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**The Changing Boundaries Of Law Enforcement:**

**State and Local Law Enforcement, Illegal**

**Immigration and Transnational Crime Control:**

**Final Report** [REDACTED]

by

**William F. McDonald**

**FINAL REPORT** *Archive*

Approved By: *J. Stone*

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Visiting Fellow  
National Institute of Justice  
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1999

*The age of nations is past. It remains for us now, if we do not want to perish, to set aside the ancient prejudices and build the earth.*

*Pierre Teilhard de Chardin, S.J. 1931*

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## **Introduction**

### I. The Scope of the Problem

This study began as an examination of the role of state and local law enforcement in transnational law enforcement with special attention to the matter of illegal immigration. It grew to include the larger historical and comparative framework needed to understand the complexity of the problem. Illegal immigration is intricately linked to legal immigration. The police can not respond to the one independently of how they respond to the other. Moreover, the problems of law and order that illegal immigration represent for the local police today are not simply a matter of catching people who are in the country illegally.

Indeed, in the United States that part of the problem has been largely removed from the direct responsibility of the local police and defined as the responsibility of the federal immigration police, the Immigration and Naturalization Service (INS) and its special unit, the Border Patrol. This division of labor, however, is of comparatively recent origin; is the reverse of what it once was; is legally open to change at the option of the local police; and is a point of contention in the larger national debate over immigration policy.

Immigration restrictionists and some local communities would like to have all available

assets including the local police engaged in suppressing illegal immigration. An odd collection of other groups including immigrant rights groups and minorities, protestors seeking to establish their own policies to protect various foreign refugees not eligible for legal migrant status under existing policy, and some police leaders want to keep the local police out of the business of enforcing immigration law. Meanwhile the federal government is attempting to restructure the relationship between its immigration enforcement effort and local police. The primary feature of the new arrangement uses the local to police to identify immigrants eligible for deportation. Selected police departments have been given access to an INS records checking center so that the immigrant status of arrestees can be rapidly determined and qualifying cases set for quick deportation processing.<sup>1</sup>

The evolution of the local-federal law enforcement responsibility for dealing with immigrants is a central part of the story. But there are other parts. The scope of the problem could be defined narrowly and reported in terms of the restructuring of the federal, state and local relationship regarding the enforcement of immigration laws. Or, it could be defined broadly, showing how this topic is embedded in larger historical changes and multiple sets of related social problems. The latter approach emphasizes the dynamic nature of social norms and of institutional arrangements. Rather than excising the topic from its context and simplifying it for the sake of

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<sup>1</sup> Marcus Stern, "Criminal Immigrants Rooted Out: New System Finds Them Fast, Deports Them, Curbs Re-Entry," *San Diego Union-Tribune*, Sept. 19 1997; Carolyne Zinko, "Supervisors Pass Program to Deport Jailed Immigrants Santa Clara County Plan Draws Fire from Both Sides," *San Francisco Chronicle*, April 1 1998; William F. McDonald, "Crime and Illegal Immigration: Emerging, Local, State, & Federal Partnerships," *National Institute of Justice Journal*, no. 232, June 1997: 2-10.

conceptual control, it explores the connections between the focal topic and other phenomena to which it is linked in a vital way. This report takes the latter approach.

It traces the history of the development of U.S. immigration policy and the role the police have played in the control of immigrants and crime and the restructuring of the federal-state-local relationship with respect to illegal immigration. As part of its analysis it examines four paradigm shifts in thinking about the police, immigrants, and crime: globalization, victimology, human rights and community policing. It conceptualizes the illegal immigration and local police connection as a node in a dense web of nodes with links to other nodes making up complex problem sets. Illegal immigration is linked to legal immigration but also to: transnational organized crime; prostitution; drug trafficking; sweatshops; slavery; document fraud; corruption; extortion; hate crime; witness non-cooperation; international flight to avoid prosecution; and the problems of cooperating with foreign criminal justice systems.<sup>2</sup>

The American police and virtually all modern criminal justice institutions are nineteenth century inventions.<sup>3</sup> They are entering the twenty-first century and a different world in which new norms and legal codes prevail and which requires new institutions and the reinvention of old ones. The problem of illegal immigration is one of the influences globalizing the American police

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<sup>2</sup> This listing is not intended to suggest that all or most illegal immigrants are involved in the activities enumerated. It is simply to identify the potential criminological linkages of illegal immigration.

<sup>3</sup> William F. McDonald, "Globalizing Criminology: The New Frontier Is the Frontier," *Transnational Organized Crime* 1, no. 1 (Spring 1995): 1-22.

institution, making it respond to the compression of the world and the intensification of global interrelatedness.<sup>4</sup>

Even without the responsibility for enforcing immigration law, it links the local police to two major world phenomena that experts regard as among the most important problems facing the world in the next millennium: migration and transnational organized crime. The evolution of those connections and their significance for the American police are examined as an example of globalization. State and local law enforcement will be increasingly involved in transnational cooperative efforts with foreign law criminal justice systems, especially those of Mexico and Central American countries. They are also being asked to give greater priority to fighting transnational/ global criminal enterprises. Doing so requires greater efforts at cooperating with federal and other law enforcement agencies to overcome jurisdictional and resource limitations.

Modern democratic governments are restrained in their treatment of foreigners and minorities by the widely accepted norms of fairness and equal treatment backed by universal human rights to which people are entitled without regard to their citizenship or migrant status.<sup>5</sup> Police tactics for controlling illegal immigrants a generation ago are no longer acceptable in the United States and other democracies.

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<sup>4</sup> Roland Robertson, *Globalization: Social Theory and Global Culture* (London: Sage, 1992).

<sup>5</sup> David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore, MD: The Johns Hopkins Press, 1996).

The crime and migration connection was once seen almost entirely in terms of the criminality of immigrants. Today it is seen from multiple perspectives. Immigrants are seen as victims of crime as well as perpetrators. Some of their victimizations are due to their being foreigners. The newly invented notion of hate crime fits many victimizations of immigrants and reflects the expectation that the police must protect the immigrant from the community as much as protecting the community from the immigrant.

The emergence of the philosophy of community policing comes at a most opportune time for police agencies everywhere. In 1992, an estimated 100 million people (2 percent of the world's population) were living outside of their homelands.<sup>6</sup> Nations that were once homogeneous are becoming diverse. Pure bred in some imaginary past they are now being forced to admit the reality of being nations of immigrants. Increasingly immigrant communities are popping up in host communities. The job of integrating those immigrants into their new communities and reconciling cultural differences among them falls heavily upon the police. This is an open invitation for creative community policing. Communities whose police fail to respond are likely to be the Balkans of the future.

## II. Methodology

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<sup>6</sup> Alex P. Schmid, Editor, *Migration and Crime* (Milan, IT: International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, 1996), 8.

This analysis is based upon an in-depth review of the several bodies of literature related to this complex topic, and upon a daily review of contemporary news items regarding national and international immigration reports. It is also based upon field observations and interviews in southern California, Texas, Virginia, and Washington, D.C.; and telephone interviews with federal, state and local law enforcement officials as well as Mexican officials and human rights activists and minority representatives in a judgment sample of jurisdictions. The jurisdictions included some large, medium and small locales in each of the top five states with the largest illegal immigration populations (California, Texas, Florida, New York, Illinois); and some from other states.

We subscribed to the on-line news clipping service of the Center for Immigration Studies (CIS) for the duration of the project. Those daily news reports were often the source of people for interviews. People listed in stories from jurisdictions with something remarkable about the police-immigration connection were called for in-depth interviewing. Often those calls led to a snowball sample of other people who were interviewed. This approach does not necessarily mean that the findings of this study are biased one way or another other than the fact that something related to the police and immigration had happened. The news items chosen for follow up were not chosen for any systematic reason beyond being newsworthy. They led to interviews in all parts of the country and on various aspects of the problem.

Field work included riding with Border Patrol officers on two occasions along the San Diego border as well as in Laredo and Brownsville- McAllen, Texas; observations and interviews

at the INS's case screening unit housed at the San Diego Sheriff's Department; interviews on two occasions with the deputy commanding officer and other members of the Mexican police unit known as Grupo Beta in Tijuana; participation at two meetings of the U.S. - Mexico Border States Attorney's General conferences; participation at conferences on migration and crime and on transnational organized crime; and participation in the federal-state Interstate Criminal Alien Working Group. Over 150 interviews were conducted. Interviews were focused on particular aspects of the larger topic. They were not intended to collective nationally representative attitudes or experiences. Rather they were open ended and designed to explore in depth whatever the respondent was most qualified to discuss.

This report does not try to make statements about the American police or police agencies on the basis of some kind of representative samples. With 12,361 police agencies, 3,084 sheriff departments, 49 state and 1,626 special law enforcement agencies in the country,<sup>7</sup> and with immigration problems differing widely between border versus interior areas and high versus low immigration area the idea of representative opinions becomes problematic. Immigration impacts the country differently. The experiences and opinions of police and the policies of their agencies undoubtedly differ accordingly.

Instead this report attempts to define the contours of the issues and to put them into larger contexts which give them meaning. It attempts to show where the American experience has come

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<sup>7</sup> Kathleen Maguire and Ann L Pastore, Sourcebook of Criminal Justice Statistics 1995 (Washington, D.C.: Government Printing Office, 1996), T. 1.26.

from and where it seems to be going with respect to state and local law enforcement, immigration control and the new world of transnational law enforcement cooperation.

## Chapter 1

### Immigration Control and the State

No aspect of immigration is more sensitive, more liable to misinterpretation, and more problematic than the issue of immigration and crime.

-- Governor Richard D. Lamm and Gary Imhoff (1985)<sup>1</sup>

#### I. Overview of American Developments

Human immigration is a world historic process that began in East Africa about 1.5 million years ago<sup>2</sup> and only became problematic when nation states arose, began controlling their borders and distinguishing between citizens and non-citizens. During the paleolithic era humans lived in small groups of 25 to 50 people.<sup>3</sup> When these groups got too big to support themselves, they split and migrated spreading out over the planet and arriving on the American continent about 20,000 years ago.

Crime problems connected with migration did not occur until about 5,500 years ago. The invention of agriculture and the storage of grain resulted in the growth of large urban

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<sup>1</sup> Ricahrd D. Lamm and Gary Imhoff, *The Immigration Time Bomb: The Fragmenting of America* (New York, N.Y.: E.P. Dutton, 1985).

<sup>2</sup> Conrad P. Kottak, *Anthropology: The Exploration of Human Diversity*, 5th ed. (New York: McGraw-Hill, 1991), 121.

<sup>3</sup> This follows Gerhard O.W. Mueller, "The General Report," Standing Rapporteur's report, International Conference on Migration and Crime (Courmayeur, Italy, Oct. 5-7 1996).

communities. They attracted migrants as countries of the developed world attract them today. Migrants from the countryside flocked to them. Some of these cities grew to tens of thousands of inhabitants. That is when crime problems began and resulted in the invention of the machinery of criminal justice with codes of law and police forces.<sup>†</sup> On the North American continent the descendants of those early migrants eventually confronted other immigrants, from Europe. They had more advanced technology with which they subdued the earlier migrants. They came from several different nations, formed a new nation and called themselves "Americans."

From the time they arrived Americans have been concerned about controlling their borders. The laws and institutions for doing so evolved from local to federal control and from simple to complex and harsh. Criminality has been a central focus of those policies. There was always a concern to exclude or remove immigrants who were criminals or potential criminals; and, criminal penalties were used to deter the illegal entry of excluded categories of immigrants.

