which allows me to share
17 some thoughts in relation to our subject that I feel is the
18 central subject for the development of cooperation and
19 cohabitation on the border. I am referring to violence and
20 impunity and facts that periodically take place at the
21 crossing and the transit areas for the migratory workers
22 from Mexico in our border.

23 Recognizing that undocumented migration is a
24 natural bilateral phenomena which responds to the economic
25 forces of attraction and expulsion from both countries, we
26 see the need to resolve it from a perspective of transborder
27 and binational point of view. The same happens with the
28 abuse and delinquency phenomena at the border which

1 threatens the safety of our nationals. And they also alter
2 the tranquility and the governing of our neighboring
3 societies.

4 Therefore, we must look for border tranquility
5 which constitutes common responsibility which demands the
6 development of efficient strategies and the mechanism of
7 binational cooperation, geared to the protection and
8 commonwealth being in respect of the particular interests of
9 citizens and the government in both countries.

10 Taking this into consideration, there was a
11 political decision made by the Mexican Government which
12 resulted on August 1990, in the implementation of a
13 three-party effort between the Municipal Government of
14 Tijuana, the State Government of Baja California, and the
15 Federal Government, in order to develop a safety model at
16 the border in San Diego/Tijuana.

17 The BETA group was formed 33 months ago. And
18 it has performed intense police activity, mainly preventive,
19 and it has also put into practice the dialogue and the
20 principals and professional cooperation of principals for
21 the development of solutions that are of common interest to
22 the safety in the border.

23 Following, I would like to just briefly
24 describe the characteristics of this group, which I think
25 are more relevant to this speech, and then make a comment on
26 some considerations derived from that same experience in
27 relation to the criminal tendencies and the formation
28 mechanisms between BETA and the U.S. enforcement agencies.

1 around the border areas, establishing with BETA a mechanism
2 of central dialogue. Therefore, the group operated, linked
3 through a radio communication frequency with the Border
4 Patrol and BCIV group agents, and most recently with INS and
5 U.S. Customs officers.

6 Through this system, our agents exchange
7 information and are on a permanent basis with these agencies
8 to detect and chase illegal activities, providing and
9 requesting support to arrest fugitives, secure victims as
10 well as their testimony and evidence that will allow
11 arresting the individuals that commit delinquent activities
12 under the umbrella of the border line.

13 Also, the group has established an automatized
14 information system that concentrates BETA related to the
15 nature and behavior of the migratory flow as well as
16 regarding delinquent activities and abused activities that
17 are committed in the border crossing areas to the detriment
18 of the migratory population. Constant processing and
19 analysis of this data allows us to learn the tendency of the
20 phenomena analyzed and provide some observation and
21 preliminary proposals relating to the subject matter of this
22 meeting.

23 "Volume and movement of the violent
24 activities."

25 The information provided by the information
26 system of the BETA group indicates that from 1991 to this
27 date, we have received a total of 838 reports which is
28 equivalent to an average of 31 reports per month.

1 Our group is formed by 45 agents at the three
2 governmental levels in Mexico, led by a technical
3 administrative and judicial group of workers from the
4 General Office of Migratory Services of the Department of
5 Interior. The agents in order to be admitted and to remain
6 in this group must be subjected to rigorous mechanisms of
7 selection and tactical and psychological training for such
8 an important mission.

9 The BETA group works -- based on information
10 network established -- with other government agencies that
11 are at a federal and local level, also working with academic
12 assistance and citizen-protection organizations that operate
13 in Tijuana.

14 The three main objectives for BETA are the
15 eradication of impunity and violence on the Mexican side of
16 the international border, the protection of undocumented
17 migrants which are the main victims of those abuses,
18 and establishing the coordination and communication
19 mechanisms with the U.S. agencies in order to fight impunity
20 and to guarantee control of transborder safety.

21 For this, the agents at BETA, patrol the
22 Tijuana/San Diego border doing some undercover and mingling
23 among the group of migratory people in order to prevent and
24 combat criminal activities. Their purpose is maintaining
25 binational coordination within a framework of respect and
26 professionalism.

27 Therefore, the Mexican government agreed to
28 limit the presence and participation of other Mexican groups

1 Approximately, 80 percent of the crimes and abuse reported
2 occurred within American territory between the areas where
3 undocumented aliens crossed and the detention centers of the
4 Border Patrol. This movement and the violent activities
5 toward the northern part of the border line is a contrast to
6 the consistent practice of the BETA group on the southern
7 part of the international border and to the limited
8 surveillance by the enforcement agencies in the American
9 territory.

10 Although the BCIV group maintains police
11 surveillance in the area, a reduced number in their agents,
12 and the limited capacity to move, does not allow enough
13 coverage of the areas where the undocumented aliens cross.

14 On the other hand, the Border Patrol agents have limited
15 participation with respect to prevention or prosecution of
16 the crimes perpetrated against the undocumented migrants.

