Panel 1: The United States-Mexico Border: Enforcement or Abuse?

INTRODUCTION TO PANEL ONE

Abel Valenzuela, Jr.†

Perhaps no other policy or social issue discussed in California is as emotionally polarized and controversial as that of immigration. As California’s economy has deteriorated, and the costs of educating a foreign-born population that speaks a language other than English have skyrocketed, immigrants have become the easy targets. As a result, a plethora of shortsighted, misguided, and meanspirited policies have either been enacted or are currently being debated in the California State Legislature that will further marginalize an already vulnerable segment of our population.

Two concerns seem to be at the root of the current immigration debate. The first is the costs associated with immigration. Politicians, policy makers, academicians, and the media all seem to have opinions on this subject, but very little empirical evidence. Immigrants have become the scapegoats not only for economic woes, but also for other social ills, such as poverty and inter-ethnic conflict, that currently plague many inner-cities. Often, the costs of immigration are analyzed without considering the many benefits such as increased federal, state and local tax revenues.

The second major concern is that of job displacement of U.S. born labor. Many believe that immigrants have taken jobs away from U.S. citizens, most notably other minority groups such as Latinos and African Americans. Empirical evidence on this issue overwhelmingly shows negligible impacts to the wages and employment circumstances of U.S. born workers.

Despite the paucity of empirical evidence on the monetary and social costs of immigration and the strong evidence that immigrants do not displace U.S. labor, we are constantly bombarded with false perceptions of immigration that lead to fear and misinformation. This fear, coupled with the already vulnerable position of immigrants in California, has resulted in a variety of abuses. Lost in the current immigration debate and rarely addressed in most public and academic forums is the issue of immigrant abuses. All too often, the personal problems, tribulations, and abuses ex-

† Lecturer, Chancellor’s Postdoctoral Fellow and Research Associate, Chicano/Latino Policy Project, University of California at Berkeley. A.B. University of California at Berkeley; M.C.P. and Ph.D. Massachusetts Institute of Technology.
experienced by immigrants are not discussed. The following speakers will highlight this very important but often neglected aspect of immigration.
Comments by Victor Clark-Alfaro*†

The end of the Cold War between the United States and Russia has had a great impact on the border between Mexico and the United States. It is no longer possible for North Americans to continue saying that immigrants from south of the border bring communist ideas and ideology from Central America. Unfortunately, however, the fear of communism has been replaced by other xenophobic ideas. Many North Americans now suggest that immigrants contribute to increased unemployment, the spread of AIDS and urban violence. Thus, despite the positive changes brought on by the end of the Cold War, immigrants from south of the border continue to be the victims of misunderstanding and hostility.

In addition to the problems they face in the north, immigrants continue to have their human dignity violated by the Mexican authorities. Fortunately, however, the economic implementations of the Salinas de Gotari administration are bringing about changes in both a foreign and domestic context. The Mexican consulates in the United States are taking an initiative that is reminiscent of the thirties and forties to fight for the human rights of these immigrants. In Mexico, protests, filed complaints and efforts of civil rights organizations have all been important factors in pressuring the state to take steps to reduce the number of human rights violations. The Mexican government has created a program called Paisano. This program is working toward guaranteeing the safety of Mexican residents in the United States and helping to provide safe passage back to Mexico for migrant workers. Since 1978 leading figures in all the major political parties in Mexico have started visiting the Mexican immigrants, in particular those that live in California.

In the Mexican state of Baja California, the three levels of government are proposing different ways of ending the violence that has been perpetuated by Mexicans against Mexicans. As a result of government efforts, an organization called Operativo Beta was created. Operativo Beta uses various expressions to refer to the violence perpetuated against immigrants. One of these is “border violence.” “Border violence” does not refer to a general state of affairs across the 3,000 kilometers of border between Mexico and the United States. Rather, “border violence” is a focused violence that has occurred in specific geographical locations on both sides of the border. On the Mexican side, there are apparent social reasons to explain the violence against the immigrants. The vast majority of the complaints about this violence refer to extortion by the Mexican law enforcement

* Copyright © 1994 by La Raza Law Journal, Inc.
† Founder, Director, Binational Center for Human Rights, Tijuana, Baja California, México.
agents. Although physical and verbal abuse is prevalent, the violence against immigrants is fundamentally economic. On the U.S. side, the aggression against the immigrants is of a racist nature. There are a myriad of abuses directed against immigrants in the U.S. but since the nature of the violence is racist, the entire situation differs dramatically from what is happening in Mexico.

Violence on the U.S. side operates within the context of excellent diplomatic relations. Yet, while the relations are very good, there is the problem of equity. Relations between Mexico and the United States operate in terms of power, economics and politics. This inequity does not allow Mexican government organizations to have the same standing when they complain about the violations against Mexican nationals. Border violence is present at locations such as Tijuana and San Diego, and, to a lesser extent, El Paso, Ciudad Juarez, Matamores, Reynosa and Nogales. Because violence has become part of the border culture, there have been few protests when Mexican have discovered that many Mexican immigrants have been assassinated or killed in San Diego and San Ysidro. It is perceived as normal that a Mexican should be mistreated or killed on the U.S. side of the border, or that the immigrant be subjected to extortion on the Mexican side of the border. Two years ago an adolescent in Calexico was shot by the Border Patrol and for the first time in many years, social groups in Mexicali, on the Mexican side, organized a group protest against the shooting. This is an unusual event for the border.

“Border violence,” and the militarization of the border zone, are concepts that we will continue hearing about for a long time. In the long run we will not see any substantial changes in the treatment of immigrants on the North American side. Mexicans will continue to leave their country in the thousands for the rest of this decade. The Mexican government believes that the free-trade agreement (NAFTA) will in the long run create enough employment to either eliminate or reduce the number of Mexicans leaving the country in search of work. This belief, however, is unsupported by the statistics. The covered labor force in Mexico is 33 million. It is growing at an approximate annual rate of 13.1%, and approximately one million young Mexicans are entering a job market with very few employment alternatives. Faced with few opportunities, the majority choose to go north. Out of these 33 million, 16 million are either unemployed or under-employed. In order to absorb this new work force each year, the country needs to grow at an annual rate of 10%, which presently seems unlikely.
Towards a Conceptualization of Border Violence*

Comments by Javier Valenzuela Malagón†

During the past three years I have become familiar with the crimes and abuses which occur adjacent to the border line between Tijuana and San Diego. I have also familiarized myself with the analysis and discourse which has developed on both sides of the border around these conflicts and incidents. Given the nature of my work, which requires me to direct a special corps of police specifically charged with combating border violence, my activities have been directed primarily towards the search for the practical, as opposed to theoretical solutions. Nonetheless, this occasion inspires me to share some observations and reflections accumulated during my three years of experience as psychologist and director of Operativo BETA in the hopes of contributing to a better understanding of the nature of these conflicts.