In the nineteenth century local police departments were established to help control the crime, disorder and urban conflict caused by the arrival of more immigrants. By the end of the century primary responsibility for immigration control had shifted to the federal government. For most of the next century local police and the federal agency created to enforce immigration law, the Immigration and Naturalization Service (INS), cooperated without restriction. That relationship began to change in the 1970s when three developments converged. The civil rights

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<sup>†</sup> Mueller, "The General Report."

revolution gave new force to the demand for equality and the elimination of all forms of discrimination. The “due process revolution” in criminal law made local law enforcement agencies more responsive to the requirements of legality. Immigration (both legal and illegal) was rising rapidly.

By the 1980s illegal immigration was out of control. At the same time the traditional forms of cooperation between local police and federal immigration officials were being terminated either by the police themselves or by state and local political authorities. By the 1990s illegal immigration was still out of control and had become a highly charged national political issue. Several Congresses and administrations had begun taking steps to deal with the problem. A key emphasis of the response was on criminality. Penalties for illegal entry or reentry after deportation were sharply increased. The procedure for deporting “criminal aliens,” i.e., legal or illegal immigrants who had committed crimes was streamlined. The types of crimes qualifying immigrants for deportation and exclusion were greatly expanded.

The partnership between the federal immigration authorities and the local police was restructured in three ways. (1) The INS joined with state and local police in task forces to crack down on criminal gangs, organized crime and specific crime markets. (2) The INS established a records checking center to provide local police with the capacity to quickly determine the immigration status of arrestees so that qualifying immigrants could be shunted into the expedited deportation procedure as early in the process as possible. (3) In 1996 Congress provided that

local law enforcement agencies could be authorized to enforce immigration law.<sup>5</sup> But it appears that few or no local police agency in the country will assume such authority.<sup>6</sup> The fact that immigration law tends to result in focusing upon ethnic characteristics of people is a serious liability in this age of heightened sensitivity to discrimination. The potential for discriminatory

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<sup>5</sup> The Immigration Reform and Immigrant Responsibility Act of 1996 (IRIRA). P.L. 104-208. Sept. 30, 1996. Sec. 133.

<sup>6</sup> As of May 31, 1999 only two local jurisdictions in the country have expressed interest in having their police assume that authority. By June 1998 Salt Lake City, Utah, Police Department expressed interest in being authorized to enforcement the law. Growing rates of crime among a rapidly increasing illegal immigrant community had prompted the initiative. But after public hearings in which minorities expressed deep fears of being harassed by police stops, the city government voted against pursuing the authorization Amy Donaldson, "Salt Lake Crime Declined Again In 1997," *Deseret News (Salt Lake City)*, May 18 1998. See also Claudia Kolker, "Complexity, Speed of '96 Immigration Reform Leave Turmoil in Wake," *Houston Chronicle (Archives)*, March 22 1998, A 33.

In April 1999 the Mayor of Douglas Arizona requested the U.S. Justice Department to deputize the local police to enforce immigration law Arthur H. Rotstein, "Douglas Mayor Finally Gets Response Promising INS Help," *Associated Press*, May 17 1999. With the tightening up of border controls at other locations, Douglas had become route to which the flow of illegal immigrants was diverted. A flood of them were moving through the area. Farmers complained that the federal government had failed to control the situations. They began arming themselves and, in the name of protecting private property, patrolled their lands looking for illegal immigrants and holding them at gun point until the Border Patrol responded. Some of them wore military-style fatigues with a "Ranch Patrol" insignia. Dozens of groups of illegals were being detained Vincent J. Schodolski, "Ranchers Round Up Immigrants: What Border Patrol Doesn't Do, Locals Do," *Chicago Tribune*, May 12 1999. The mayor worried that an international incident was going to happen.

While local police have not yet been deputized to enforce immigration, the reverse is also true. Federal immigration law enforcers are not being authorized to enforce state criminal laws, at least in Texas. There the flow of illegal immigrants, smugglers and bandits has prompted local authorities to call for legislation authorizing the Border Patrol to make arrests for violations of state criminal laws. The initiative died in the legislature Pinker James Ton, "Controversy Brews Over New Bills Expanding Power of Border Patrol," *Houston Chronicle (Rio Grande Valley Bureau)*, April 2 1999.

enforcement is high. Minorities are likely to protest. Police agencies and local political officials are want to avoid the political repercussions. Police agencies committed to philosophy of community policing are concerned to not disrupt their relations with ethnic communities. The INS also as stepped away from joint operations with local police when their allegedly discriminatory and political character were challenged.<sup>7</sup>

While the American state and local law enforcement agencies have moved away from enforcing immigration law per se, they have become more directly involved in dealing with immigration and its consequences. This is likely to increase in the future. The high rate of legal immigration and the philosophy of community policing have prompted many police departments to experiment with ways of overcoming cultural barriers and integrating new immigrant groups into the larger community. Legal immigration brings with it illegal immigration which increasingly is linked to numerous criminological and social problems which in turn are tied to transnational organized criminal networks that smuggle immigrants. Drug trafficking; prostitution rings; fraudulent document production; sweatshops; involuntary servitude; extortion; home invasions; corruption and crimes against immigrants both predatory and hate-motivated are among the ancillary problems associated with illegal immigration and the growing business of human smuggling.

Some of these problems manifest themselves at the local level as phenomena which the

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<sup>7</sup> Mack Reed, "INS Arrests in Simi Gang Sweeps Assailed," *Los Angeles Times*, April 3 1997; Mack Reed, "Border Patrol to Forgo Role in Police Raids," *Los Angeles Times*, March 27 1997; Fred Alvarez, "Latinos Denounce Border Patrol Role in Simi Gang Raids," *Los Angeles Times*, March 10 1997.

police have the option of addressing either as isolated events or as the end products of a chain of internationally coordinated efforts. Policy analysts and officials seeking to adjust existing law enforcement institutions of the world to respond to the proliferating number of transnational criminal networks are urging local police to opt to respond to the international dimension of these activities rather than settling for the comparatively easy prosecution for the local crime. Local police are being asked to think globally as they act locally, to become part of a law enforcement network that can reach from the local to the international level matching the reach of transnational criminal networks. The logic being advocated is that "it takes a network to catch a network."<sup>8</sup>

For American state and local law enforcement agencies following this injunction usually means cooperating more fully with federal law enforcement agencies who have the jurisdiction and resources to deal with international crime. This means overcoming the jurisdictional fragmentation of American police agencies that is the legacy of the nineteenth century experiences with crime problems and ideas about limiting police authority. That restructuring began in the United States in the late 1960s and was expanded extensively through the next three decades. Federal, state and local crime task forces of various kinds were created with federal support largely in efforts against organized crime and drug trafficking. Law enforcement networks have been created and have had some successes. But they also had difficulties in

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<sup>8</sup> Phil Williams, "Organizing Transnational Crime: Networks, Markets and Hierarchies," Paper presented., Workshop of Transnational Organized Crime (National Research Council, Washington, D.C., June 1998).

bridging the jurisdictional fragmentation and bureaucratic competition and conflicts inherent in the U.S. federal system.<sup>9</sup>

State and local law enforcement agencies have also developed transnational law enforcement networks without the involvement of the federal government. Although the federal

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<sup>9</sup> J. F. Kehoe, *National Conference on Organized Crime - Structuring an Organized Crime Program* (National College of District Attorneys, Houston, TX, n.d.); W. H. Bishop, "Intelligence Systems - L.E.I.U. - An Early System," *Police Chief*, Sept. 1971, 30, 32; National Association of Attorneys General, *FEDERAL-STATE LAW ENFORCEMENT COMMITTEES* (Washington, DC: Author, 1974); N.J. Loschiavo, "Law Enforcement Intelligence Unit," *Police Chief* 62, no. 2 (Feb. 1975): 46, 82; Mark A.R. Kleiman, Holland, William E. and Christopher Hayes, *Report to the District Attorney for Essex County: Evaluation of the Lynn Drug Task Force*, Unpublished report (1984); James I. K. Knapp, "Intergovernmental Cooperation in Criminal Prosecutions Under the Reagan Administration," NCJ Number: 100626, Annual Meeting of the Pennsylvania District Attorneys Association (Rockville, MD: National Criminal Justice Reference Service Paper, Feb. 6 1986); Institute for Intergovernmental Research, *Analysis of Data Relating to Membership and Service Activities of the RISS Projects 1983-1985* (Tallahassee, FL: Author, 1986); Anthony J. Mancuso, "Joint Task Force in Rhode Island," *Police Chief*, Jan. 1988, 24; Edwin Meese, "Organized Crime and International Drug Traffic," *Police Chief*, Jan. 1988, 12; Institute for Intergovernmental Research, *Membership and Service Activities of the Regional Information Sharing System (RISS) Projects 1989- 1991: Summary Report*, NCJ Number: 142644 (Tallahassee, FL: Author, 1992); P. A. Reidinger and M. D. Cashio, "Multi-Agency Cooperation Leads to Drug Interdiction Along the Southwest Border," *Police Chief* 59, no. 10 (Oct. 1992): 68, 70, 72, 77-78; E F McGarrell and K Schlegel, "Implmentation of Federally Funded Multijurisdictional Drug Task Forces: Organizational Structure and Interagency Relationships," *Journal of Criminal Justice* 21, no. 3 (1993): 231-44; U.S. General Accounting Office, *War on Drugs: Federal Assistance to State and Local Drug Enforcement*, GAO/GGD-93-86 (Washington, DC: Author, 1993); Jeannette L. Chu, Joan C. Higgins and Bruce J. Nicholl, "Combating Criminal Aliens," Special section of six articles on this topic, *Police Chief* 61, no. 6 (1994): 20-44; D Shur, "Safe Streets: Combining Resources To Address Violent Crime," *FBI Law Enforcement Bulletin* 64, no. 4 (April 1995): 1-8; N. E. Jones and G. A. Holden, "States Expand Crime Prevention and Law Enforcement Efforts," *Intergovernmental Perspective* 19, no. 2 (Spring 1993): 32-35; Institute for Intergovernmental Research, *Membership and Service Activity of the RISS (Regional Information Sharing Systems) Projects 1991-1993*, Grant Number: 94-RS-CX-0002, US Department of Justice (Tallahassee, FL: Author, 1994).

government normally handles international criminal matters such as requests for extradition or evidence or testimony, state and local law enforcement agencies have established their own networks for exchanging intelligence with agencies abroad.<sup>10</sup> They occasionally pursue cases internationally on their own. Law enforcement agencies in border jurisdictions for a long time have had relations with their counterparts in Mexico or Canada. These networks were used to deal with local matters.<sup>11</sup> Since the 1970s California and more recently the other border states have pioneered the use an alternative route to effective transnational administration of justice. They have developed the use of a procedure available in civil law countries such as Mexico and other countries from which many of today's immigrants originate and to which they are liable to flee if involved in a serious crime. Known as "foreign prosecution" it allows those governments to prosecute criminals on behalf of foreign governments. As immigration from these countries increases, the use of this procedure is likely to increase which will mean an even greater role in transnational law enforcement efforts by state and local authorities.

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<sup>10</sup> Bishop, "Intelligence Systems - L.E.I.U. - An Early System."