17 "Type of crime and profile of the aggressors."

18 In relation to the type of crimes reported, our
19 information reveals that the highest number is of assaults
20 by regular delinquents, followed by injuries and abuse
21 attributed to American officials, and in the third place
22 extortion and abuse attributed to Mexican officials. The
23 comparison in the volume of reports received in the first
24 trimester in 1993 compared to that same trimester in 1992,
25 reveals that reports made against our regular delinquents
26 decreased from 80.5 percent to 59.1 percent, while those
27 made against Mexican officials went up 2.4 percent to
28 5.4 percent with respect to the total.

1 On the other hand, the volume of the reports
2 presented against American officials increased from 9.8
3 percent to 32.2 percent for that same total. The previous
4 information indicates that a decrease in violent activities
5 reported during the past two years is mainly due to a
6 decrease in crimes attributed to delinquents and Mexican
7 officials which are systematically fought by civil
8 organization, academic institutions, and Mexican Government
9 agencies.

10 On the other hand, the decrease in this type of
11 illicit activity has had the effect of showing very clearly
12 the lack of equilibrium between the efforts and the actions
13 to eliminate violence implemented on either side of the
14 border.

15 With this respect, we feel that it is essential
16 to promote greater responsibility for the U.S. agencies in
17 charge of surveilling the area through training that will
18 promote an attitude of respect and protection towards the
19 migratory population, independent of the surveillance and
20 control procedures for the areas where the undocumented
21 aliens cross.

22 "Impunity factors that provide a greater
23 potential for border violence."

24 The greatest difficulty for the detection and
25 investigation -- for the type and detection and
26 investigation of these violations lie in two main factors:
27 the extreme, clandestine conditions in which they occur and
28 the migratory character of the victims. The first factor

1 Frequently, the victims of an assault or
2 humiliation are told to show up one or two days later to
3 file their report. And they are, therefore, forced to leave
4 without even recording or filing their report.

5 I have after this, five conclusions that I will
6 not read in order, not to take advantage of your time.

7 Thank you.

8 MR. PENA: Thank you very much.

9 Are there any questions of Mr. Valenzuela?

10 Thank you. And please leave us with a copy of
11 your report. Thank you.

12 We will now hear from Jose Luis Perez Canchola,
13 Procurador de los Derechos Humanos, Estado de Baja
14 California, Tijuana.

15 MR. CANCHOLA: Thank you.

16 I will try to made my presentation short in
17 order to save time.

18 MR. PENA: Thank you.

19 MR. CANCHOLA: I appreciate the invitation
20 that I received from Mr. John Dulles to participate in this
21 meeting. I would like to say that the State Commission on
22 Human Rights in Baja California was founded by the State
23 Congress on April 6, 1991. This is a new instrument for the
24 community in the state of Baja. Today, there is a similar
25 commission in every state and also a Commission on Human
26 Rights.

27 We have the following functions: First, we
28 investigate accusations against public authorities of human

1 does not allow us to obtain reliable facts of public opinion
2 of the authorities. While the migratory factor limits the
3 possibility that the victims may be able to present or file
4 their complaint or may participate in bureaucratic, judicial
5 processes that take so long.

6 This limitation may only be resolved through
7 political decisions within the administrative and judicial
8 systems involved, that will allow establishing legal
9 assistance and counseling services for the migratory groups
10 in the detention and expulsion centers as well as agile,
11 judicial mechanisms that will allow the immediate receipt
12 and investigation of the complaints in order to sanction the
13 people responsible. It is only in this manner that impunity
14 may be fought, which is the essential element of border
15 violence.

16 The experience of the BETA agent has allowed a
17 system to receive more complaints through permanent contact
18 with the migratory groups in the crossing areas as well as
19 the repatriation filters. Even so, on occasions when we
20 have the reports and we identify the parties responsible, it
21 is not possible to take any actions in view of bureaucratic,
22 judicial, technical considerations.

23 This becomes even worse when most of the crimes
24 and abuse takes place during the night and on weekend
25 days -- such as Friday to Sunday -- when we have a greater
26 concentration of undocumented migrants and when the
27 administrative and technical government offices are closed
28 or do not work to full capacity.

1 rights violations, to issue recommendations on appropriate
2 actions, to propose a state policy regarding the respect for
3 and in defense of human rights, to prepare preventive
4 programs concerning human rights.

5 Here, in past decade, human rights in our
6 borders have suffered a great offensively from criminal
7 accusations, such as drug traffickers and professional
8 smugglers for undocumented migrants. The Mexico/U.S. border
9 is a clear example of both. Our commission is aware of
10 human rights violation of migratory workers and their
11 families on both sides of the border. This awareness is the
12 consequence of the complaints received by our office.

13 Violence and the violation of human rights
14 committed by authorities in Mexico or the U.S. side, should
15 be distinguished from that committed by private parties. We
16 only have the power to take action when that human right
17 violation involves Mexican officials.