Violence and Migration

In the majority of cases, migration is itself an act of violence. Migration is the result of economic violence which destroys, and tears apart, and expels the individual from his social nucleus and casts him into a labyrinth of survival, uncertainty, and precariousness. From the moment of departure, the migrant senses the presence of a superior external force which imposes itself on him and dominates his insecure steps along the migratory journey. During this journey, the migrant is deprived of the social support networks which provide sustenance and protection, and becomes a potential victim of all kinds of abuses and arbitrariness at the hands of those who recognize that he is weak and defenseless. Thus the undocumented migrant, whose clandestine traverse puts him at the center of a confluence of ill-willed aggression perpetrated by ruffians and authorities alike, emerges as the central figure and common denominator of border violence.

The cycle of violence for the migrant begins inside the Mexican border. The migrant must confront the brutality and violence of the abuses and extortion constantly directed at migrants by those elements, official or pseudo-official, which see in this ambulatory group a population easy to mistreat or blackmail with little risk of any repercussion. Our data reveals

* Copyright © 1994 by La Raza Law Journal, Inc.
† Departamento de Protección, Operativo Especial BETA, Tijuana, Baja California, México.
that approximately 10% of complaints filed refer to acts of extortion and abuse of authority by agents or pseudo-agents of Mexican institutions at the principle points of migrant concentration along the border such as the region known as the “Zona Norte.”

As is well known, the level of risk for the migrant grows as the border gets closer, where groups of migrants are left at the mercy of gangsters who take advantage of the dark lawlessness of “no man’s land” to assault the defenseless population with impunity. Among these assailants, the most numerically important group includes the very “coyotes” contracted by the migrants for the illegal crossing. We have seen cases where “coyotes” use the dark of night to separate a women or girl from the group and physically abuse her or sequester her from her family in order to obtain a ransom. Also common are cases of “coyotes” who ask for payment in advance and then abandon the migrants while still in Mexican territory.

Nonetheless, we cannot say that all those who traffic in illegal immigrants act in this way, but there are many who do. According to statistics collected over the past three years, 70% of reported complaints implicate that type of assailant, generally a Mexican national who has made a way of life out of robbery and assault at the expense of undocumented immigrants. Hidden in the canyons and blinds along the border, they await the passage of groups of immigrants in order to steal their belongings and attack those who resist.

The most dangerous time for the immigrants is when they are confronted by the agents of the Border Patrol who, in keeping with their persecutorial function, express their frustration through blows and insults. Our statistics indicate that the Border Patrol is implicated in 20% of all the complaints processed by our agency over the past three years. The majority of the complaints refer to excessive use of force by Border Patrol agents making arrests. The vast majority of these incidents occur within U.S. territory and under conditions which thwart accurate reporting and identification and punishment of the perpetrators.

The abuses and mistreatment do not finish upon arriving in the “promised land,” rather they are prolonged as the immigrant faces the exploitative work and living conditions that accompany illegal status. One particularly illustrative example is that of 300 workers at Rancho Somis in the county of Ventura who were found living in slavery-like conditions reminiscent of feudal times.

In sum, we can say that in some respects the first agent of aggression against the migrant is the very system of economic relationships and bilateral politics which expels him from one side, attracts him on the other, and sanctions or criminalizes him for the mere condition of being a migrant. By criminalizing the migrant and branding him with the label of “undocumented alien,” the political ideology categorizes the migrant as a public
enemy and condemns him to situations of secrecy and marginalization which segue easily into positions of risk and insecurity.

As this data illustrates, border violence is a response to diverse factors ranging from the random delinquency of thugs and gangsters to the institutional racism which underlies the political and extortionist abuses of the authorities. Each of these factors has its own source and responds to specific motives which should be interpreted and approached independently in order to correctly understand and possibly resolve them. It is important to emphasize that there are multiple factors and social agents participating in the phenomenon because any generalization made about border violence can be risky, and may prejudice the effort to arrive at a comprehensive understanding of these issues. Notwithstanding this problem, the bilateral character of border violence and impunity is indisputable. It affects people on both sides of the border and contributes to the establishment of an atmosphere of generalized social intolerance.

Paradoxically, though as one may expect from a context characterized by asymmetrical economics and cultural diversity, the same interpretations which are formulated to denounce this problem—usually of a biased and reactionary nature—are rarely conducive to illuminating the issues and instead tend to aggravate the climate of incomprehension, intolerance, and tension among the border populations.

In my experience as a psychologist, I have observed in the behavior of family and conjugal groups in conflict situations that efforts at solutions put into practice by one party tend to generate more rigidity and resistance to change in the other(s), and that resolutions require the broad and comprehensive elaboration of structural interpretations which include and synthesize divergent viewpoints into a common interpretation. The understanding of the border context necessary to finding solutions requires a thorough analysis of each sides’ motivations and expectations and an elaboration of proposals for change to include the participation of all the social groups and organizations.

Below, I have tried to succinctly describe the experience developed over three years of working for Operativo BETA, a model of border security designed to eradicate the crime and abuse against the migratory population which concentrates on the border between Tijuana and San Diego.

El Operativo BETA: A Model of Trans-border Communication and Cooperation

In August 1990, the three levels of the Mexican government agreed to implement a joint effort for material security on the border to protect the integrity of the migratory population and eliminate crime and police abuse in the area. To that end, the operation establishes a permanent system of
commination and cooperation among the police and governmental as well as non-governmental agencies operating in the region.

The fundamental aims which the establishment of this network of intercommunication seeks to achieve are the following:

1. The establishment of a central data bank which will allow the systematic registration and cross-indexing of the complaints filed by undocumented migrants at various investigative organizations and service groups.

2. The establishment of a formal system for the exchange of information among police agencies in the area via the use of a common radio frequency which would tie together the members of the group with their colleagues on either side of the border. This system would allow immediate communication about incidents on either side of the border enabling quick responses to both aid the victims, and take testimony and evidence to allow for the identification and arrest of those responsible.

3. The development of diverse procedures for informal communication at the middle levels of agencies in Tijuana and San Diego, including periodic meetings, training exercises, and the interchange of intelligence which can contribute to achieving the common goal. I should clarify at this point that such interchanges are often realized when there exists a framework of cooperation and respect for the institutional norms which guide the function of each of these agencies.

4. The development of informal networks of communication and agreements with academic and assistance groups in order to facilitate their goals of investigating and bringing aid to the migratory population. Such a system of communication would restore hope in the efforts of our police organization to sensitize and raise the consciousness of its members.