<sup>11</sup> H. Marshall Carter, "Law Enforcement and Federalism: Bordering on Trouble," *Policy Studies Journal* 7 (1978): 413-18; H. Marshall Carter, "Law, Order, and the Border: El Paso Del Norte," Unpublished paper, National Council on Geographic Education, Annual Meeting ( Nov., 1979b); H. Marshall Carter, "Federalism and the Judicial Process: A Case Study and Discussion from the US-Mexico Border," Unpublished paper., Annual Meeting, The American Political Science Association, Washington, D.C., (Aug., 1979a); C. Richard Bath, H. Marshall Carter and Thomas J. Price, "Dependence, Independence, or Detachment?: Three Case Studies of International Relations Between El Paso, Texas and Ciudad Juarez, Mexico," Unpublished paper., Third World Conference, Omaha, Nebraska, (Oct. 28, 1977); Robert L. Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, NCJ Number: 102732 (Ph.D. diss.) (Rockville, MD: National Institute of Justice/National Criminal Justice Reference Service, 1986).

In sum, an understanding of the role of American state and local law enforcement in dealing with illegal immigration and transnational crime requires a broad look at these related topics and an appreciation of the dynamic nature of culture and social institutions. Immigration today is transforming American society as well as many other nations. The police are responding to that and will need to make additional adjustments.

## II. Comparative Perspectives

Illegal immigration is not solely an American problem. It is a worldwide problem and has emerged as one of the most pressing issues of our time. In 1992 an estimated 100 million people (2 % of the world's population) lived outside of their homelands.<sup>12</sup> Seven million people a day cross international borders.<sup>13</sup> Wars, the collapse of the Soviet Union, the ease of transportation and global economic integration have confronted many countries with the immigration issue, some for the first time. Countries of transit and countries of destination are trying to cope with the new reality. A range of measures is being taken and considerable disagreement over them.

Criminalizing illegal immigration is troublesome for liberal democracies. Immigration

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<sup>12</sup> Alex P. Schmid, Editor, *Migration and Crime* (Milan, IT: International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, 1996).

<sup>13</sup> Schmid, *Migration and Crime*, 13.

control lies at the intersection of three sensitive issues: the sovereignty of nations, world inequality, and cultural integrity. The very concept of sovereignty assumes a state's right to control its borders and to decide whether to mix its blood with other peoples. This means that countries may use their criminal law to restrict the number and type of people admitted; to treat gate-crashers as criminals; and to try to protect their biological and cultural traditions from change.

The use of the criminal law for these purposes is controversial, reflecting differences as to what a reasonable and useful immigration policy should be. The right to emigrate is considered a hallmark of a free society; but the right to immigrate is not, although it has its supporters. "Men are like birds; when they do not have food, they go for it wherever it is" says an advocate for making immigration a human right.<sup>14</sup> Some economists including the Wall Street Journal argue that borders should be open to labor as much as to capital. But nation states are not yet ready to completely open their borders; and the criminal law continues to be used as the deterrent of choice although the fairness and degree of severity in its application varies.

Immigration advocates try to minimize the criminality of illegal immigration saying that it is not a "real crime."<sup>15</sup> They share the view that immigration should be a right and that you can

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<sup>14</sup> Lolita Aniyar de Castro, "Like Birds: Forced Migration Today and Tomorrow," in *Migration and Crime*, ed. Alex P. Schmid and Irene Melup (Milan: ISPAC, 1998), 124-5. She says that the Catholic Church has been supporting this view since Vatican II.

<sup>15</sup> Daniel Wolf, *Undocumented Aliens and Crime: The Case of San Diego County* (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, San Diego, 1988), 26.

not fault a person who is only looking for work. Defenders of the law disagree. One illegal entry may cause no harm. Thousands are a different matter. Values cherished by publics are felt to be threatened. In this case the values are many: undermining sovereignty and national security; fostering disrespect for law; subverting democracy; jeopardizing humane immigration and asylum policies; being unfair to immigrants following legal procedures; undercutting the wages and the quality of life in the receiving country; distorting by perpetuating dependence upon cheap labor rather than stimulating labor-saving inventions; creating an underclass; disrupting the gains of other minority groups; increasing discrimination; increasing the risks of cultural fragmentation; burdening taxpayers; and forestalling needed reforms in sending countries for whom massive emigration serves as safety value.<sup>16</sup>

Virtually all countries where opportunities exist are confronting the problem of illegal immigration. None seems to have found a fair, humane and effective solution.<sup>17</sup> Many of them use their criminal law and enforcement machinery to try to deter unlawful entry.

## Europe

In 1986 when European states declared their intention to eliminate borders among themselves, they simultaneously pledged to strengthen their cooperation in combating terrorism,

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<sup>16</sup> William Barbour, Ed., *Illegal Immigration* (San Diego, CA: Greenhaven Press, 1994); Barry R. Chiswick, "Illegal Alien Policy Dilemma," in *Essays on Legal and Illegal Immigration*, ed. Susan Pozo (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1986), 73-87.

<sup>17</sup> Wayne A. Cornelius, Philip L. Martin and James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford, CA.: Stanford University Press, 1994).

crime, illegal immigration, drug trafficking and illicit trading of art and antiques. It was accepted as a necessary corollary of eliminating internal borders that external borders would have to be strengthened into a "hard outer shell" referred to as a "ring of steel." The fear was of illegal immigrants and related crime. After the fall of the Berlin Wall, there were warnings in Europe of an imminent flood of illegal immigrants from the East. The Council of Europe estimated there were between 1.5 and 2.5 million illegal immigrants in European Union countries as of 1990. In the view of several senior police officers the goal of fighting clandestine immigration seemed to become the principle reason for increased European police cooperation.<sup>18</sup>

In February 1993 interior ministers from 35 European countries set out to crack down on the wave of illegal immigration coming from the former Soviet states. They agreed to make organized smuggling of illegal immigrants a criminal offense across Europe and also agreed that commercial carriers should be liable to fines under new rules regarding transporting illegal aliens. Also they agreed to set up special police units, to exchange information and to adopt a common procedure regarding border checks.<sup>19</sup>

In contrast to the United States where local police have moved away from direct

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<sup>18</sup> John Benyon, "The Developing System of Police Cooperation in the European Union," in *Crime and Law Enforcement in the Global Community*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997); Monica den Boer, *Immigration, Internal Security and Policing in Europe*, Working Paper 8 (Edinburgh: University of Edinburgh, Department of Politics, 1993).

<sup>19</sup> Nicholas Denton, "Immigrants Crackdown Agreed," *Financial Times*, Feb. 17 1993, 2.

involvement in immigration enforcement, in Europe responsibility for immigration enforcement has devolved on traditional police agencies in European states that have abolished their internal border controls. In July 1997 Commissioner Anita Gradin, responsible for Justice and Home Affairs within the European Commission, proposed an exchange and training program for officials working with border control, immigration and asylum. She declared:

“To create a secure Europe with free movement for people the Member States have to cooperate against organized crime and trafficking in human beings. We have to make sure that customs, police and judicial authorities in all Member States work together and understand each other. For that purpose we have created a whole range of exchange and information programs for people fighting organized crime, trafficking with human beings and abuse of children and women. The program proposed today, called Odysseus, is one in a series aimed at augmenting knowledge and co-operation between EU officials.”<sup>20</sup>

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<sup>20</sup> Justice and Home Affairs European Commission <msk@us.net>, "Overseas Immigration News: European Commission Press Release: IP/97/639," Article <199707111544.LAA29641@us.net>, in <CISNEWS@cis.org>, July 11 1997. Odysseus aimed at training, exchange and co-operation in the field of asylum, immigration and the crossing of external borders. It included identification of false documents. Odysseus was to run from 1997 to 1999 and costs ECU 10 million. Several programs were designed to improve co-operation and knowledge within the area of Justice and Home Affairs. All were open for Member States as well as Accession Countries.

Grotius was for officials employed by judicial authorities in the EU. 1997-1999 ECU 8 million. Oisin was for police, customs and other law enforcement authorities. 1997-1999 ECU 8 million. Sherlock was for those working to identify false documents. 1996-1999 ECU 1 million. Stop was for officials engaged in the fight against trafficking with human beings and sexual abuse of children. 1996-2000 ECU 6.5 million. Daphne was for NGOs fighting abuse of children youths and women. 1997 ECU 3 million. The Commission was to fund between 60 and 80 percent of all projects under each program.

Ironically in the wake of the Cold War, the process of integrating Europe is eliminating some borders but reinforcing others and provoking new charges of discrimination. The German - Polish border is one where tough new rules regarding border crossings were put into effect. The Poles say it discriminates against them.<sup>21</sup>

### **Sweden**

Shiploads of illegal immigrants have been landing in Nordic countries. Thousands of others from the Balkans claiming to be refugees have been traveling by "bus tours" to Poland and the Baltic countries seeking asylum in Nordic countries. Sweden has assigned police officers to the Baltic countries and Russia to try to stop the smuggling of illegal immigrants.<sup>22</sup>

### **Lithuania**

Lithuania is holding 626 illegal immigrants in detention camps. They are mainly from countries like Pakistan, Sri Lanka, India and Iraq, and recently rioted in protest of their detention conditions.<sup>23</sup>

### **France**

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<sup>21</sup> Rick Atkinson. "Europe's Two Worlds Divided by More Than a River," *The Washington Post*, Aug. 2 1995, A1, A30.

<sup>22</sup> Henry Kamm, "'People Smugglers' Send New Tide of Refugees Onto Nordic Shores," *The New York Times*, Feb. 15 1993, A1.

<sup>23</sup> Reuter (Msk@us.net). (1997, May 22). Overseas immigration news [199705221452.KAA17262@us.net]. CISNEWS.

The French government drafted a law which requires citizens to report the departure of any foreigners, most of whom come from the developing world, who have been staying in French homes. In protest 3,000 artists and academics signed petitions urging civil disobedience over the bill.<sup>24</sup>

France has been deporting plane loads of illegal immigrants and last year French police stormed a church where illegal immigrants were holding a hunger strike in protest to the pending deportations.<sup>25</sup> While some of these policies for dealing with illegal immigrants have drawn criticism, there has been broad public approval of the massive nightly identity checks of immigrants conducted by the French in southern cities where many Muslim immigrants live.<sup>26</sup>

## Italy

Italy is turning back would-be Albanian asylum seekers fleeing the chaos in their country.<sup>27</sup> Also, it has recently tightened its borders giving authorities permission to detain illegal immigrants.<sup>28</sup> Italy used to be a source country for out-migration. Now it is a destination

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<sup>24</sup> John Follain <msk@us.net>, "Overseas Immigration News," Article <199702181817.NAA02266@us.net>, in <CISNEWS>, Feb. 18 1997.

<sup>25</sup> Charles Trueheart and Anne Swardson, "Police Storm Paris Church to Evict African Protesters: Raid Ends Summer-Long Standoff Over Immigration," *The Washington Post*, Aug. 14 1996, A17.

<sup>26</sup> Jonathan Randal, "Nabbing Carlos Makes France's Top Cop the Summer's Star," *The Washington Post*, Aug. 19 1994, A33.

<sup>27</sup> AP-Dow Jones News Service <msk@us.net>, "Overseas Immigration News," Article <199703281234.HAA16386@us.net>, in <CISNEWS@cis.org>, Mar. 28 1997.

<sup>28</sup> The Associated Press <msk@us.net>, "Overseas Immigration News," Article <199702181817.NAA02266@us.net>, in <CISNEWS>, Feb. 18 1997.

country for Africans, Turks, Iraqis and others. The Italian Left used to dismiss all immigration proposals as xenophobic and racist; but these days the Left is silent.