18 According to our records, in 1992, there were
19 49 incidents of violations that affected a total of 128
20 individuals in the area of the Tijuana border on both sides.
21 Taking into account the area where the abuses took place,
22 we have 36 incidents happened on the U.S. side and 13 on the
23 Mexican side.

24 Of the total of incidents, 35 such acts were
25 committed by private parties and these are the following
26 consequences: eight people were dead. 14 injured, 7
27 assaulted, 2 kidnappings, and 4 other were victims of other
28 types of abuses.

1 Law enforcement officials participated in 14
2 violent acts with the following consequences: 4 deaths,
3 4 injuries, 2 extortions, and 4 other types of abuses.

4 The two authorities that account for more than
5 half of the complaint are those involving deaths and
6 injuries. The officials' responsibilities of those abuses
7 were: Tijuana-Mexico Police in 2 occasions; Border Patrol
8 agents in 8 occasions; Border Patrol information units in
9 2 occasions; San Diego Police, 1 occasion; INS officials,
10 1 occasion. As we can see, there were 12 deaths, total.

11 I would like to call your attention to this
12 problem, because all of them were on the U.S. side: eight
13 were committed by private parties. 5 were involving car
14 accidents. The other 4 were shot by the BCIU and 1 by the
15 Border Patrol and 1 by the San Diego Police.

16 As long as those migrant workers and their
17 families keep crossing the border illegally, violence and
18 human rights violations will persist along the U.S./Mexican
19 border.

20 In my personal opinion, the main
21 responsibilities of this migration is on the Mexican side.
22 The level of poverty, unemployment, millions of people
23 without jobs and opportunity in the future, are the main
24 causes of this phenomena.

25 As long as this reality persists, there will be
26 no end to the immigration into the U.S. But, in the
27 meanwhile, we have to do all we can to cut down the number
28 of incidents where human rights are violated. To do so, the

1 enforcement agency on both sides should improve their
2 relationships. A civilized coexistence between Mexico and
3 the U.S. demands general and effective respect of human
4 rights of nationals for each of our countries, mainly along
5 the border.

6 On the other hand, at the present time, there
7 are no strong relationships for human rights agencies from
8 Mexico and the U.S. And because of this, I would like to
9 suggest at this meeting to examine in the near future the
10 possibility of looking for proper mechanisms to improve this
11 situation. I am convinced that this is the best way to
12 assist the Mexican and U.S. officials regarding the reality
13 of migration to our borders and the necessity to accept that
14 all people have human rights, no matter of their legal
15 status, color, or descent.

16 Thank you very much for your attention.

17 MR. FENA: Thank you very much.

18 Any questions for Mr. Canchola?

19 Ms. Garcia?

20 MS. GARCIA: Yes.

21 Mr. Canchola, these shootings and -- I guess,
22 in particular, the ones that result in death, have those
23 been reported to the U.S. officials? And, if so, who were
24 they reported to? And what has been the result?

25 MR. CANCHOLA: Well, I'm not aware of what is
26 happening on this side. I suppose all these incidents were
27 reported to the U.S. officials. But we do wish to find a --
28 to help the individuals to --

1 MS. GARCIA: To create a file.

2 MR. CANCHOLA: -- and turn it into the First
3 Ministry or the National Commission on Human Rights. That
4 is because we -- as a state organization, we don't have the
5 authority to investigate such kind of cases.

6 MS. GARCIA: Are they reported at all to the
7 Mexican Consulate in San Diego, for instance?

8 MR. CANCHOLA: No. We work with the National
9 Commission on Human Rights.

10 MR. FENA: Are there any other questions?

11 Mr. Zazueta?

12 MR. ZAZUETA: Thank you.

13 I just wanted to know how long have these
14 organizations -- BETA and your organization at De Los
15 Derechos Humanos -- how long have they been in operation?
16 MR. CANCHOLA: BETA was created in July 1990;
17 and the human rights office in April of 1991.

18 MR. FENA: Are there any other questions?

19 Mr. Paz?

20 MR. PAZ: Has there been any effort to try to
21 communicate with the United States agencies in order to do
22 this exchange of information that you have? Have there been
23 any recorded efforts?

24 MR. VALENZUELA: BETA group maintains permanent
25 communications through their common radio communication
26 frequencies and through informal meetings for exchange of
27 information. The greatest difficulty for presenting and
28 giving follow-up to these reports -- as I said before was a

1 clandestine manner in which they occur and the lack of
2 volunteerism by the minority people to participate in such
3 long, judicial processes and also frequently the difficulty
4 in clearly identifying the responsible party of those
5 activities.

6 MR. PAZ: Beforehand -- before you came in, we
7 asked a question of what the Border Patrol would be doing in
8 terms of informing the public as to how to report abuses.
9 Do you have -- the answer was, they didn't have any.