Conclusions

Although it is more acute, and exacerbated by the crossing, anti-migrant violence is not limited to the border region. In fact, the very characterization of the problem as "border violence" is inadequate and imprecise, and contributes to the false image of border violence as a strictly localized phenomenon linked to bilateral politics and diplomacy. This interpretation wrongly marginalizes such contributing factors as the lack of professionalism among the police agencies of both nations. Recognition of the multifaceted nature of the problem requires the active participation of various organizations in order to implement policies of a different order and magnitude. First, the United States should strive for greater flexibility, and recognition of the benefits of undocumented migration to the U.S. economy as well as a reformulation of discourse which is currently anti-migrant, and anti-Mexican. Second, there should also be a higher standard of professionalism among the police agencies on both sides of the border which would contribute to guaranteeing public safety at the border, and to the establish-
ment of standards of treatment which respect the human rights of the mi-
grant population, and which would provide judicial sanction for violations
of such guarantees. Third, we must expand networks of communication
between governmental and non-governmental organizations of both nations
in order to spread the culture of human rights to neighboring nations and
counteract the unilateral spread of intolerance which obscures trans-border
dialogue and cooperation.

Finally, we must work to raise the consciousness of migrant workers
with respect to the importance of filing complaints, testifying and present-
ing evidence. Such consciousness raising, which should be encouraged at
point of origin as well as in transit, could contribute to the greater dignity of
the undocumented worker, whose ambulatory conditions should not deprive
him of fundamental guarantees of human rights.

The results obtained since the implementation of Operativo BETA in-
dicate a dramatic reduction in the number of violent incidents against the
migratory population, particularly on the Mexican side. Data drawn from
the police agencies, academic institutions, and social assistance groups
clearly confirms these findings and, in doing so, confirms the viability and
efficacy of Operativo BETA as a model of border protection and security
based on a system of transborder communication and cooperation.
Hacia una Conceptualización de la Violencia Fronteriza*

Javier Valenzuela Malagón†

Durante los últimos tres años me he familiarizado con los crímenes y los abusos ocurridos cotidianamente en la línea de cruce fronterizo entre Tijuana y San Diego. De la misma manera me he familiarizado con el análisis del discurso que se construye de ambos lados de la frontera alrededor de esos conflictos e incidentes. Dada la naturaleza de mi trabajo que me exige dirigir un cuerpo policial especial encargado precisamente de combatir la violencia criminal y policial en esta frontera, mi actividad ha estado dirigida mayormente a la búsqueda de soluciones prácticas que al análisis de soluciones teóricas. Sin embargo en esta ocasión me anima el propósito de contribuir al desarrollo de una mayor comprensión de la naturaleza de estos conflictos, con algunos datos y reflexiones derivadas de la experiencia recabada, como psicólogo y director de Operativo BETA, los últimos tres años.

Violencia y Migración

En la mayoría de los casos la migración misma es un hecho de violencia, violencia económica que desintegra y desampara: fuerza que expulsa al individuo de su núcleo social inmediato y lo arroja a los laberintos de la supervivencia, la incertidumbre, y la precariedad. Desde el inicio del parto migratorio el migrante reconoce esa fuerza superlativa que se le impone y domina sus pasos inseguros a lo largo de la travesía migratoria. Durante este trayecto el migrante, desprovisto de redes de sustento y protección social, se vuelve una víctima potencial de todo género de abusos y arbitrariedades de quienes le reconocen débil e indefenso. Como elemento central y común denominador de la violencia fronteriza, aparece la figura del migrante indocumentado, cuyo tránsito clandestino lo coloca en el centro de aquel conjunto de agresiones ejercidas principalmente por malvivientes y autoridades de ambos lados de la frontera.

En primer término, el ciclo de violencia para el migrante comienza dentro de la frontera mexicana. El migrante suele enfrentar con mayor brutalidad la violencia en el abuso y la extorsión dirigida constantemente hacia los migrantes por parte de elementos policiales o pseudo-policiales,

* Copyright © 1994 La Raza Law Journal, Inc.
† Departamento de Protección, Operativo Especial BETA, Tijuana, Baja California, México.
que ven en este grupo ambulatorio una población fácil de maltratar o de extorsionar con mínimo riesgo de enfrentar una denuncia policial. Nuestro banco de datos revela que un 10% aproximadamente de las denuncias recabadas se refieren a los actos de extorsión y abuso de autoridad perpetrados por agentes o pseudo-agentes de corporaciones mexicanas, en los principales puntos de concentración de los grupos de migrantes, tales como la central camionera, la llamada "Zona Norte" y algunos puntos adyacentes a la línea internacional.

En segundo término, y como es perfectamente conocido, los niveles de riesgo se acentúan al llegar a la línea de cruce clandestino, donde los grupos de migrantes quedan a la mercad de viciosos o pandilleros que se aprovechan de la oscuridad y la impunidad que les brinda la "tierra de nadie" para asaltar y lesionar a esta población indefensa. Entre estos asaltantes, el grupo más importante numéricamente incluye a los propios "polleros" contratados para el cruce ilegal. Hemos encontrado algunos casos por ejemplo donde el "pollero" o el "coyote" se aprovechan de la oscuridad de la noche para apartar a una mujer o apartar a una niña y abusarla físicamente, o secuestrarlas para exigir una cierta cantidad de dinero por regresarlas a sus familiares, o cobrarles adelantadamente y dejarlas en un lugar antes del cruce dentro del territorio mexicano.

Sin embargo no podemos decir que todos los traficantes de indocumentados actúan en la misma manera, pero sí hay muchos de ellos que lo hacen. De acuerdo a nuestras estadísticas de los últimos tres años, el 70% de las denuncias reportadas por los migrantes se refieren a ese tipo de agresor, generalmente de nacionalidad mexicana que ha hecho del robo y del asalto una fuente de vida a costa de los migrantes indocumentados. Ocultos entre las veredas y los cañones adyacentes a la línea internacional, los asaltantes aguardan la cercanía de grupos migrantes a los que amagan y someten con violencia, despojándolos de sus pertenencias y lesionándolos en los casos que oponen alguna resistencia.