### **Hong Kong**

When Hong Kong was about to revert to China there were fears of massive illegal immigration. Fences topped with razor wire separated Hong Kong from China and high-speed boats patrolled the harbor. Hong Kong authorities signaled their policy of zero tolerance for illegal immigration. In April 1997 50 Hong Kong immigration officials, backed by police, fire fighters and social workers, repatriated to China a nine-year old mainland girl who was smuggled into Hong Kong when she was one or two years old. There was a sharp increase in the number of illegal child immigrants who were returned to China.<sup>29</sup>

### **Ireland**

By 1997 Ireland had become a popular destination for illegal immigrants from eastern Europe and Africa. Details about the good benefits for asylum seekers and means for obtaining illegal transport to Ireland were being passed along by word of mouth as well as the World Wide Web. The government became "very concerned" at the level of unlawful entry and began cracking down on immigrants arriving illegally. It imposed curbs on immigration and imposed immigration checks for the first time on people traveling between Ireland and Britain, essentially

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<sup>29</sup> "Asia." Migration News. Vol 4, No. 6. June, 1997.

ending the free travel between the two countries that had existed. Under the Aliens Order by the Minister of Justice, people from non-EU countries who enter Ireland from the UK can be sent back if their papers are not in order. Human rights groups and the United Nations High Commission for Refugees have severely criticized the government's actions.<sup>30</sup>

### **Australia**

A right-wing politician in Australia is campaigning to keep Asian migrants out of the country. Pauline Hinson has launched a party called One Nation and polls indicate that 10% to 25 % of the voters might support her. She has been condemned as a racist and pelted with tomatoes by 1,000 protesters and the government has spoken against her position.<sup>31</sup> But the government also just reduced the level of immigration for a second time and changed the criteria away from a family basis (which would favor Asians) to a skill basis

### **Malaysia**

Malaysia built a 17 mile concrete fence through rugged jungle to try to keep out illegal immigrants. Thailand was offended.<sup>32</sup>

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<sup>30</sup> Paul Cullen, "UNHCR Criticises Govt Over Illegal Immigrants," *The Irish Times*, Aug. 7 1997.

<sup>31</sup> Vijay Joshi <msk@us.net>, "Overseas Immigration News," Article <199705071455.KAA20535@us.net>, in <CISNEWS@cis.org>, May 7 1997.

<sup>32</sup> Vijay Joshi. "Malaysia Builds 17-Mile Jungle Barrier to Illegal Immigrants: Economic Boom Lures Flood of Thai Workers," *San Diego Union-Tribune*, Nov. 28 1996.

## **Saudi Arabia**

Saudi Arabia has conducted a nationwide campaign to drive out more than 100,000 illegal aliens from the kingdom. Sheltering or helping illegal immigrants are punishable by up to a year in prison and fines of up to \$26,700 for each infraction. Saudi Arabia each year deports several thousand illegal aliens. Most of them are from the Indian subcontinent. Some enter the country legally as part of one million foreigner visitors who perform the Muslim haj pilgrimage and remain to work. Others enter illegally or overstay their visas. In 1995 more than 100,000 illegal foreign workers left the country under threat of punishment.<sup>33</sup>

## **Vietnam**

Vietnam established the death penalty for illegal immigration.<sup>34</sup>

The list of countries tightening their borders in one way or another goes on and on: Venezuela, Argentina, Chile, Russia, India, South Africa, Japan, China (against the North Koreans) and others.

## **III. Conclusion**

Humans have been migrating in search of better lives since the race began. They

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<sup>33</sup> Reuter <msk@us.net>, "Overseas Immigration News," Article <199707241344.JAA25220@us.net>, in <CISNEWS@cis.org>, July 24 1997.

<sup>34</sup> Vietnam News Agency, "'Life and Death Sentences' to Stop Illegal Emigration," *Lexis Nexis*, Oct. 29 1991.

continue to do so today. Nations that became states with geographic borders have tried to control immigration into their lands. They have used their criminal laws and law enforcement machinery to do so. Structural changes in the world's economy, politics and technology have stimulated a new surge of migration between poor or troubled states and richer more secure states. States are responding by continuing to use the penal sanction as a key to immigration control. They are revising their law enforcement institutions and penal sanctions to meet the new conditions.

The right to control borders and determine who shall be allowed to immigrate have been matters of sovereignty and assumed to be above question. But the concept of sovereignty is changing and restrictions on immigration are being challenged both by human rights advocates and free market economists. Using the criminal law and traditional police agencies to deal with the problem of illegal immigration has become controversial. Immigration issues are tied to ethnic and racial questions as well as matters of social justice. These matters easily become politically charged. In America state and local law enforcement agencies have ceased assisting with the enforcement of immigration law as some of them once had. It is not likely that this change will be reversed soon. In contrast in Europe where states have abolished internal borders the responsibility for the enforcement of immigration laws is devolving upon traditional police agencies.

Unlawful immigration today is associated with a host of other social problems and conventional criminal activities many of which are tied to transnational criminal networks responsible for smuggling illegal immigrants. An important part of the response to illegal

immigration is the effort to deal with these ancillary crime problems and their international connections. Illegal immigration is forcing local police to develop a transnational and even global framework for making local choices.

## Chapter 2

### Current Immigration and Its Consequences for the Police

#### I. The Demographic Transformation

The United States is experiencing the highest flow of immigration in its history. Most of it is coming from non-traditional (non-European) sources, much of it from Hispanic cultures especially Mexico. Some of it is illegal. The current immigration flow is having profound social, political and economic consequences and will continue to do so for decades to come. Many of those consequences have direct significance for the police. Although it is fair to assume that most immigrants are law abiding, this massive change is bring problems of crime, conflict and disorder to which local police must respond.

Immigration points the police in two directions: outwardly at the burgeoning world of transnational crime and justice, and inwardly at the perennial problems of order maintenance, crime control and community relations. At the international level immigration requires that the police develop new forms of cooperation with foreign law enforcement agencies and more efficient forms of cooperation with domestic agencies who are often seen as rivals and competitors. Domestic and foreign law enforcement agencies must be able to operate as networks capable of responding to transnational criminal networks engaged in the smuggling of aliens and other illicit commodities, as well as to the problem of transnational fugitives who use

international boundaries to evade prosecution.

At the local level the police must help manage the tensions created by the new diversity; protect the community from crime and disorder generated by the immigrants; and protect the immigrants from exploitation and violence directed at them. Immigrants who are illegal are none the less entitled to protection from criminal violations.

Immigration to the United States has come in four waves (see Figure 2.1). Until now the largest wave had been at the end of the last century. The present wave may be larger in absolute numbers (although smaller relative to the existing population) and is still in process. Its composition and size are influenced by the Immigration and Nationality Act of 1965 (hereinafter, INA).<sup>1</sup> The social and economic changes being brought about by it are truly historic. The INA abolished the last vestiges of the race and ethnic discrimination as the basis for immigration to the United States. In so doing it joined the civil rights legislation of the time and the constitutional restrictions on police powers in marking the beginning of a new era in sensitivity to racial and ethnic tolerance and the public condemnation of discrimination.

Following World War I immigration had dropped off sharply and was only slowly increasing. After 1965 immigration began its current steady climb. As recently as the 1950s, only about 250,000 immigrants entered the country annually. By the 1990s, about 1 million legal immigrants were being admitted annually. In addition there has been an increase in illegal

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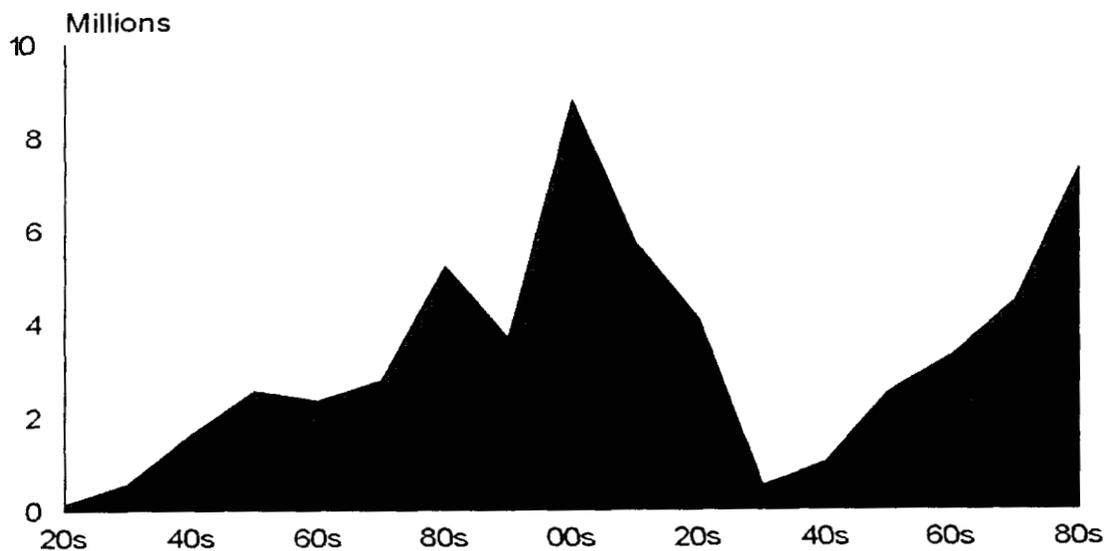
<sup>1</sup> 79 Statutes-at-Large 911.

immigration since the 1960s. Today an estimated 275,000 aliens per year enter and stay illegally.

Figure 2.1

## Total Legal Immigration to the U.S.

1820-1990 Totals by Decades



INS Yrbk :1994, T1

As a percentage of the U.S. population the foreign born had been on a long downward decline from its peak of 14.7 percent in 1910 to its lowest point this century of 4.8 percent in 1970. As of 1996 it was back up to 9.3 percent and climbing.<sup>2</sup> Because of the decline in the

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<sup>2</sup> U.S. Bureau of the Census, *The Foreign-Born Population: 1996*, Hansen, Kristin A.; Faber, Carol S., authors, Current Population Reports (Washington, DC: U.S. Department of Commerce, 1997), F. 1; U.S. Bureau of the Census, *The Foreign-Born Population in the United States: March 1997 (Update)*, Current Population Reports (Washington, DC: U.S. Department of

number of children borne by American women, immigration now accounts for nearly 40 percent of the growth in the population.<sup>3</sup>

According to the National Research Council and others immigration has been a net benefit to the nation as a whole.<sup>4</sup> But those costs and benefits are not distributed evenly. A few states have borne the great bulk of the impact of the immigration. In 1996 six states received more than two-thirds of the legal immigrants— California (22.0%), New York (16.8%), Texas (9.1%), Florida(8.7%), New Jersey (6.9%) and Illinois (4.6%).<sup>5</sup>

Almost the same picture emerges when states are ranked in terms of the percent of their populations that are foreign born. California (25.1%) and New York (17.7%) lead the rankings and Florida (15.2%), New Jersey (14.6%) and Texas (11.1%) are among the top.<sup>6</sup> In fact 60% of all foreign-born residents live in six cities: Los Angeles, New York, San Francisco, Chicago,

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Commerce, 1998)..

<sup>3</sup> George J. Borjas, "The Impact of Immigration on the Native Labor Market" <<http://www.house.gov/judiciary/6091.htm>>, May 19 1998.

<sup>4</sup> National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, DC: Author, 1997)..

<sup>5</sup> Immigration and Naturalization Service U.S. Department of Justice, "Table 3. Immigrants Admitted By State and Metropolitan Areas," in INS Statistics <<http://www.ins.usdoj.gov/stats/annual/fy96/997.html>>, 1998.