10 Do you have a system, a mechanism, where people
11 report abuses to you?

12 MR. VALENZUELA: As I mentioned before, we have
13 constant communication with the migrants at the sites where
14 they are crossing and also when they are returned back to
15 the country. This has allowed us to learn of the reports
16 that I've talked about before.

17 Nevertheless, there is a big problem in being
18 able to address these reports immediately or timely by the
19 corresponding authorities. When we are able to do this,
20 when we have these reports and we are able to establish
21 contact between the victims and the authorities, we
22 generally don't know what the follow-up is for these
23 reports. It could be that these factors do not help in
24 reporting these acts.

25 We recently were offered by Border Patrol to
26 establish a 24-hour telephone line that would help us and
27 assist the officers. Since the steps through the Mexican
28 consulate take a long time because of the times and dates

1 when these crimes are committed, it can be, perhaps, that
2 this mechanism might help in learning about these reports
3 and providing the help by the corresponding authorities.

4 MR. PAZ: Thank you.

5 MR. PENA: Ms. Garcia?

6 MS. GARCIA: Mr. Canchola, the cases of abuse
7 that occur on the U.S. side that you report to the Human
8 Rights Commission in Mexico, what does that commission do
9 with those reports?

10 MR. CANCHOLA: Well, they have a mechanism
11 through the foreign relations administration. And I
12 understand that they have a direct contact with the INS in
13 Washington in order to follow each case. And as far as I
14 recall, all these incidents are put into these captions.

15 MR. PENA: Thank you.

16 Any other questions of the panel?

17 Thank you very much. And Mr. Canchola, if you
18 would provide us a copy of your remarks.

19 Thank you very much.

20 MR. VALENZUELA: Gracias.

21 MR. PENA: Mr. Bonner -- T.J. Bonner, from the
22 National Border Patrol Council, San Diego.

23 You may proceed when you are ready.

24 MR. BONNER: Thank you, Mr. Chairman, and
25 members of the panel. I welcome the opportunity to address
26 the issues being considered by the Commission from the
27 perspective of the employees who deal with illegal
28 immigration and undocumented migrants on a daily basis.

1 of coercing confessions of wrongdoing.

2 Given this shabby treatment of employees, it is
3 remarkable that the incidence of due-process violations by
4 Border Patrol agents is so low. One cannot reasonably
5 expect employees who are treated like second-class citizens
6 to provide first-class treatment to the people they
7 encounter in the course of their employment. This should
8 not be construed as approval of the denial of due-process
9 rights, but it does help to explain why such rights are not
10 consistently honored by all Border Patrol agents.

11 The number of substantiated cases of physical
12 abuse by Border Patrol agents is minuscule, especially in
13 proportion to the number of persons encountered by the
14 Border Patrol. In the overwhelming majority of cases where
15 physical force is employed by Border Patrol agents, it is
16 done in self-defense or in the defense of others. Those few
17 cases where Border Patrol agents exceed the scope of their
18 authority by assaulting someone without provocation should
19 be dealt with harshly, as there is no justification for such
20 action.

21 However, to conclude that the Border Patrol
22 engages in systematic abuses of human rights because of the
23 improper actions of a few renegade employees would be
24 grossly inaccurate and unfair.

25 Border Patrol agents are not heartless robots.
26 They are human beings, no more perfect or imperfect than any
27 other class of people. They are active members of their
28 community. They eat in the same restaurants, go to the same

1 I'm the President of the National Border Patrol
2 Council of the American Federation of Government Employees,
3 AFL-CIO, which represents all nonsupervisory employees of
4 the Border Patrol throughout the United States.

5 The Council was founded in 1965, and its
6 primary objectives are to promote the interests of Border
7 Patrol employees and ensure that their statutory and
8 contractual rights are safeguarded. Being a labor
9 organization, it is not involved in, or responsible for, the
10 policies of the Immigration and Naturalization Service.

11 I have served as a Border Patrol agent in
12 the -- San Diego, California's, Border Patrol sector, for
13 the past 15 years. In addition to my own person experiences
14 and observations, numerous Border Patrol agents from all
15 parts of the country have shared many insights with me
16 concerning their perceptions of the problems associated with
17 the border.

18 Border Patrol agents receive extensive training
19 in protecting the civil and due process rights of all
20 individuals, as well as the proper use of force against
21 combative individuals. Unfortunately, the leadership of the
22 Department of Justice and the Immigration and Naturalization
23 Service routinely ignore and blatantly violate the
24 due-process rights of Border Patrol employees, failing to
25 advise them of their right to representation in
26 investigative interviews that can lead to disciplinary or
27 criminal action, denying representation when it is
28 requested, and even intentionally lying to agents in hopes

1 churches, and send their children to the same schools as
2 everyone else in community.

3 Almost without exception, they enforce our
4 nation's immigration laws in a fair, humane, and
5 compassionate manner. Their many acts of heroism and
6 compassion, small and large, performed on a daily basis, are
7 rarely publicized.