En este mismo escenario, que es el de mayor peligrosidad para los migrantes, se ven enfrentados a los agentes de la patrulla fronteriza quienes en cumplimiento de su función persecutoria frecuentemente expresan en insultos y golpes la intolerancia y la frustración que caracterizan a muchos elementos de esa corporación. Nuestras estadísticas indican que las denuncias imputadas a los agentes de la Border Patrol ascienden a un 20% aproximadamente del total registrado en los últimos tres años. La mayoría de estos reportes hacen referencia al uso excesivo de la fuerza de esos agentes durante la realización de sus arrestos. Al igual que en el caso anterior, la inmensa mayoría de esos hechos ocurren en el interior del territorio norteamericano y en condiciones tales que se dificulta la captación de los reportes y la identificación y castigo de los responsables.
Por si fuera poco la estela de abusos de explotación y de maltratos no termina al llegar a la “tierra prometida,” sino que se prolonga al enfrentar condiciones de trabajo de alta explotación y condiciones de vida de gran precariedad, propias de su condición de ilegalidad. Un ejemplo por demás ilustrativo lo constituye el caso de los 300 trabajadores contratados en el Rancho Somis, condado de Ventura, en el que se encontraban sometidos a condiciones de esclavitud y explotación propias de la época feudal.

Recapitulando, podríamos decir en cierta forma que el primer agente agresor del migrante es el régimen mismo de las relaciones económico-políticas bilaterales que lo expulsa de un lado, lo atrae del otro, y lo sanciona y lo criminaliza por su sola condición migratoria. Al criminalizar al migrante y colocarle el letrero de “illegal alien” la ideología política imperante que lo cataloga de enemigo público y lo condena a situaciones de clandestinidad que orillan automáticamente hacia situaciones de riesgo y de inseguridad.

Como puede verse a partir de estos datos, la violencia fronteriza responde a factores diversos que van desde los de tipo estrictamente delincuencial, hasta los de carácter institucional como lo son el abuso policial y la extorsión o las agresiones de carácter racista. Cada uno de estos factores tiene una naturaleza propia y responde a móviles específicos, que deben ser interpretados y abordados en forma diferenciada para su correcta comprensión y posible resolución. Es importante recalcar que son múltiples los factores y los agentes sociales que participan en estos fenómenos delictivos y de violencia, por lo que cualquier generalización que se haga en torno al concepto de la llamada “violencia fronteriza” puede ser arriesgada y aún perjudicial al intento de comprensión objetiva de estos sucesos. No obstante esta problemática, lo que resulta indiscutible es el carácter bilateral que representa, en su conjunto, el fenómeno de la criminalidad y de la impunidad fronteriza, que impactan a las poblaciones de ambos lados de la frontera y que contribuyen a establecer una atmósfera de tensión y de intolerancia social generalizada.

Paradójicamente y como es natural en un contexto caracterizado por la asimetría económica y la diversidad cultural, las mismas interpretaciones que se formulan con el propósito de denunciar este problema, generalmente en forma contestataria y parcial, raras veces conducen a dilucidarlo y antes, más bien, conllevan a acrecentar el clima de incomprendición, intolerancia y tensión entre los habitantes de las poblaciones fronterizas.

En mi experiencia como psicólogo, he observado en el comportamiento de los grupos conyugales o familiares en situaciones de conflicto, que cada intento de solución puesto en práctica por una de las partes genera una mayor rigidez y resistencia al cambio en su contraparte y que la resolución requiere la elaboración de interpretaciones estructurales, amplias y comprensivas, que incluyan y sinteticen puntos de vista divergentes en
una interpretación común. Al igual que en esos casos, la comprensión del contexto fronterizo para la solución de sus problemas, requiere analizar detenidamente las motivaciones y expectativas propias de cada parte y la elaboración de propuestas de cambio de carácter global, en las que se incluye la participación responsable de todos los organismos sociales y grupos de poder involucrados.

A continuación describiré en forma sucinta la experiencia desarrollada a lo largo de los últimos tres años por el Operativo BETA, modelo de seguridad fronteriza diseñado para erradicar la criminalidad y el abuso existente contra la población migrante que se concentra en la frontera de Tijuana con San Diego.

**El Operativo BETA: Un Modelo de Comunicación y Cooperación Transfronteriza**

En agosto de 1990, los tres niveles del gobierno mexicano en la entidad acuerdan implementar un esfuerzo conjunto en materia de seguridad pública fronteriza, que proteja la integridad de la población migrante y elimine la delincuencia y el abuso policial en el área. Para ese fin, el operativo establece un sistema de comunicación y cooperación permanente con todas las corporaciones policíacas y los organismos gubernamentales y no gubernamentales de ambos lados de la frontera.

Los propósitos fundamentales que se persiguen mediante el establecimiento de esta red de intercomunicación son los siguientes:

1. El establecimiento de un banco de datos que permita registrar en forma sistemática las denuncias aportadas por los migrantes indocumentados a través de distintas organizaciones de investigación y de servicio existentes en la ciudad. Esta medida permite valorar las tendencias de la criminalidad y el abuso a lo largo del tiempo, identificando con cierta precisión el tipo de delitos que se cometen, los sitios en que ocurren y el perfil predominante de los agresores. La utilidad de este banco radica en que permite desplazar en forma racional los recursos de seguridad disponibles, a la vez que contribuye a esclarecer la naturaleza de estos problemas y estimar sus tendencias.

2. El establecimiento de un sistema formal de intercambio de información entre todas las agencias policíacas del área, mediante el uso de una frecuencia común de radio-transmisión, que enlaza a los miembros del operativo con sus colegas de ambos lados de la frontera. Este sistema contribuye al intercambio inmediato de información sobre ilícitos ocurridos en ambos lados de la línea internacional, así como la asistencia inmediata de las víctimas y la acumulación de testimonios de pruebas que posibiliten la identificación y el arresto de los responsables.
3. El desarrollo de una diversidad de procedimientos de comunicación informal entre los mandos medios de todas las corporaciones de Tijuana y San Diego, que incluyen la realización de reuniones periódicas y la realización de ejercicios de entrenamiento y el intercambio de información de inteligencia policiaca que contribuya al cabal cumplimiento del propósito común. Cabe aclarar en este punto que tales intercambios se realizan invariablemente en un marco de cooperación y de respeto hacia las normas institucionales que rigen el funcionamiento de cada una de estas corporaciones.

4. El establecimiento de redes de comunicación informal y de convenios de cooperación con organismos académicos y asistenciales, con el propósito de contribuir a las tareas de investigación y de servicio asistencial ofrecidas a la población migrante por esas instituciones. El funcionamiento de este sistema de comunicación permite a su vez retroalimentar en forma permanente la actuación de nuestro operativo policiaco, contribuyendo a sensibilizar y concientizar a sus integrantes para una mayor superación profesional.

Conclusiones

La violencia antimigratoria no es exclusiva de la región fronteriza, si bien se agudiza en esa zona, exacerándose en las zonas de cruce indocumentado, por lo que la misma noción de "violencia fronteriza" resulta imprecisa e inadecuada y contribuye a desdibujar la naturaleza multifactorial de ese fenómeno, dando la impresión de que se trata de un conflicto estrictamente diplomático o de política bilateral y haciendo de lado los factores asociados a la actividad criminal y la falta de profesionalización de las agencias policíacas de ambos países.