<sup>6</sup> U.S. Bureau of the Census, *The Foreign-Born Population: 1996*, F.2.

Miami, Washington, D.C., and Houston.<sup>7</sup>

The same is true of the illegal immigrants. There are an estimated 5 million illegal immigrants in the country--almost 2 percent of the total U.S. population. The majority of them did not come in over the southwest border. They entered the country legally but overstayed their visas.<sup>8</sup> The vast majority of the illegals live in the same states where the legal immigrants live. About 40 % live in California and an additional 40% live in only five other states (Texas, New York, Florida, Illinois, and New Jersey).<sup>9</sup>

There is nothing surprising about this because legal immigration is closely linked to illegal immigration. It is a kind of incubator for illegal immigration. Many families have both legal and illegal immigrants within the same household. Given the family preferences immigration policy, once a family member obtains legal status he or she can begin to bring in other family members in what is known as "daisy-chain immigration." But the backlog and inefficiency of our immigration processing system causes long delays for these other family members to be admitted legally.<sup>10</sup> Rather than living apart for months or years, people frequently

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<sup>7</sup> William Booth, "One Nation, Indivisible: Is It History? Soon, No Single Group Will Comprise Majority," *The Washington Post*, Feb. 22 1998, A1.

<sup>8</sup> William Branigin, "Illegal Immigrant Population Grows to 5 Million," *The Washington Post*, Feb. 8 1997, A3.

<sup>9</sup> Associated Press, msk@mail.us.net, "Illegal Aliens State-By-State," 199702111514.KAA06402@us.net, CISNEWS@cis.Org (Feb. 7, 1997).

<sup>10</sup> Andres Viglucci, "Elderly Immigrants Sue INS Over Delays," *Miami Herald*, May 22 1998; Mirta Ojito, "Immigration Office Sets a One-Year Wait," *The New York Times*, May 22

choose to live with their relatives in the United States and to be illegal while they wait to be legalized. In 1995 approximately one out of every four legal immigrants was actually an illegal alien who was already in the country while laundering his or her status.<sup>11</sup>

The 1965 legislation also brought about a momentous shift in the ethnic composition of the population. Until the 1950s persons of European origins had dominated the immigrant flow. But in the 1980s only about 10 percent of the persons admitted were of European origin. By 1996 more than half of the foreign born population were from Hispanic cultures and over a quarter were from Asia.<sup>12</sup> It is now estimated that non-Hispanic whites may form a minority of the population by the year 2050.<sup>13</sup>

Mexico is by far the largest single source country for today's immigrants. The Mexican exodus of past two decades represents the largest-ever sustained mass migration of a single group to the United States, far exceeding the numbers of Irish, Italians and Jews of earlier years. More

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1998.

<sup>11</sup> Public Broadcasting System, "Background Briefings: Slamming the Door," in Online NewsHour <[www1.pbs.org/newshour/bb/congress/may96/immigration\\_status\\_5-3.html](http://www1.pbs.org/newshour/bb/congress/may96/immigration_status_5-3.html)>, May 2 1996.

<sup>12</sup> U.S. Bureau of the Census, *The Foreign-Born Population: 1996*, T. A.

<sup>13</sup> U.S. Bureau of the Census, *Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995-2050*, Current Population Reports (Washington, DC: U.S. Department of Commerce, 1996), T.L.

than 7 million Mexican-born people now reside in this country. Most arrived since 1970.<sup>14</sup>

Mexican cross-border migration in this century happened in two waves, the first from 1900 to 1930, when the Great Depression cut it short; the second, began during World War II when the demand for labor led the United States to establish a contract labor program with Mexico known as the Bracero Program and has skyrocketed since 1970.<sup>15</sup> The phenomenal increase in the immigration of Mexicans is being chalked up to the law of unintended consequences.<sup>16</sup> That law says that the experts at some earlier time were not expert enough to anticipate the consequences of the what they were doing.

One failure was not to anticipate that the policy of family preferences would lead to "daisy chain migration." Another failure was not to anticipate that the border tightening efforts like Operation Gatekeeper in San Diego would have the unintended effect of reducing the return flow of Mexican migrants back to their homes. Mexican migration has traditionally had a substantial component of immigrants returning home when the growing season was finished.

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<sup>14</sup> 1970. Patrick J. McDonnell, "Mexican Arrivals Seek New Frontiers," *Los Angeles Times*, Jan. 1 1998.

<sup>15</sup> Arthur F. Corwin and Lawrence A. Cardoso, "Vamos al Norte: Causes of Mass Mexican Migration to the United States," in *Immigrants--and Immigrants: Perspectives on Mexican Labor Migration to the United States*, ed. Arthur F. Corwin (Westport, CT.: Greenwood Press, 1978), 38-66.

<sup>16</sup> Sydney Wientraub, "Crossing the Border: Understanding U.S.-Mexican Migration," Panel Discussion sponsored by the Center for Strategic and International Studies and the World Affairs Council of Washington, D.C. (Washington, DC, June 4 1998).

Indeed, the fact that they did not set down roots, did not bring their families with them and returned home had long been touted as one of the best parts of great bargain of Mexican labor.<sup>17</sup> Now it appears that illegal immigrants are staying longer in the United States in order to reduce the increased risks of apprehension at the border. Yet at the same time the flow of first time illegal immigrants from Mexico has not been deterred by the tightening at the border.<sup>18</sup>

The main reason for the current surge of Mexican immigration is the Immigration Reform and Control Act (IRCA) of 1986<sup>19</sup> which was supposed to have been the solution to the problem of illegal immigration. Its consequences were not unanticipated. The act was compromise after almost two decades of political battles among a cacophony of interest groups over the policy to control illegal immigration. The solution advocated since 1952 was to cut off the magnet of jobs by making it a crime for employers to knowingly hire illegal aliens. Business interests opposed this because of the additional burdens it placed on them as well as the exposure to criminal prosecution. Mexican-American and civil rights groups opposed it because it might lead to

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<sup>17</sup> Arthur F. Corwin, "A Story of Ad Hoc Exemptions," in *Immigrants--and Immigrants: Perspectives on Mexican Labor Migration to the United States*, ed. Arthur F. Corwin (Westport, CT.: Greenwood Press, 1978), 136-75.

<sup>18</sup> Katharine M. Donato, Jorge Durand and Douglas S. Massey, "Stemming the Tide? Assessing the Deterrent Effect of the Immigration Reform and Control Act," *Demography* 29, no. 2 (May 1992): 139-57; Frederick Rose, "Mexican Immigrants Don't Stay Long in the U.S., Study Shows," *The Wall Street Journal*, Jan. 29 1997; Wientraub, "Crossing the Border: Understanding U.S.-Mexican Migration.,"; Audrey Singer and Douglas Massey, "The Social Process of Undocumented Border Crossing," Paper presented, Meetings of the Latin American Studies Association (Guadalajara, April 19 1997); McDonnell, "Mexican Arrivals Seek New Frontiers."

<sup>19</sup> 100 Statutes-at-Large 1716.

discrimination against all people who looked Mexican. Organized labor supported it as the best way to stop cheap laborer from competing with American workers. But existing research showed that employer sanctions had failed where they had been tried, such as in the state of California and Europe.<sup>20</sup>

The compromise had three parts: First, amnesty would be granted to illegal immigrants who had been in the United States in an illegal status since before January 1, 1982. They could apply for legal status. Second, employer sanctions made it a crime to knowingly hire illegal immigrants. Finally, three new categories of special agricultural workers were created that granted legal immigrant status to foreign agricultural workers who met certain conditions. A total of 2.76 million agricultural workers mostly Mexicans were eligible for legal status. By 1994 almost all had attained it.<sup>21</sup> IRCA amounted to the largest foreign labor program since the Bracero Program. The provisions were so generous that a Washington Post editorial called it a

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<sup>20</sup> Kitty Calavita, "Employer Sanctions Legislation in the United States: Implications for Immigration Policy," in *America's New Immigration Law: Origins, Rationales and Potential Consequences*, ed. Cornelius, Wayne A. and Ricardo A. Montoya (San Diego, CA: Center for U.S. - Mexican Studies, University of California, 1983), 73-81; U.S. General Accounting Office, *Information on the Enforcement of Laws Regarding Employment of Aliens In Selected Countries*, GAO/GGD-82-86 (Washington, D.C.: Government Printing Office, 1982); U.S. General Accounting Office, *Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws*, GAO/GGD-86-17BR (Washington, D.C.: Government Printing Office, 1985).

<sup>21</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.: Government Printing Office, 1996), 13..

“cave-in” to agribusiness interests.<sup>22</sup> Some theorists explain the outcome as the kind of resolution that happens when fundamentally contradictory forces are at work. In this case the economic demand for cheap labor prevailed over the political demand for immigration restriction and protection from low wage workers. IRCA was just symbolic legislation that gave the appearance of coping with a problem that fundamentally involves an unresolvable conflict.<sup>23</sup>

## II. Immigration and Community Conflict

### Understanding Contemporary Anti-Immigrant Sentiment

As in the past, the current wave of immigration has been met by a crescendo of anti-immigrant sentiment which crested and broke in California in 1994 with Proposition 187 and then subsequently in Congress with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Some of that anti-immigrant sentiment is unquestionably racist and xenophobic. But when it comes to immigration the first rule to remember is that nothing is simple.

It is a mistake to reduce every discussion of immigration to an analysis of the alleged

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<sup>22</sup> “The Immigration ‘Compromise,’” July 16, 1986, quoted in Kitty Calavita, “The Contradictions of Immigration Lawmaking,” in *Making Law*, ed. William Chambliss and Margaret Zatz (Bloomington, IN: Indiana University Press, 1993), 246.

<sup>23</sup> Calavita, “The Contradictions of Immigration Lawmaking.”

racist leanings of the discussants. In our race-obsessed society, no one is pure enough to cast the first stone. Framing the issue in racist terms simply fails to capture the complexities involved. It is about competition for jobs,<sup>24</sup> quality of education,<sup>25</sup> population growth, environmental degradation, conflict between labor and capital, national sovereignty, foreign policy, and other issues.<sup>26</sup> Finally, with the new immigration the traditional meaning of race no longer resonates clearly.

Public opinion polls reveal some of the complexity. A 1996 Roper poll found that majorities of black Americans and a slight majority of Hispanics supported reducing immigration to less than 300,000 per year<sup>27</sup> In February 1996 a Roper poll found 60 percent of Hispanics nationwide were in favor of "tough laws against illegal aliens."<sup>28</sup> A 1997 survey of American Jews asked whether they thought the number of immigrants from foreign countries permitted to come to the United States to live should be increased, decreased or kept the same. Thirty-four percent said "decreased;" 48 percent said "left the same as it is now" and only 15 percent said

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<sup>24</sup> After the economy recovered and jobs became more plentiful anti-immigrant sentiment declined in Houston Armando Villafranca, "Immigrants' Role Being Seen In New Light," *Houston Chronicle*, April 20 1998, A9.

<sup>25</sup> Haya El Nasser, "Study Links Immigrants, 'White Flight,'" *USA Today*, April 20 1998..

<sup>26</sup> William F. McDonald, "Illegal Immigration: Crime, Ramifications and Control (The American Experience)," in *Crime and Law Enforcement in the Global Village*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997), 65-86.

<sup>27</sup> Michael Lind, "TRB from Washinton: Huddled Excesses," *The New Republic*, April 1 1996..