8 Border Patrol agents have rescued undocumented
9 migrants from raging flood waters, reunited lost family
10 members, fed hungry, undocumented migrants with money from
11 their own pockets, freed undocumented migrants being held
12 for ransom, assisted undocumented migrants in securing wages
13 owed by unscrupulous employers, provided shelter and warmth
14 for undocumented migrants exposed to the elements, and
15 performed other acts of kindness and heroism too numerous to
16 mention.

17 There is no question that far too many violent
18 incidents occur on the border between the United States and
19 Mexico, especially in the San Diego area. The source of
20 most of the violence, however, is not Border Patrol, but the
21 criminals who physically assault undocumented migrants and
22 even Border Patrol agents. These assaults on Border Patrol
23 agents take the form of being assaulted with guns, knives,
24 clubs, stones, vehicles, fists, and other weapons. Under
25 these circumstance, Border Patrol agents are unquestionably
26 justified in defending themselves.

27 In their quest to disparage the Border Patrol,
28 detractors point to misleading statistics concerning the

1 number of persons that have been shot near the border. In
2 actuality, the majority of those shot have been border
3 bandits engaged in assaults upon law enforcement officers or
4 innocent, undocumented migrants.

5 These critics also ignore the startling
6 statistics concerning the murders, mayhem, rape, and other
7 atrocities committed by criminals lurking along the border
8 between the United States and Mexico.

9 Fortunately, the placement of lights at
10 strategic points along the border has greatly reduced such
11 crimes.

12 Increased cooperation between the law
13 enforcement agencies in the United States and Mexico has
14 also been responsible for a reduction in crime and violence
15 at the border. This cooperation, coupled with harsh
16 prosecution of those guilty of instigating violent
17 encounters and otherwise breaking our laws, promises to be
18 the most effective solution to the problem of violence that
19 has plagued our borders for so long.

20 Opponents of the Border Patrol also point to
21 other statistics in their attempts to denigrate the Border
22 Patrol. They imply that pedestrian deaths on our highways
23 near the border and Border Patrol checkpoints are somehow
24 the fault of the Border Patrol and not of those who rush in
25 front of speeding traffic. They insinuate that automobile
26 accidents involving smuggling vehicles pursued by the Border
27 Patrol are not caused by the criminals who drive recklessly
28 in attempts to avoid arrest and prosecutions for smuggling

1 and vehicle theft but rather by the Border Patrol. Of
2 course, the fallacy of these accusations is transparent.

3 All allegations of abuse by Border Patrol
4 agents are thoroughly investigated by the Immigration and
5 Naturalization Service, the Department of Justice, or both
6 agencies. The majority of such complaints are determined to
7 be unfounded. The most likely cause for the large number of
8 unsubstantiated complaints is the hope that temporary legal
9 status will be granted to the complainant pending the
10 investigation of the complaint.

11 Not surprisingly, the majority of those that
12 come forward with complaints refuse to swear to them under
13 oath, mostly likely fearful of the penalty for false
14 declarations under oath. The overabundance of groundless
15 complaints unfortunately serves to taint the credibility of
16 those making legitimate complaints.

17 Although far from perfect, the system currently
18 in place offers better oversight of the Border Patrol than a
19 civilian review board could provide.

20 The 1993 appropriations bill has already
21 established a citizens advisory panel to accept and review
22 complaints of abuse by the Border Patrol. The current
23 system can also be improved by speeding up the investigatory
24 process; ensuring that discipline is administered swiftly,
25 fairly, and uniformly; and by breaking down the wall of
26 silence that shrouds the process.

27 The United States Border Patrol is charged with
28 the impossible task of controlling our nation's border with

1 inadequate manpower and resources. Despite such
2 overwhelming odds, the men and women of the Border Patrol
3 consistently perform their jobs admirably and
4 professionally. They deserve our support for their
5 dedicated service to our nation, not condemnation for
6 largely unsubstantiated reports of abuse.

7 Thank you.

8 I would be happy to answer any questions.

9 MR. PENA: Are there any questions for
10 Mr. Bonner?

11 Ms. Garcia?

12 MS. GARCIA: Yes.

13 Mr. Bonner, we've heard testimony earlier
14 today from quite a few individuals that the complaint
15 process is not meaningful.

16 In fact, the civil rights commission in 1980
17 made similar conclusions. And, in fact, the Office of
18 Inspector General earlier in his testimony stated that there
19 has really not been much change in all of these years to
20 address these problems.

21 So how can you tell us that statistics show
22 that you're guilty of very few abuses? And how can that
23 statistic be meaningful if there is not a meaningful
24 complaint process?

25 MR. BONNER: Well, that's a number of questions
26 all rolled into one.

27 First of all, I think we need to define the
28 term "abuse." I mean, if we're talking about somebody who

1 has assaulted a Border Patrol agent, then complains because
2 he gets hit back, I don't view that as abuse. I view that
3 as self-defense.