Reconocida la naturaleza multifactorial de este problema, se requiere la participación activa de las diversas organizaciones involucradas, a fin de implementar acciones de diferente orden y nivel. En primer término, la política norteamericana debe pugnar por una mayor flexibilidad, que reconozca los beneficios de la migración indocumentada para la economía de los Estados Unidos y reformule el discurso antimigratorio y antimexicano. También debe haber una mayor profesionalización de las corporaciones policíacas de ambos lados de la frontera, que contribuya a garantizar la seguridad pública en el área fronteriza y proporcione un trato respetuoso y apegado a los derechos humanos de la población migrante, sancionando jurídicamente las violaciones a esas garantías. En tercer término, se deben ampliar las redes de comunicación entre los organismos gubernamentales y no gubernamentales de ambas naciones, con el propósito de extender la cultura de los derechos humanos hacia las sociedades vecinas y contrarrestar las interpretaciones intolerantes y unilaterales que obstaculizan el diá-
logo y la cooperación transfronteriza. Finalmente se debe contribuir a la concientización de los trabajadores migratorios, respecto a la importancia de su participación decidida en la presentación de denuncias y señalamientos que posibiliten el acopio de pruebas testimoniales para hacer efectiva la acción de la justicia. Tal concientización, que habría de promoverse tanto en los lugares de origen como en los de tránsito y destino, apuntaría a una mayor dignificación del trabajador migrante, cuya condición ambulatoria e indocumentada no lo priva de sus garantías y derechos humanos más elementales.

Los resultados obtenidos a partir de la implementación del Operativo BETA denotan una disminución dramática y significativa de los hechos de violencia ocurridos en perjuicio de la población migrante indocumentada, particularmente en el lado mexicano de la frontera. Las cifras de las corporaciones policíacas, las instituciones académicas y los organismos de protección y asistencia social confirman plenamente estos resultados y, con ello, la viabilidad del Operativo BETA como modelo de seguridad y protección fronteriza, basado en un sistema de comunicación y cooperación transfronteriza.
Let me begin by making a brief comparison between my current work in border violence litigation and my previous work in the agricultural labor movement. I was involved with the United Farm Workers for six years fighting the interests of the agricultural industry. I say fighting their interests because they were fighting the interests of the farmworkers. This was a time of very serious strikes and litigation in California and it ultimately resulted in the enactment of the Agricultural Labor Relations Act. I mention this because during that time we were battling what is certainly one of the most important industries in the state. Yet, the experiences I have had representing the interests of migrants who have been shot, who have been beaten, and who have been sexually assaulted by U.S. Border Patrol agents, have been much more demanding.

I want to talk about a few cases and a few experiences that I have had representing victims of Border Patrol abuse and misconduct in order to give you an idea of why we need an independent commission to investigate these abuses.

I was first involved in 1985 when Humberto Carillo, who was then twelve years old, was shot by a Border Patrolman on the other side of the border. Humberto was a frail boy. He weighed no more than 98 pounds. Humberto had been trying to stop a Border Patrolman, who was on the north side of the border fence, from beating his fourteen year old brother. His brother's only crime had been to cross the border to buy a hamburger at the Jack-in-the-Box. In desperation, Humberto first pleaded with the agents to stop beating his brother. When that was to no avail, he attempted to pry a rock loose from the road. As he was doing so, Ned Cole, a thirty-six year old seasoned veteran of the Border Patrol, shot him in the back with a .357 magnum bullet.

During the litigation of the case, we were obviously interested in any statements that had been made by this agent, and we had requested such statements through formal discovery. We had already investigated and discovered that Mr. Cole had a history of violence. On Good Friday, 1987, after discovery had already closed and we were preparing for trial, I received an anonymous call from La Guardia Airport in New York. The caller would not reveal his identity, but he told me that there was a sworn statement that I had not been given. This statement was a tape recorded statement that had been made by Agent Cole within two months of the
shooting. We had never been provided with this information in the entire discovery process.

This was obviously very disturbing so I immediately called the U.S. Attorney handling the case and pointed this out to him. There was silence for approximately fifteen seconds, and then he said, "Oh shit," and that was all. We moved to compel the statement, and it turned out to be directly contradictory to the theory taken by the defense and to Mr. Cole's deposition testimony during the litigation and during the discovery process. I had the opportunity to depose Mr. Cole who had then been transferred to the Canadian border. We found out that he had committed other atrocities there. It was not surprising. When you first take on these cases you really do not know the nature of the beast. We know that at times the patrolmen are acting under intense pressure and under very stressful circumstances, but this was not the case here. Mr. Cole had been in Vietnam.

Interestingly enough, after we obtained the first judgment in history against the U.S. Border Patrol for these types of abuses, I was contacted by an FBI agent. I was hopeful that perhaps through a good result in our civil case we might also have a criminal prosecution. Instead, the FBI was more interested in obtaining additional information on what they suspected was a federal agent providing me with what they considered confidential information.

What we had in the Carillo case is federal agents investigating federal agents. Sadly, we have a lot of one hand washing the other and the process fails. It failed miserably.

I had another interesting case in January 1989. This involved the killing of two Mexican "coyotes." One of the men, Mr. López, was shot in the back of the head with a shotgun. His partner was shot in the back with a revolver. I obtained this case within two weeks of its occurrence. We immediately began to investigate and we were able to locate witnesses who indicated that they saw both men apprehended by the Border Patrol. They were cuffed by the Patrolmen and, when they attempted to flee to Mexico, they were shot.

We located these witnesses and despite my experience with the FBI in the Carillo case, I agreed to help the FBI with their investigation in this case in the hopes that this time things would work out differently. My investigator and I were able to schedule a day and time with the FBI agents when we would meet the witnesses and go to the sight of the killing which was in an area near the San Ysidro port of entry. However, when my investigator and I met with the FBI agents, we were informed that within one and a half hours prior to our scheduled appointment with the witnesses there had been

---

1. "Coyote" is a term used to refer to those (mostly Mexican nationals) who assist undocumented people in crossing the border to the United States.
a joint raid at the area. More than 300 people had been apprehended, including our witnesses. This joint raid was conducted by the U.S. Border Patrol and the state police of Baja California. We know that the majority of the people were apprehended by the U.S. Border Patrol, but we also know that there was a good group of about 50 to 75 people who were apprehended in Mexico. They were not taken to jails in Tijuana, but to a private compound out in the area of Las Playas where they were told not to cooperate in any investigation. This is another example of collusion and of one hand washing the other. I, of course, protested to the FBI, who claimed that they did not have anything to do with the scheduled raid. Nevertheless, I asked them to investigate this blatant conspiracy to violate the civil rights of these people.