<sup>28</sup> Mark Krikorian <msk@us.net>, "Survey of Latinos." in <CISNEWS@cis.org>, May 22 1996.

“increased.”<sup>29</sup> In 1998 the Director of the annual Houston Area Survey reported that blacks are more negative about immigrants than whites or Hispanics. He attributed it to the greater threat of losing their jobs.<sup>30</sup>

Even these findings do not adequately convey the new complexity. Race relations in the United States used to be framed in dichotomous, black and white terms. Gunnar Myrdal summed it up as an “American dilemma”. But with the growth of the Latino community it has become at least a “trilemma” and adding in the Asians and others it is a “polylemma.” The word, “racist,” simply fails to capture the diversity tensions the new immigration has spawned.

Immigration produces winners and losers. Currently the losers are unskilled and low skilled workers who are losing their jobs to the new arrivals, one third of whom have little or no education.<sup>31</sup> Immigrants who arrived just a few years earlier and African Americans are among the losers.<sup>32</sup> Blacks are not only losing jobs but hard won political power. Hispanics have already eclipsed blacks as the most populous minority group in gateway cities like New York, Houston, Los Angeles, and Miami. Neighborhoods that were once predominantly white and then

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<sup>29</sup> Mark Krikorian <msk@us.net>, "U.S. Immigration News," Article <199706241706.NAA27612@us.net>, in <CISNEWS@cis.org>, June 24 1997.

<sup>30</sup> Villafranca, "Immigrants' Role Being Seen In New Light."

<sup>31</sup> U.S. Bureau of the Census, *The Foreign-Born Population: 1996*, T.B; Booth, "One Nation, Indivisible: Is It History? Soon, No Single Group Will Comprise Majority."

<sup>32</sup> In Los Angeles there were 2,500 unionized black janitors in 1977. By 1985 that was down to 600 due to the use of non-union immigrant labor Daniel James, *Illegal Immigration--An Unfolding Crisis* (Lanham, MD: University Press of America, 1991), 49.

went black are now mostly Latino or Asian. Blacks resent the fact that they led the struggle for civil rights but Latinos are reaping the benefits. Blacks are threatened by their own successes. In the Watts area in Los Angeles, for example, the Martin Luther King Hospital was a symbol of black power when it opened in 1974. Today the majority of its patients are Latino and Latino critics are complaining that the number of black doctors and staff is disproportionately high.<sup>33</sup>

In March of 1998 the police in East Palo Alto, California had to break up a fight between Latinos and blacks arguing over bilingual education at a school board meeting. Palo Alto once was predominantly black but shifted to majority Hispanic in recent years.<sup>34</sup> At school board meetings in Dallas there have been several near brawls between blacks and Latinos.<sup>35</sup> In Miami where Cuban immigrants have taken over the political and economic structures, blacks complain that the Hispanics refuse to share power or even hire them. Things were better when the whites were in power and the Jim Crow laws in effect, said one black activist.<sup>36</sup>

These tensions erupt into violence. Gang violence often expresses them and riots are influenced by them. In the 1992 Los Angeles riots Korean-owned businesses in largely black

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<sup>33</sup> Ed Timms and Jayne Noble Suhler, "Americans at Odds: Struggles in Dallas Between Minority Groups Mirror National Trend," *Dallas Morning News*, Jan. 4 1998.

<sup>34</sup> Booth, "One Nation, Indivisible: Is It History? Soon, No Single Group Will Comprise Majority."

<sup>35</sup> Timms and Suhler, "Americans at Odds: Struggles in Dallas Between Minority Groups Mirror National Trend."

<sup>36</sup> Booth, "One Nation, Indivisible: Is It History? Soon, No Single Group Will Comprise Majority."

neighborhoods were singled out. The Mount Pleasant riot in Washington, D.C. in 1991 is particularly revealing of the convoluted state of American ethnic relations and of the ironic need for better police community relations.

No one was killed but the damage was extensive. Hundreds of hispanic youths threw rocks and bottles at the predominantly black police force. They damaged and looted 31 businesses, and set vehicles on fire including 20 police cars and two dozen Metro transit vehicles. A curfew was imposed for three days. The incident began when three Metropolitan Police officers stopped a 30-year-old Salvadoran immigrant who had been drinking in a park. When he drew a knife on the Hispanic female officer who was handcuffing him, her black female partner shot him. Word of the incident spread immediately and Hispanic youths went on a rampage.

Mount Pleasant once was predominantly black but during the 1980s Hispanics increased by 129 percent and blacks decreased by 20 percent. Many of its residents were illegal immigrants from Central America. The reason for the riot given by virtually all neighborhood Hispanics was police abuse. They accused the police of treating them unfairly. Some made comparisons to the police back home. "It's just like in Guatemala, except that what happens back home during the day happens here at night," observed one immigrant.<sup>37</sup> "The same oppression that there is in my country, there is here too. The police are the same as in El

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<sup>37</sup> James, *Illegal Immigration--An Unfolding Crisis*, 81.

Salvador. For the simple pleasure of it, they harass people. The rioting is the response to years of oppression,” said another.<sup>38</sup> The Seven Eleven store was singled out for destruction because it was a police hangout.

The black leadership responded by complaining that Hispanics had not tried hard enough to integrate into the community. Mayor Dixon stated:

I do think that in order to become a part of the community here you have to make an effort. Hispanics are not involved in ANC [Advisory Neighborhood Councils] or town meetings. They say when in Rome do as the Romans do....It's to everyone's advantage to learn how to speak English.... You cannot have people drinking in public, because that is an inappropriate and criminal activity....And you have to respond to that symbol of authority in whatever forms it takes in our culture....<sup>39</sup>

A black member of the D.C. City Council who headed the Council's Human Services Committee shocked Hispanics when he exploded with: "If they don't appreciate our country, get out".<sup>40</sup> Hispanics replied that assimilation of poorly educated, non-English-speaking, immigrants from a culture where drinking in public, urinating on the street and throwing garbage on the sidewalk is commonplace is not easy. A Peruvian baker pointed out that town hall

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<sup>38</sup> James, *Illegal Immigration--An Unfolding Crisis*, 83.

<sup>39</sup> Quoted from The Washington Post 12, 1991 in James, *Illegal Immigration--An Unfolding Crisis*, 82.

<sup>40</sup> James, *Illegal Immigration--An Unfolding Crisis*, 82.

meetings and neighborhood councils were simply not going to do it.

Some black leaders acknowledged the irony. One City Council member stated: “The Hispanics see the police department as an occupying force the same way black people saw the police department as an occupying force in ‘68 [an allusion to the riots in D.C. after the assassination of Dr. Martin Luther King].”<sup>41</sup> Another Council member and former member of the Student Non-Violent Coordinating Committee said, “After listening to the Hispanic young people I went home and told my wife it was like listening to myself 20 years ago.”<sup>42</sup>

#### Illegal Immigration and Anti-Immigrant Sentiment

Understanding anti-immigrant sentiment today is confounded even further by the presence of a highly inflammatory additional factor, namely illegal immigration. This factor cuts in many directions and can not be reduced to mere racism or xenophobia. People who believe in the rule of law, and a fair and orderly process of government have every right to object to people who enter or stay in the country without proper authority. They also are justified in registering their discontent at a government that fails to control its borders. These two factors certainly contributed to California’s response to the immigration problem.

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<sup>41</sup> James, *Illegal Immigration--An Unfolding Crisis*, 80.

<sup>42</sup> James, *Illegal Immigration--An Unfolding Crisis*, 84.

It took Congress almost twenty years to pass the Immigration Reform and Control Act of 1986 which was supposed to stop illegal immigration by punishing employers who knowingly hire illegal aliens. Meanwhile, hundreds of thousands of illegal immigrants crossed and re-crossed the undermanned and unprotected border. The federal government's failure at the border became a national humiliation. In the early 1980s Attorney General William French Smith reported that we had lost control of our border. Television magazine shows like 60 Minutes aired stories about it. National Geographic Magazine did a feature with photos showing immigrants gathering on the mesas just inside the American border preparing for the nightly run north.<sup>43</sup> In California the frustration began to take its toll. In less than a 2-year period in the late 1980s more than 250 stories appeared in southern California newspapers bearing such titles as: "Sparks Fly, Grievances Aired at Workshop on Illegal Aliens;" "Aliens Said Preying on School Kids;" "Illegal Aliens Invade;" "Troops Are Proposed for Border: Antonovich Asks Military to Curb Alien, Drug Flow."<sup>44</sup>

The widow of a Border Patrol Officer killed by an immigrant initiated a "light up the border" campaign. Participants parked their cars and directed their headlights at Mexico in an effort to remedy the anarchy. They waived American flags and banners saying "Wake Up

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<sup>43</sup> Mark Kramer, "U.S.-Mexican Border: Life on the Line," *National Geographic Magazine* 167, no. 6 (June 1985): 720-49.

<sup>44</sup> Susan Pennell, Christine Curtis and Jeff Tayman, *The Impact of Illegal Immigration on the Criminal Justice System* (San Diego, CA.: San Diego Association of Governments, 1989); Daniel Wolf, *Undocumented Aliens and Crime: The Case of San Diego County* (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, San Diego, 1988).

America." The protest began small but soon had over 1,000 members and 300 cars. It was condemned as racist by counter protestors who held up sheets of black plastic to reflect the lights back at America.<sup>45</sup>

Proposition 187 was an anti-illegal-immigrant initiative. It attempted to do what the federal government had failed to do, to cut off the flow of illegal immigrants by denying virtually all public services to them and requiring public officials including teachers and hospital workers to report suspected illegals. The magnitude of the vote in favor of the initiative was stunning. Over 4.6 million people voted for it, more votes than any candidate anywhere in the country received that day.<sup>46</sup> Even today after the courts have struck down Proposition 187, protest against the government's failure continues. Activists planned to put up a billboard at the California-Arizona state line on Interstate 10 that reads: "Welcome To California. The Illegal Immigrant State. Don't Let This Happen To Your State. Call Toll Free (877) NO ILLEGALS."<sup>47</sup>

### III. Immigrants as Victims of Crime and Exploitation

#### Hate Crimes

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<sup>45</sup> Patrick J. McDonnell, "Protestors Put Border Lights on the Shelf: Organizers of the Movement Say They Will Give Officials a Chance to Make Good on Recent Vows to Deal with the Problem of Illegal Immigration," *Los Angeles Times*, June 23 1990, B1; Patrick J. McDonnell, "Protestors Light Up the Border Again," *Los Angeles Times*, Aug. 24 1990, B3.

<sup>46</sup> Roberto Suro, "Proposition 187 Could Open Pandora's Box for GOP," *The Washington Post*, Nov. 11 1994, A24.

<sup>47</sup> Amanda Covarrubias, in CISNEWS@cis.Org <<http://www.cis.org/cis>>, May 1 1998.

Some anti-immigrant reactions have been strictly hateful and predatory. In Fresno, California where the majority of the state's 70,000 Hmong refugees from the Viet Nam war live, thousands of Hmong are departing for kinder, gentler parts of the United States. They are fleeing the criminal violence in their neighborhoods and the personal invectives of the mean-spirited, such as the anonymous letter received by Serge Lee, a Hmong immigrant who is a professor of social work at California State University at Fresno. It read: "Take your shacks, trash and Asian gangs, and leave America!"<sup>48</sup>

In 1996 in Sacramento, California, Jeff Katz, a radio talk show host suggested on the air that motorists near the Mexican border should run down illegal immigrants and that for every one hit the driver be awarded a sombrero-shaped bumper sticker. For every ten sombrero bumper stickers the motorist should get a free meal at Taco Bell.<sup>49</sup>

Turner, Maine, is a rural township of 5,000 people. Maine is the whitest state in the nation second only to its neighbor Vermont. In the 1980s Mexicans began arriving. Today hundreds live there, many working for the world's largest brown egg producer. The company only pays minimum wage and the work conditions were so bad that it was fined nearly \$2 million in federal penalties for health and safety code violations. Nevertheless the Latinos see it

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<sup>48</sup> Knight-Ridder <info@us.net>, "Hmong Refugees in California Flee Crime and Intolerance," Article <20:28:12.23>, in <CISNEWS>, Dec. 4 1996.