4 MS. GARCIA: We're getting into, I guess,
5 merits of particular cases. I want to talk, simply, of this
6 neutral-complaint process. And from all indications, there
7 has not been a uniform process. There has not been an
8 adherence to time, deadlines. Fundamentally, there is not
9 even a public awareness in the community that there is a
10 complaint process. There has not been a uniform complaint
11 form. There are all these problems. And what I'm asking
12 you is, how can any statistic that has been stated earlier
13 today, 1 in 17,000 complaints -- how can that be meaningful
14 if there is not a meaningful complaint system?

15 MR. BONNER: As I stated at the outset, I do
16 not represent the agency. I represent the agents. I play
17 no part in compiling those statistics, and I really can't
18 confirm or dispute their veracity. I would agree that there
19 is no uniformed reporting form; although, most of the people
20 that I encounter in the course of my employment are aware
21 that they can complain to any agent and that that complaint
22 will be taken seriously and forwarded on through channels.

23 MR. PENA: Mr. Sillas?

24 MR. SILLAS: You indicated that you've been a
25 Border Patrol agent for how long?

26 MR. BONNER: Fifteen years, sir.

27 MR. SILLAS: In the course of your enforcement
28 of our immigration laws, did you arrest the same person time

1 and time again? Was that an occurrence, that you can
2 recall?

3 MR. BONNER: It happens on occasion. I can
4 recall one specific group of about -- it started out with 12
5 people that we caught seven times in the space of one month.

6 MR. SILLAS: Is it kind of a frustrating
7 process for you to encounter that?

8 MR. BONNER: Not so much frustrating to me as
9 it was to them, because we would encounter them about three
10 or four days' walk into the United States and return them.
11 And they literally spent one month of walking and had
12 nothing to show for it.

13 MR. SILLAS: As you testified in here, is there
14 any assurance that after the seventh time that they quit?

15 MR. BONNER: I doubt that they quit. I think
16 they got by us. They got better every time.

17 MR. SILLAS: The -- and this may be an unfair
18 question, and if you don't care to answer it, I would
19 understand. But we have gotten statistics here this
20 afternoon that would indicate that there is a lack of
21 resources at the border here to, in effect, stop the flow.

22 We've also got statistics to indicate that
23 about 85 percent of the people that are crossing the border
24 here are seeking employment or attempting to get back to
25 their families. Is it your sense that there really is an
26 underlying policy here that you kind of want to have a
27 border along the San Diego area where people can get through
28 if they try hard enough to accomplish employment or to get

1 unsuccessfully as a labor organization to get ahold of the
2 manual that governs the Office of Inspector General. They
3 have adamately refused. So I don't know what their internal
4 guidelines would say. I would hope that they have some kind
5 of time restraints, but judging by the way they conduct
6 their operations, it's highly doubtful. I have seen these
7 things drag on for years, literally.

8 MR. SILLAS: The same --

9 MR. BONNER: There is no resolution.

10 MR. SILLAS: The same investigations, one
11 complaint, the investigation would last for over a year?

12 MR. BONNER: Yes.

13 MR. SILLAS: And what does the officer or the
14 agent do during this period of time? Does he continue to
15 remain employed and perform his duties?

16 MR. BONNER: It depends on what the agent was
17 charged with. If an agent is arrested or indicted, they
18 will generally be suspended from duty without pay under the
19 provisions of the -- it's called the Crime Provision in the
20 Civil Service Reform Act which allows an agency to give
21 seven days' notice, then suspend that officer until the
22 matter is resolved.

23 MR. SILLAS: You made reference, also, that
24 your agents are not allowed to have counsel or not advise
25 that they can have counsel during an interrogation?

26 MR. BONNER: That's correct.

27 MR. SILLAS: How common is that?

28 MR. BONNER: All too common, unfortunately.

1 to their families?

2 MR. BONNER: I think that is definitely the
3 case. I think that if the Federal Government were
4 interested in stopping illegal immigration, it could stop
5 it. But I think it has to look at the broader picture as to
6 whether they really want to, and, obviously, the
7 policy-makers in Washington have decided that all they want
8 is a token force out there to show the public that we are
9 trying to do something. But I don't think they want to stop
10 illegal immigration.

11 MR. SILLAS: But at the same time, there is
12 really a concerted effort to stop the drug smuggling and
13 illegal activity, in a sense, the contraband, et cetera.

14 MR. BONNER: Yes. But it was pointed out
15 through earlier testimony, it is really difficult to
16 separate the two. For example, if an intrusion device -- we
17 have electronic intrusion devices all up and down the
18 border -- if one goes off, I doesn't tell us, well, this is
19 going to be illegal aliens, or this is going to be
20 narcotics. We have to respond to everything.

21 MR. SILLAS: Let me change to another phase of
22 your comment regarding the investigations and the rights of
23 the Border Patrol agents. Is there any requirement, that
24 you're aware of, that investigations dealing with civil
25 rights allegations against a Border Patrol agent must be
26 that that investigation must be accomplished within a
27 prescribed time?