Another example of the system failing is the case of Eduardo Garcia, a fifteen year old boy very similar to Humberto Carillo. Eduardo was in the process of trying to prevent one of his friends from receiving a severe beating at the hands of a Border Patrolman when he was shot. Now, it is important to know what transpired an hour before. That same evening a congressional committee had visited this area, known as “El Bordo,” to see the border situation firsthand. After the committee had left, one of the reporters with the L.A. Times hung around the border, talking to people and other reporters in the area. Unaware of the presence of the reporters, the supervisor of the Border Patrol got a loud speaker and started yelling obscenities at the Mexicans on the other side of the border. It was one hour later, in this heated environment, that Eduardo crossed the border to protect his friend and was shot in the abdomen.

One of the methods that is used to get rid of victims and witnesses is to send them back to Mexico. This is exactly what happened in this case. Despite the fact that he was very ill and in the hospital at UCSD in San Diego he was chained to his bed for two days until a Juvenile Court judge ordered that he be unshackled. We were assured by the hospital in good faith that Eduardo would not be released for at least two weeks. However, four days later while I was involved in a trial in Los Angeles, I found out that he had been picked up and sent back to the border by persons unknown. Despite numerous efforts to locate him, we were never successful. This happens often, either with material witnesses or with victims themselves.

There is the case of Eduardo Zamores, another young boy who was shot as he was perched on the international fence. He was felled on the Mexican side. In that case, as is customary, we were never provided with the name of the Border Patrol agent involved. I publicly requested that the Border Patrol agent be extradited to Mexico for prosecution. The Mexican Congress passed such a resolution, but when the Secretary of State in Mexico was preparing the petition and they asked us for the name of the agent, we could not provide it. These kinds of practices have an adverse effect on
the Border Patrol. During the investigation of the case, at least five names of Border Patrol agents surfaced as suspects. As a good, decent Border Patrolman, I can certainly see how the failure to release the correct name could be very disconcerting to say the least.

Finally, there is the case of Ms. Silva, a young woman of twenty-six years who was sexually assaulted by a Border Patrolman in the north county of San Diego. We filed a suit in that case in federal court and through our investigation we were able to determine that the patrolman had been seen in the vicinity of Encinitas. He had been suspected of involvement in other conflicts. After we had filed the suit, we attended a mandatory settlement conference. We were scheduled to be given the name of the agent two weeks after the date of the mandatory settlement conference through the formal discovery process. However, because we were able to settle, we never received the name of the agent. The agent, whose name we do not know, may still be on the force, nameless to the public and thereby shielded.

These are the basic types of problems that litigants at the border encounter. Such problems are to be expected when you rely on a system which allows only federal agents to investigate federal agents, with a federal judge ultimately passing judgment. Without the establishment of an independent oversight commission such as that to be discussed by Stephen Rosenbaum, this type of official misconduct will surely continue.
The cultural and anthropological information provided by Victor Clark-Alfaro¹ and Javier Valenzuela-Malagón,² as well as the remarks of Marco López³ regarding the different cases and the practical difficulties of using the civil litigation process, are all very useful in framing the context for my discussion. I will focus specifically on violence committed by Border Patrol or other agents of the Immigration and Naturalization Service (INS). Incidentally, the Border Patrol is a sub-unit of the INS, which in turn is a division of the United States Department of Justice. I will not address the very real issue of violence on the other side of the border, nor crimes committed by unorganized, non-police forces.

I will talk specifically about what I refer to as "civilian review of uncivil behavior." I think this country is coming very close to setting up the independent review board that Marco López alluded to. I want to give credit at the outset for this concept to the American Friends Service Committee (AFSC), to María Jiménez, one of the panelists speaking on a different topic today, and to the keynote speaker, Roberto Martínez, all of whom have really been at the forefront of this struggle. While I believe we are close to seeing the creation of such a board, this is only the beginning of our work. My remarks today will address some of the components necessary to such a board.

Three years ago, just days after his police department had investigated the shooting of two undocumented immigrants by a Border Patrol agent, a Chula Vista, California police officer told a newspaper reporter "[h]e's in uniform, he's performing his job, and he got into a situation where he thought it was necessary to fire his gun. I don't see any criminal component here. There may be some procedural problems."⁴ "Procedural problems," as lawyers know, is a misnomer, and it is clearly an understated description of what is wrong with the process used to both investigate allegations of misconduct by agents and to see that the agents are properly sanctioned. According to the AFSC, which incidentally has a very sophisticated data bank, and Javier Valenzuela-Malagón, who spoke today about

---

¹ See Comments by Victor Clark-Alfaro, supra p. 90 this issue.
² See Comments by Abel Valenzuela-Malagón, supra p. 92 this issue.
³ See Comments by Marco López, supra p. 103 this issue.

---

* Copyright © 1994 by La Raza Law Journal, Inc.
† Attorney at Law and Director, California Rural Legal Assistance (CRLA) Foundation Immigration Project; Lecturer, University of California, Berkeley School of Law (Boalt Hall). For an amplification of these spoken comments, see Rosenbaum, Keeping an Eye on the INS: A Case for Civilian Review of Uncivil Conduct, supra p. 1 this issue.
the importance of developing these data banks on both sides of the border, there were 116 administrative complaints of misconduct logged with the INS or other officials in the Department of Justice in 1989-90. During the same period, 20 reports were made to Congress and 27 lawsuits were filed in federal court, several of them involving border offenses. The allegations ranged from a beating in Florida to a shooting in Arizona to a hit-and-run in California. The complaints included deaths, charges of sexual abuse, illegal searches and seizures, and verbal and psychological abuse. For each incident, AFSC reports no action taken or, for a very small number, action unknown. Therein lies the problem.

A decade has passed since the United States Commission on Civil Rights identified serious problems in the INS internal complaint review procedure. Just over two years ago, the INS Commissioner himself acknowledged what he called “the escalating violence on the border” and vowed that his agency would “begin immediately to determine what steps the INS could take to eliminate or dramatically reduce these incidents.” That Commissioner is no longer in office, and the new Commissioner will have the opportunity to take that vow very seriously.

Since that time, three respected human rights organizations have published reports documenting INS misconduct along the border. The AFSC’s Immigrant Law Enforcement Monitoring Project and Americas Watch, a division of the renowned Human Rights Watch, issued reports just last year which chronicle pervasive INS misconduct in California, Arizona, New Mexico and Texas accompanying the arrest and detention of undocumented migrants. Additionally, Americas Watch reported on the problems with the current internal review process for misconduct. In an earlier report, Mexico’s own National Commission for Human Rights also documented cases of mistreatment and abuse by various U.S. law enforcement officers, mainly the INS, but also Customs agents.