<sup>49</sup> He was fired for doing so but KPIX FM 95.7 in San Francisco auditioned him when its ratings plunged after ending its live coverage of the O. J. Simpson trial Staff, "Racist Radio," *The News (Mexico City)*, Sept. 14 1996, 4.

as a great opportunity and sometimes work 100 hours a week. Latinos constitute less than 1% of Maine's population but signs of the Mexican presence have mushroomed. Roadside lobster stands now also serve salsa and chiles. In 1995 two white men shouted, "Go back to Mexico!" to a group of Latino poultry workers at a convenience store north of Turner. They then pursued the fleeing Latinos at high-speed, firing shots at their vehicle injuring one of them<sup>50</sup>.

In Texas in early 1998 during the execution of Karla Faye Tucker a mob quickly turned against Hispanic death penalty protesters, all primarily immigrants. They yelled things like "This is our state, go back to where you came from."; "Mexicans just come in to trash our country;" and "They should all be killed."<sup>51</sup>

In the 1980s newspapers reported that Ku Klux Klan members in San Diego county boasted of "beheading and burying undocumented aliens."<sup>52</sup> In March 1998 San Bernardino County District Attorney's Office acting on information supplied by the Los Angeles Police Department's Anti-Terrorist Division alleged that four men belonging to a militia group were plotting to massacre illegal aliens as they entered the country. The group's leader, Glenn Yee, a reserve officer with the Irwindale Police Department, said he knew nothing of the border plot and

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<sup>50</sup> The assailants were subsequently convicted of federal civil rights violations  
McDonnell, "Mexican Arrivals Seek New Frontiers."

<sup>51</sup> Villafranca, "Immigrants' Role Being Seen In New Light."

<sup>52</sup> Todd A Eisenstadt and Cathryn L. Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County* (San Diego, CA: The Center for U.S.-Mexican Studies, University of California, 1994), 50.

that the LAPD had fabricated evidence to frame his multiracial group to which some LAPD officers belong.<sup>53</sup>

There have been several occasions of vigilantism along the border in Arizona and California including shootings, beatings and kidnaps of immigrants. During the early 1990s there were several confrontations between neo-Nazi skin heads and immigrants rights advocates on the border with the San Diego Police Department between them. Militia groups including the Metl militia, a group of uniformed high school students, practice shooting at immigrants crossing the border.<sup>54</sup> One human rights activist in San Diego who has been critical of law enforcement practices related to immigrants has received many death threats some of which he believes are from law enforcement officers.<sup>55</sup>

In January 1990 in Carlsbad, California, Cándido Galloso, a 26-year-old day laborer from Mexico was kidnaped and beaten from outside a market where migrants wait for curbside hiring. The store's owner and his brother bound the migrant worker's arms and legs with duct tape and put a bag over his head with a sign saying, "No Más Acqui.." In October 1992 in East San Diego County José Luis López, a mechanic from Mexicali with permission to work in the United

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<sup>53</sup> Matt Lait, "Men Accused of Plotting Massacre," *Los Angeles Times*, March 12 1998.

<sup>54</sup> Personal interview with Roberto Martinez, Director, American Friends Service Committee, San Diego, 6/22/98.

<sup>55</sup> Personal interview with Roberto Martinez, Director, American Friends Service Committee, San Diego, 6/22/98.

States, was attacked by two white men with baseball bats. They accused him and two illegal immigrants of raping a local white woman. The three lived in a creek-bed encampment in Alpine, an affluent, unincorporated community, where they worked as day laborers.<sup>56</sup>

Tensions over the migrants' presence had been brewing for some time. Shoplifting in a store across the street from the camp had prompted the employees to keep a log, the "Mexican Incident Book." A controversial 1992 San Diego County Grand Jury report linked migrants living in the creek bed to various crimes. Anti-immigrant activity had been happening including racial slurs, bottle throwing and beatings of migrants. In a separate matter three weeks after the incident patrons at a local tavern reported to the Sheriff's Department that three Mexicans had raped a woman. Although when interviewed the victim said her attacker was an Anglo, Sheriff's deputies searched the camp. According to the bartender when the rape call was made to law enforcement there was talk in the tavern about "going out there and playing vigilante."<sup>57</sup>

The Lopez incident was resolved mostly to the satisfaction of a local human rights activist with years of experience with violence against the migrants. Roberto Martinez, Director of the local American Friends Service Committee, attributed the resolution to a combination of good law enforcement and pressure from a coalition of pro-immigrant activists. They raised a

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<sup>56</sup> Eisenstadt and Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County*, 47ff.

<sup>57</sup> Eisenstadt and Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County*, 48.

reward for information leading to a successful prosecution and the blitzed law enforcement authorities with faxes urging them to help diffuse the tensions and to promptly make arrests. They collaborated closely with law enforcement officials providing informants who supplied the basis for the case against five individuals including the victim's husband. They were convicted of battery and assault with a deadly weapon but were sentenced only to time-served.<sup>58</sup>

Martinez regards it as proof that human rights groups and law enforcement authorities can work together and that community policing can mean protection for all humans living in the jurisdiction even those who lack standing and a voice. In his vision of problem-oriented policing the problem is the asymmetry between the immigrants and the native born regarding their respective abilities to obtain police sympathy, support and protection. There is a reinforcing cycle of isolation and distrust. Immigrants do not report their beatings and victimizations to the police because they perceive the police to be biased against them and disinterested. That leaves them even more vulnerable to further victimizations and it leaves law enforcement authorities without any official records that the victimizations are occurring.

He and other human rights activists believe that in order to provide protection to immigrant communities law enforcement agencies must do more to monitor, document and take seriously hate crimes. At a minimum this requires that law enforcement officers be trained to

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<sup>58</sup> In June 1998 the husband of the victim was found not guilty in a case where he shot in the back and killed two Mexican American youths involved in a confrontation. Personal interview with Roberto Martinez, Director, American Friends Service Committee, San Diego, 6/22/98.

recognize the elements of hate crime; that better records be kept and monitored to anticipate and diffuse growing community tensions. In this era of massive immigration, the effective enforcement of hate crime statutes may represent a timely adjunct to law enforcement's means for deterring violence and integrating the new community.

### Exploitation and Banditry

Immigrants need protection not only from hatred but from predators seeking to exploit their vulnerabilities. There have been no surveys in America that focused upon the victimization of immigrants.<sup>59</sup> But there are daily reports in the press about illegal immigrants begin victimized in all imaginable ways. They exploited and abused by smugglers, employers, bandits, officials, and other predators. Illegal immigration has revitalized involuntary servitude.<sup>60</sup>

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<sup>59</sup> A study of the victimization of Greek immigrants in Germany found that while the rate of victimization of the Greek immigrants was similar to the German rate, the Greeks suffered more serious victimizations Angelika Pitsela, "Criminal Victimization of Foreign Minorities in the Federal Republic of Germany," in *Crime and Criminal Justice*, ed. Gunther Kaiser and Geissler (Freiburg i. Br.: Max-Planck-Institut, 1988), 385-406.

<sup>60</sup> Charlotte Gail Blake, "North Carolina's New Involuntary Servitude Statute: Inadequate Relief for Enslaved Migrant Laborers," *North Carolina Law Review* (1984); Wendell Rawls Jr., "Migrant Slavery Persists on Southeast Farms," *The New York Times*, Nov. 19 1981, A1; Reuter, "8 Arrested in L.A. on Charges They Enslaved Thai Immigrants," *The Washington Post*, Aug. 4 1995, A17; Mark Stevens, "Crackdown on Sweatshops," *Christian Science Monitor*, March 7 1980, 3; David Wysoki, "Sweatshops Return: Established Safeguards Don't Work: Possible Links to Crime Figures," *United Press International*, BC Cycle, Fin. Sec. 1981; Charles Alexander, "Notes from the Underground: Millions of Illegal Workers Will Not Be Celebrating Labor Day," U.S. Edition, *Time*, Sept. 7 1981; Frank Swaboda and Margaret Webb Pressler, "U.S. Targets 'Slave Labor' Sweatshop: Back Wages Sought From Clothing Makers," *The Washington Post*, Aug. 16 1995; North Carolina Legislative Research Committee, *Migrant Workers*, Report to the 1983 General Assembly of North Carolina (Raleigh, N.C.: State of North

In July 1997 New York police discovered 50 adult and 12 children who were illegal Mexican aliens most of them deaf living in squalid conditions and being forced to work as slave labor selling \$1 trinkets on the New York subways and being beaten if they failed to make the \$100-a-day sales quota. A ring of 16 Mexicans smuggled them into the country and enslaved them. The ring leaders were ordered to pay \$1.5 million in restitution to the victims. The money was to come from an estimated \$3 million in bank accounts raised by operation.<sup>61</sup>

In February 1998 the FBI broke up an alien smuggling/ prostitution ring that brought 20 girls some as young as 13 from Mexico to Florida, enslaved them for two years and forced them into prostitution to work off the \$2,000 smuggling fee.<sup>62</sup> A family of six illegal immigrants from Mexico operated the sex/slavery ring in Florida, Texas and South Carolina. They are accused of

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Carolina, 1983); Joey Asher, "Comment: How the United States Is Violating Its International Agreements to Combat Slavery," *Emory International Law Review* (1994); Benjamin Whitaker, *Slavery*, Doc. E/CN.4/Sub.2/1982/20Rev.; U.N. Sales No. E.84.XIV.1 (1982) (New York, N.Y.: United Nations, 1982); Aurelio Rojas, "Growers Hire Illegals With Impunity: Workers Pay the Price for Lax Scrutiny of Farm Industry," *San Francisco Chronicle*, March 19 1996, A1; Federation for American Immigration Reform, Ed., *Immigration 2000: The Century of the New American Sweatshop* (Washington, D.C.: Author, 1992); Jim U. Oliver, "Crime and Immigration: A Joint Venture," *United States Attorneys' Bulletin* 44, no. 2 (April 1996): 24-26; William Branigin, "Reaping Abuse for What They Sew: Sweatshops Once Again Commonplace in U.S. Garment Industry," *The Washington Post*, Feb. 16 1997, A1, A30; Associated Press, CISNEWS@cis.org, "More Sentences on the Deaf Mexican Illegals Case," CISNEWS (May 15, 1998).

<sup>61</sup> Associated Press. "4 Sentenced in Captive Worker Ring."; Richard Pyle, "First Sentencing in Mexican Deaf Case," *Associated Press News Service*, May 8 1998.