28 MR. BONNER: We have been trying years

1 The office of Inspector General feels that it is not part of
2 the contractual agreement. They feel that was made with the
3 Immigration and Naturalization Service and that they are
4 separate and apart from them. However, it is clear that
5 they are acting on the behalf of the INS. So that
6 obligation does transfer over.

7 MR. SILLAS: Do you have an opinion as to --
8 that if the investigations were being conducted by your
9 department itself, that they would be at a much faster
10 process than the present system? Or do you have any opinion
11 on that at all?

12 MR. BONNER: The Border Patrol does not have
13 the resources in place to investigate itself. And I also
14 question the wisdom of having an agency police itself.

15 MR. SILLAS: Thank you.

16 MR. PENA: Mr. Paz?

17 MR. PAZ: Just to follow up on Ms. Garcia's
18 remarks on complaints, could you, just, for our sake, define
19 what a complaint is? What would constitute a complaint
20 against a Border Patrol official?

21 MR. BONNER: A complaint could be anything from
22 this officer physically abusing me, struck me, be it with a
23 fist or with a wooden club, or that this officer yelled at
24 me. I've seen people actually make complaints that, you
25 know, they were running away from a Border Patrol agent and
26 the Border Patrol agent screams at them to stop, and they
27 were offended that they were yelled at by the Border Patrol.

28 MR. PAZ: As an administrator, I have various

1 complaints from the people that work for me. And, perhaps,
2 I might wait until I hear it 10 or 15 times before I decide
3 that it's a complaint. Would that be a similar way that the
4 Border Patrol might operate?

5 MR. BONNER: No. We have very explicit
6 instructions that if we receive any type of complaint, as an
7 agent, we must refer that to a supervisor.

8 MR. PAZ: Does that become a statistic at that
9 time?

10 MR. BONNER: I can't speak for that. I don't
11 know how they report these different complaints.

12 MR. PENA: Mr. Zazueta?

13 MR. ZAZUETA: Mr. Bonner, on this issue of
14 misleading statistics from community groups -- the community
15 groups that came up this morning stated that many times the
16 Border Patrol has misleading statistics.

17 How do you see this problem resolved?

18 MR. BONNER: Between the two sides of
19 reconciling where the truth really lies, I honestly don't
20 know how to answer that. I mean it -- Obviously, each side
21 is going to have some bias in there.

22 But the statistics that frequently get dragged
23 in by certain groups, they date back so many years and they
24 will say that, you know,
25 78 people have been shot by law enforcement officers down at
26 the border, which makes it sound pretty bad, but when you
27 realize that sixty-some-odd of the people were bandits who
28 were assaulting Mexican nationals coming across and that

1 MR. BONNER: They are very much aggressive.
2 MR. ERLER: What does a typical investigation
3 entail, then, if, say, you were the object of a complaint?
4 What would the procedure be?

5 MR. BONNER: The typical procedure is that an
6 agent will get a phone call or an investigator will show up
7 on their doorstep and an OIG investigator will say, "We
8 would like to ask you a few questions about this." And they
9 will just jump right into the middle without giving the
10 employee any notice of what could potentially happen, even
11 if it's a criminal matter.

12 MR. ERLER: But presumably, your union is up on
13 these kinds of situations. You've advised your membership
14 that they have the right to be represented or they have the
15 right not to cooperate. Is that the case?

16 MR. BONNER: We put that word out, to the best
17 of our ability. You have to understand that we have
18 approximately 4,400 bargaining-unit people, nonsupervisory
19 spread, throughout the United States, across the Southern
20 and Northern border but also in remote places like, Miami,
21 Oklahoma, which is a two-man checkpoint there.

22 You simply cannot get the word out to
23 everybody. Additionally, there is such a turnover of
24 personnel within the Border Patrol, that at any given time,
25 there is the large number of brand-new people who have not
26 gotten the message.

27 MR. ERLER: In your remarks, you seem to
28 indicate that this behavior on the part of the Inspector

1 these bandits made the fatal mistake of assaulting a group
2 of law enforcement officers who are armed to the teeth, you
3 know, somebody is going to -- if you pull a gun on a group
4 of six law enforcement officers down at the border and try
5 and kill them, then you should expect to be shot.

6 MR. ZAZUETA: Does your association have
7 training programs for your officers?

8 MR. BONNER: We do not train them in -- we
9 train our people in labor-relation matters in dealing with
10 problems of interfacing with management. It is management's
11 prerogative to dictate what all of the operational-type
12 training will be. We have made recommendations in the
13 past. It is usually shot down, but we keep trying.

14 Thank you.

15 MR. ZAZUETA: Thank you.

16 MR. PENA: Mr. Erler?

17 MR. ERLER: Yes.

18 I'm a little puzzled about something. You
19 seemed to say that your union position is that the
20 due-process rights of officers are being systematically
21 violated by the Officer of Inspector General in the
22 investigation of complaints. Is that it?