In 1991, the Justice Department’s Office of the Inspector General, which oversees the INS internal review process, concluded that “there are no INS policies or procedures accurately reflecting recent statutory changes affecting the use of firearms.” Mr. Martínez referred to the fact that some of the firearms that are currently being used, and some of the explosives, increasingly of a military nature, have been considered to be illegal for some time.

We also have a recent example which graphically brings home the violence at the border: “vehicular pursuits.” Congress has urged the INS to

---

6. At the time of this symposium, the vacancy in this post had not been filled. President Clinton has since appointed Doris Meissner as INS Commissioner.
7. See the Keynote Address by Roberto Martínez, supra p. 84 this issue.
reverse its policies to avoid high speed chases like the one that killed six people in Temecula, California in June of 1992. The six were white high school students in a very conservative community. You can imagine the reaction there by the mayor, city council and others. It brought to their attention a problem that a number of the Mexican migrants had been dealing with for some time. Clearly, this incident added new urgency to the public debate. In October of last year, a conference report ironing out the differences between the House and Senate on an appropriations bill was about to require changes in the Border Patrol policies on vehicular pursuits. However, these were deleted with the expectation that the INS would voluntarily reverse its policies.

Other problems include physical abuse to obtain information or confessions, threats and psychological and verbal abuse. Again, I won’t recount all the details here, you can read them in very well documented reports.

Marco López talked about the practical difficulties of litigation. There are some problems in terms of the case law as well. In a 1984 decision by the U.S. Supreme Court, *INS v. Lopez-Mendoza,* the Court indicated its belief that INS agents receive sufficient training to permit them to perform their duties without violating the constitutional prohibitions against unreasonable search and seizure. But even that minimal protection may not be guaranteed for migrants who lack sufficient connections with a particular location to be considered part of the community worthy of protection. That is the test of a more recent Supreme Court case, *United States v. Verdugo-Urquidez.* In light of these decisions, non-citizens in the border region can very easily find themselves beyond the scope of the Fourth Amendment.

As for filing civil suits for damages or equitable relief to deter these unreasonable searches and seizures and other kinds of behavior, the results are mixed. One of the practical difficulties that Marco López alluded to is that many would-be plaintiffs are expelled from the United States following an incident with the INS agents. In one notorious case occurring four years ago, Roberto Martínez told a congressional subcommittee of a fifteen-year-old boy who was shot by a Border Patrol agent in the stomach and, after a six day hospital stay, was released and sent back to Mexico in a taxi with five dollars and a bottle of aspirin. Even in those instances where the victim has the opportunity to file an administrative complaint, deportation could follow, possibly based on the information supplied in the complaint. The only exception is where the immigrant requests, and is granted, a stay of deportation—a remedy which is discretionary.

---

There are other problems involved with bringing suits under Sections 1981 and 1983 of Title 42, the federal Civil Rights Statutes enacted after the Civil War, which have proven so successful in litigation of domestic race and ethnic-based discrimination. There are the so-called Bivens suits, named for a Supreme Court case, Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, that offer some hope. Bivens stands for the proposition that the lack of statutory authority does not prevent courts from acting in equity to grant a remedy, such as monetary damages, when harm of constitutional proportions has been done by a federal officer. Still, this is left to judicial discretion, and it is difficult to obtain.

Criminal prosecutions have been few and far between. Marco López spoke of the failure of the FBI to initiate investigations and criminal prosecution, and last night Roberto Martínez spoke about his very recent disappointment in the case of Dario Miranda-Valenzuela, where a Border Patrol officer was acquitted of murder. This case, United States v. Elmer, represented the first time that such a charge had been brought against an immigration agent. The officer was acquitted of all charges last December, which, of course, leaves us with very little hope in that process.

There is also the possibility of grand juries. I am hopeful that new Attorney General Janet Reno, having asked for the resignation of all U.S. Attorneys throughout the country, may find among her new core of federal prosecutors individuals who will in fact bring forth some grand jury indictments.

Other forums have been tried. For example, a petition was filed last year with the Organization of American States' Inter-American Commission on Human Rights. The complaint, brought by AFSC, and the League of United Latin American Citizens (LULAC), as well as the victims themselves and their survivors, decries the INS’ use of force and the perfunctory investigations and minor punishments of immigration officials that follow public charges or formal complaints filed in the present process. In particular, the petition alleges twenty instances of gross human rights violations, deadly force involving the use of firearms, and other kinds of abuses. The complaint alleges that the domestic procedures are inadequate for redressing these grievances and asks for an outside investigation by the human rights commission. The international human rights aspect, what Boalt Hall Professor Emeritus Frank Newman has called “the mobilization of shame,” is a very useful and important technique for trying to bring about change. It is also, however, a very long process.

Let me talk now about changes in the internal complaint process. In October of last year, the INS proposed regulations establishing standards

for the use of force, including deadly force, and expediting the internal review process for the violation of these standards. This review process is shrouded in secrecy. There is no publication of the results, the complainant hears nothing about the progress of the complaint, and the complainant is rarely informed of the results. The investigators themselves are current or former INS officers.

But even the modest step of creating an expedited internal due process came about only because of Congress' explicit mandate in the Immigration Act of 1990 and because of the success of a number of civil rights organizations, such as the National Lawyers Guild, the Mexican American Legal Defense and Educational Fund, the American Civil Liberties Union and others. The present rules, however, were not promulgated until two years after the passage of the Act, and are still not final today. They fall far short of the needed overhaul; they simply summarize what is publicly known of the crime, Justice Department policy, and procedures for investigating complaints.

Americas Watch and the AFSC, among a number of others, have recommended the creation of an independent review board. Hopefully, in the next several weeks we will see a bill introduced in Congress creating an immigration enforcement review commission to investigate complaints of abuse against the INS and the Customs Service. Current drafts of the bill include provisions for independent civilian oversight. The number of commissioners on the bipartisan review board would be seven, appointed by the President, and subject to Senate confirmation. They would have the power to make recommendations for discipline and general policy.

Civilian oversight is important to public perception of fairness of the review process. Those of us in law talk as much about the perception of fairness as we talk about its reality. A civilian review board will increase public confidence, will notify the complainants of a complaint's progress and final resolution, and hopefully will bring about a just resolution.

Civilian oversight is also consistent with the notion of checks and balances. When a paramilitary force is ultimately responsible only to itself, there is a well-founded concern that it will not work to curb its excesses.

I would like to highlight some of the preliminary comments submitted to the INS in 1991 by an ad hoc working group on which I served, a group convened by the AFSC and the National Lawyers Guild. Many of these concepts are borrowed from notions of due process. Aspects of this process are currently utilized throughout the country, although on a sub-national level, in local law enforcement agencies, particularly local police depart-

12. Since the time of the symposium, the bill here referred to has been introduced as H.R. 2119, 103d Congress, First Session. For a fuller explanation of this bill, see Rosenbaum, Keeping an Eye on the INS: A Case for Civilian Review of Uncivil Conduct, supra p. 16-31 this issue.
ments. I would like to emphasize here those components that are peculiar to the immigration context.

Special attention must be paid to victims, the nature of the complaints, and the size and scope of the agency itself. I think some of the impetus here for actually establishing a commission can be attributed to the Rodney King beating. As tragic as that event was, it has brought back to the public consciousness and heightened the importance of looking at police abuse. We must keep in mind that the INS and Border Patrol are the equivalent of a federal police force.

The first and most important aspect of this or any procedure is that the public must know of its right to complain. It is conventional wisdom among advocates that people will not file complaints when there is no publicity about the procedure. Here, the hurdles are tremendous: cultural, linguistic, educational, and so forth. A minimal outreach plan must include development and dissemination of materials in multiple languages, toll-free telephone lines with multilingual personnel and a complaint form which is adaptable. Complaints must be able to be made in person, by mail, by phone, by fax; anything to make the process more accessible. I am pleased that the current draft of the bill talks about a community outreach office, but the implementation of this is very important. Much lip service is paid the notion of outreach; actually doing it is something far different.

For all these strategies, we can look for guidance to the lessons of the amnesty application process under the Immigration Reform and Control Act of 1986, where a very sophisticated procedure was set up using community-based service organizations to act as intermediaries between the INS and the beneficiaries of amnesty. Many were skeptical or critical of the approach that the INS used. However, others have concluded that it worked well. Professor Bill Ong Hing wrote recently about the importance and success of these community-based organizations. He states that about 2000 religious and social groups signed up to help process individuals for applications. This can be a very important intermediary to help do the necessary outreach and to assist individuals in filing complaints.

A second, necessary feature is confidentiality. Given the interest of the Service in discovering employees who violate standards of enforcement and the interest in publicly protecting itself from such violations, provisions need to be made to allow the confidentiality of complainants and witnesses alike and to protect them from retaliation. Aside from the fear of deportation, some of the complainants may be reluctant to deal with the American legal system. This reluctance may arise from negative and harmful experiences in their own countries, notably Mexico and some Central American countries, and from their shared ignorance of the process here. Again, there is precedent for this in the 1986 immigration act, which prohibited INS officials from releasing information obtained in the legalization application
process. Congress knew that the fear of prosecution or deportation would make many undocumented aliens reluctant to come forward. Again, we must keep that principle in mind and must assure confidentiality.

This does not necessarily mean that review boards should accept anonymous complaints. Review bodies and police departments across the country find these inherently unreliable, and indeed it goes against the tenets of our own judicial system to move forward without allowing the accused to face the accuser. We want to know who the complainant is, as well as the nature of the complaint. However, there are exceptions.

We can look for models elsewhere. For instance, our northern neighbor, Canada, when it had its own immigration amnesty in the 1970's, allowed for third parties to come forward and initiate an application for amnesty and legalization, later to be followed up by the individual. Moreover, we can employ the concept of broad and liberal standing, including third party standing; concepts not inconsistent with state law in California or International Law. In the international community, the individual petition procedures for such forums as the Inter-American Commission, the U.N. Commission on Human Rights, and UNESCO's Executive Committee all allow for very broad standing for individuals with knowledge of wrongdoing who are not necessarily the individual victim. Therefore, a process should be implemented whereby third parties, may come forward on behalf of the actual victims of the particular unfair practices.

Another aspect to consider is the review commission's scope of authority. Every legislature which has created one of these civilian review bodies pays close attention to the role of such a commission. Is it an advisory body to the mayor or city council? Is it an appellate body looking at the record of a violation of an investigatory procedure? Or is it simply implementing a decision already made by some administrative law judge? Will the review body be able to supplement the investigatory efforts already made?

Another issue involved in INS oversight is the sheer size of the staff and the geographic base. We are looking at the whole country and a very large staff, a very large police force. A couple of years ago, AFSC's Maria Jiménez told Congress that the civilian oversight program should be implemented at the local regional level as well as the national level. Certainly, localized administration would make the task more manageable and allow for true public participation in the process. On the other hand, a national commission might be able to set up a regional structure, regional office, much like our own Equal Employment Opportunity Commission, to do the investigation or conduct on-site hearings, while maintaining uniformity in decision making. Of course, the question of determining centralized structure is not the same as determining localized control.
City councils in some border cities have attempted to set up municipal advisory commissions to improve the relations between the Border Patrol and local communities. Roberto Martínez alluded to the El Paso experience. The El Paso local accountability commission created last year was authorized to conduct hearings and investigations, but lacks subpoena powers. Its mandate is to examine and attempt to control immigration enforcement such that it comports with the El Paso community’s “common regard for human dignity and conduct for one another.” But the local Border Patrol chief has already refused to recognize the body, claiming that the federal agency has no reason to follow the advice of a local entity.

Indeed, there are many control considerations here. Are local communities preempted by the federal government from setting up their own monitoring commissions? It is safe to say that a local government body simply wanting to have a dialogue with the INS, or a non-governmental body that wants to alert the INS to popular sentiment, may proceed on constitutionally sound grounds?

At this point, I would like to briefly list the other elements that are important in this process. It is essential to know the disposition of the cases; to have public disclosure, a record of the complaints and statistical summaries of their ultimate disposition in order to build data bases. Investigation and assigning of cases must be dealt with sensitively, as well as the problem of ex-Patrol agents investigating themselves. Ultimately, imposition of civilian oversight will mean grappling with such issues as reconsideration procedures and possible disciplinary schemes, not to mention very real issues of institutional and individual officer resistance. Roberto Martínez spoke of klansmen who were wearing sheets by night and the green uniform of the Border Patrol by day. You can be sure that law enforcement agencies will not embrace these changes readily. We also must not damn the criminal justice system. We must make sure that there are grand jury indictments and that individual agents are prosecuted. And we also have to use all of the other means that have been discussed today to bring pressure. In the end, our national policy makers, with much help from various advocates and policy analysts, will have to wrestle with the threshold questions of civilian oversight. If any review board is to truly spotlight abuses, punish unacceptable behavior, and encourage an acceptable code of conduct, Congress and INS administrators will need to consider some of the issues and alternatives discussed today.

13. See the Keynote Address by Roberto Martínez, supra p. 84 this issue.
14. Id.