23 MR. BONNER: Yes.

24 MR. ERLER: We've heard nothing but complaints
25 today that the Office of Inspector General is a nonentity
26 and doesn't really do much in the way of investigation. But
27 your perception of the office is that they are an aggressive
28 agency. They are systematically trampling the rights of --

1 General's Office had a tremendous, demoralizing proportion
2 on the Border Patrol agents and affected their capacity and
3 ability to do the job of the Border Patrol.

4 MR. BONNER: I think it does. They have run
5 undercover operations trying to -- wherein they actually do
6 things to provoke Border Patrol agents. They have actually
7 assaulted Border Patrol agents. And then based upon the
8 reactions, have tried to prosecute Border Patrol agents.

9 MR. ERLER: So from your point of view, the
10 idea that the Border Patrol acts in a way that is completely
11 unsupervised is simply not true as evidenced by the actions
12 of your OIG?

13 MR. BONNER: Definitely. There is definite
14 supervision over the Border Patrol. We are not a bunch of
15 renegades out there running around administering our own
16 system of frontier justice. We are very much supervised.

17 MR. ERLER: Thank you.

18 MR. PENA: Thank you very much.

19 Ms. Garcia?

20 MS. GARCIA: I have a follow-up question.

21 Are you aware, sir, that the Office of
22 Inspector General has recommended, in very few cases,
23 criminal prosecution of Border Patrol agents who have been
24 involved in violent acts. Are you aware?

25 MR. BONNER: No. I wasn't aware of that
26 statistic.

27 MR. ERLER: Do you think it's true?

28 MS. GARCIA: I'm sorry?

1 MR. ERLER: I wondered if you thought that
 2 that was true, what he just said.
 3 MR. BONNER: Criminal prosecution I -- I would
 4 say that that probably has not been allowed, criminal
 5 prosecution, but I think that is because the Border Patrol
 6 is not this -- it's not the Gestapo as some people would
 7 paint us.
 8 We're not out there systematically abusing
 9 people's rights. I think that there are very clear
 10 guidelines in place, and the officers, by and large, adhere
 11 to those. So that there is not a lot of criminal activity
 12 on the part of Border Patrol agents.
 13 MS. GARCIA: Sir, are you aware that there is a
 14 bill to establish an Immigration Enforcement Review
 15 Commission that is going to be introduced relatively soon?
 16 MR. BONNER: I am aware of that.
 17 MS. GARCIA: And you're aware that that
 18 legislation resulted because of the many complaints about
 19 Border Patrol abuse?
 20 MR. BONNER: I don't know that it was so much
 21 the complaints of Border Patrol abuse as it was a
 22 frustration with the way the Office of Inspector General
 23 operates behind a cover of complete silence and darkness. I
 24 think if they had been more forthright in what they were
 25 doing, I think the public would have been much more
 26 satisfied and able to see some results.
 27 MS. GARCIA: And lastly, are you -- do you
 28 support or not support the establishment of this review

1 STATE OF CALIFORNIA
 2
 3 COUNTY OF SAN DIEGO
 4
 5
 6 I, Karen A. Black, Certified Shorthand Reporter, in
 7 and for the State of California, Certificate No. 8997, do
 8 hereby certify:
 9 That the hearing was taken before me on Friday,
 10 April 16, 1993, at the Holiday Inn at the Embarcadero,
 11 1355 North Harbor Drive, Coast Ballroom, in the City of
 12 San Diego, State of California; that said hearing was
 13 reported by me in shorthand and transcribed, through
 14 computer-aided transcription, under my direction; and that
 15 the above and foregoing pages, numbered 3 through 251,
 16 inclusive, is a true record of the proceedings.
 17 I do further certify that I am a disinterested person
 18 and am in no way interested in the outcome of this hearing
 19 or connected with or related to any of the parties.
 20
 21 In witness whereof, I have hereunto set my hand this
 22 day of _____ 1993.

KAREN A. BLACK, CSR NO. 8997

1 commission?
 2 MR. BONNER: As it's currently constituted, we
 3 do not support the bill. It excludes anybody who has been
 4 associated with law enforcement for a certain number of
 5 years. In other words, they have to be out of law
 6 enforcement for a certain number of years before they get
 7 onto this commission. It would give them broad subpoena
 8 power, and yet it would not establish any due-process rights
 9 for Border Patrol agents. So, in its current form, we
 10 cannot support it.
 11 MR. PENA: Thank you very much, Mr. Bonner.
 12 Please provide us with a copy of your prepared
 13 statement.
 14 MR. BONNER: Certainly.
 15 MR. PENA: And that will conclude today's
 16 hearing. We are in recess until tomorrow morning at
 17 8:45 a.m.
 18 Thank you.
 19
 20 (The Hearing was adjourned at 5:10 p.m.)
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 28