<sup>62</sup> John Pacenti, "FBI Busts Mexican Prostitution Ring," 199802251530.KAA05219@home.us.net, CISNEWS@cis.Org (Feb. 24, 1998).

beating the women, raping some and forcing two to have abortions.<sup>63</sup>

Even legal immigrants are vulnerable to the extent that they do not trust and can not communicate with law enforcement authorities. Immigrant enclaves become societies within societies where the local law enforcement can not easily penetrate and thus can neither obtain intelligence and cooperative witnesses. Thus the cultural barriers are obstacles to providing safety for both the immigrant community or the host community. Immigrant communities become the recruiting ground for organized criminal enterprises particularly with international connections. Members of the same ethnic group form extortionate and violent enterprises that prey only on their own kind.<sup>64</sup>

#### IV. The Criminality of Immigrants

The connection between crime and immigration has a long history. The first federal immigration restrictions as well as the state and colonial laws attempted to keep criminals out. Anti-immigrant polemicists frequently play upon public fears of immigrant criminality. Often this has been linked to assumptions about the innate inferiority of particular racial or ethnic groups or their natural proclivity for crime.

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<sup>63</sup> Knight Ridder News Service, "16 Mexican Immigrants Charged with Sex Slavery in South Carolina," *Lexington Herald-Leader*, June 3 1998.

<sup>64</sup> Huey-Long John Song, "No White-Feathered Crows: Chinese Immigrant' and Vietnamese Refugees' Adaptation to American Legal Institutions," Ph. D. Diss. (Irvine: University of California, 1988).

Systematic analyses of the relative criminality of immigrants were once a central focus of early American criminology. Such studies have not been done in the United States for several decades but are being done in Europe as immigration has become a political issue there.<sup>65</sup> The one notable exception is a cross-city study that examined the relationship between immigration into a metropolitan area and the area's crime rate over the 1980's. It found that after controlling for the demographic characteristics of the cities, that recent immigrants had no effect on crime rates in a cross-sectional analysis. Also immigration had no effect in explaining changes in a city's crime rate over time. In a companion analysis of data from the National Longitudinal Survey of Youth, it was found that youth born abroad were statistically significantly less likely than native-born youth to be criminally active.<sup>66</sup>

There is a literature from abroad from an earlier time. The methodological rigor of immigration-and-crime research has improved; yet doubts continue about measures of crucial concepts such as country of birth and alien status at time of offense.<sup>67</sup> Findings have been

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<sup>65</sup> Ineke Haen Marshall, Ed., *Minorities, Migrants, and Crime* (Thousand Oaks, CA: Sage, 1997); Michael Tonry, "Introduction," in *Ethnicity, Crime, and Immigration: Comparative and Cross-National Perspectives*, ed. Michael Tonry (Chicago, IL: University of Chicago Press, 1996), 1-29.

<sup>66</sup> Kristin F. Butcher and Anne Morrison Piehl, "Immigration and Institutionalization," Presented at various seminars at MIT, Harvard, Stanford Universities (April, 1996).

<sup>67</sup> The topic continues to be of interest to some criminologists. See Harold M. Launer and Joseph R. Palenski, eds., *Crime and the New Immigrants* (Springfield, IL.: Charles C. Thomas, 1989).

mixed. Some studies suggest that immigration is associated with higher crime rates.<sup>68</sup> Others report lower rates.<sup>69</sup> Ethnic (national groups) differences in the types of criminality seem to exist and appear to reflect differences in the cultural traditions of the home country.<sup>70</sup> As immigrants assimilate they tend to reflect the criminality of their new environment.<sup>71</sup>

The few studies of the criminality of illegal immigrants are of limited value. Given that there is no uniform method for identifying illegal aliens in arrest populations (INS, 1989), their measures of alienage are problematic. They are useless for determining the incidence or prevalence of criminality among the illegal alien population. Most studies are about the costs of alien crime. They provide rough indications of the relative distributions of illegal aliens among

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<sup>68</sup> Fahad Al-Thakeb, "Crime Trends in Kuwait," International Criminological Symposium. Stockholm, Sweden (1978).

<sup>69</sup> U.S. National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws*, No.5 (Washington, D.C.: Government Printing Office, 1931e); Australian Immigration Advisory Council, *Third Report of the Committee Established to Investigate Conduct of Migrants* (Canberra: Commonwealth Government Printer, 1975); Leonard D. Savitz, *Delinquency and Migration*, Ph.D. diss. (Philadelphia, PA.: University of Pennsylvania, 1960); P.J. Griffen, "Rates of Crime and Delinquency," in *Crime and Its Treatment in Canada*, ed. W.T. McGrath (Toronto: Macmillan, 1965); Franco Ferracuti, "European Migration and Crime," in *Crime and Culture: Essays in Honor of Thorsten Sellin*, ed. Marvin E. Wolfgang (New York, N.Y.: Wiley, 1968), Clinard 1978; Peter-Alexis Albrecht, Christian Pfeiffer and Klaus Zapka, *International Summaries: Reactions of the Agencies of Social Control to Crimes of Young Foreigners in the Federal Republic of Germany*, NCJ Number 078597 (Rockville, MD: National Criminal Justice Reference Service, 1978); William Wilbanks, *Murder in Miami* (Lanham, MD.: University Press of America, 1984).

<sup>70</sup> Lyle W. Shannon, "The Economic Absorption and Cultural Integration of Immigrant Workers," *American Behavioral Scientist* (1969).

<sup>71</sup> Edwin H. Sutherland and Donald R. Cressey, *Criminology*, 9 (Philadelphia, PA: J.B. Lippincott, 1974), 152.

arrested/incarcerated populations and support qualified comparisons by type-of-crime of aliens versus others.

In 1972 the best estimates of the criminality of illegal aliens relied upon "expert opinion". The consensus was that illegal aliens were not involved significantly in crime. In 1975 a San Diego County study found that during a recent 20 month period the San Diego County Sheriff's Department had logged a total of 107,563 bookings at the jail. Of these 601 (.005%) were classified as illegal aliens.<sup>72</sup>

A decade later San Diego County conducted the most rigorous study of this kind.<sup>73</sup> It analyzed the involvement of illegal aliens in over 7,000 adult serious crimes (i.e., arrests for Index offenses or felony narcotic or receiving stolen property violations) in San Diego (Ca.) and El Paso, (Tx.) between July 1, 1985 and June 30, 1986. The study took pains to accurately establish alienage.

In San Diego, 81% of the 4,431 sample arrests were U.S. citizens; 12% illegal immigrants; 2% legal immigrants; 4% foreign-born but citizenship unconfirmed. In El Paso the proportions were: 74% (of 1,668) were citizens; 15% illegals; 7% legals; and 4% unconfirmed. In both jurisdictions illegal aliens were less likely than other groups to be among those arrested for the violent crimes and narcotics. In San Diego illegal aliens were more likely than U.S.

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<sup>72</sup> Vic Villapando, *A Study of the Impact of Illegal Aliens on the County of San Diego on Specific Socioeconomic Areas* (San Diego, CA.: San Diego County Human Resources Agency, 1975).

<sup>73</sup> Pennell, Curtis and Tayman, *The Impact of Illegal Immigration on the Criminal Justice System*.

citizens to be arrested for property crimes (62% compared to 43%); and less likely for violent crimes (22% compared to 35%). In El Paso the pattern was similar. Illegal aliens were more likely to be arrested for property crimes (66% compared to 44%) and less likely for violent crimes (25% compared to 36%).

A recent Urban Institute survey of the seven states in which the largest numbers of aliens are concentrated (Az., Ca., Fl., Il., N.J., N.Y., Tx.) estimated that there were 21,215 illegal aliens incarcerated in those states' penitentiaries. California alone had an estimated 71% of all incarcerated aliens.<sup>74</sup>

#### V. Conclusion

The current flow immigration is profoundly transforming the country and presenting numerous challenges to the police. There is no systematic evidence that illegal immigrants are more or less likely to be victims of crimes or offenders. Even without responsibility for enforcing immigration laws the police will have immigration-generated problems of a wide variety with which to deal for several decades.

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<sup>74</sup> Rebecca L. Clark, et al., *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States* (Washington, D.C.: Urban Institute, 1994).

## Chapter 3

### Immigration, Crime and Cultural Change

#### I. Introduction

Immigration, crime and the police have had a long and complex association in American history. From colonial days to the present Americans have had ambivalent attitudes about immigrants. America is a nation of immigrants. Its national motto, *E Pluribus Unum*, proclaims the ideal that many different people would live together as one. Yet, the reality has been one of repeated efforts to restrict immigration of certain kinds of people.

The country began by declaring that “all men are created equal.” It took a century to abolish the most glaring contradiction to that ideal, slavery, and another century to prohibit discrimination. Since the 1960s the racial, ethnic, and religious biases which had been encoded into American immigration law and other public policies have been eliminated. Nowhere has cultural change in American history been more evident than on the matter of equal treatment of people regardless of social or biological attributes. The kind of unabashed bigotry and discrimination that were openly practiced without fear of public rebuke in the past has been marginalized to the extremists.

Today the law is not only prohibits discrimination but punishes crimes motivated by the

hatred of people because of their race, ethnicity, religion, national origin or other social status.

The hate crimes legislation marks the dramatic extent of the change in American law and culture with respect to the pluralist ideal. With regard to immigration and the police it means that police have new obligations regarding the security of immigrants from the kind of criminally xenophobic responses that typically accompany them.

These cultural and legal changes as well as changes in our understanding of the police function in modern democratic societies can be traced through immigration history. The reactions to the immigration crisis in the United States as well as the rest of the world today are notably different from those a century ago. Several paradigm shifts have happened. The connection between immigration and crime is still being made but it is being viewed more critically and from new perspectives. Racial and ethnic biases are far more in check. The local police are once again being looked to manage the crime and disorder problems related to immigration but the kind of response being sought breaks with the nineteenth century mold. Immigrants are being studied as much as victims of crimes as perpetrators. Local police are being asked to respond to the international dimensions of the criminality associated with immigration. This chapter traces these changes.

## II. Pluralism, Crime, and Immigration

### E Pluribus Unum

Human migration brought different cultural groups into contact usually resulting in

struggles for cultural and political hegemony. This happened on the North American continent between descendants of those earliest migrants and the newer migrants from Europe. But the Europeans who established the American nation also established new ideals for the kind of society it wanted to become. In 1776 Congress had one of those ideals engraved as a motto on the Great Seal of the United States. E Pluribus Unum: Out of many, one.<sup>1</sup> The motto was originally intended to express the union of the 13 states.<sup>2</sup> But it quickly came to stand for a larger ideal of pluralism that was already in circulation. The ideal was that out of the many different peoples in the new nation one new breed or “race” of people (which meant “nationality” in the eighteenth and nineteenth centuries) would emerge.

An often quoted expression of this ideal was from an immigrant named Hector St. John de Crèvecoeur. He emigrated from France to the American colonies in 1759, married an American woman, settled on a farm in Orange County, New York, and published his Letters from an American Farmer in 1784. He marveled at the diversity of the other settlers – “a mixture of English, Scotch, Irish, French, Dutch, Germans, and Swedes,” a “strange mixture of blood” that you could find in no other country. He recalled one family whose grandfather was English, whose wife was Dutch, whose son married a Frenchwoman, and whose present four sons had married women of different nationalities. “From this promiscuous breed,” he wrote, “that race

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<sup>1</sup> U.S. Department of State, *The Great Seal of the United States*, Bureau of Public Affairs, September (Washington, DC: Government Printing Office, 1996).

<sup>2</sup> U.S. Department of State, *The Great Seal of the United States*.

now called Americans have arisen".<sup>3</sup> "What then is the American, this new man?"

Crèvecoeur's answer has become a classic statement of the assimilationist ideal. Who is this new man? "He is an American, who leaving behind him all his ancient prejudices and manners, receives new ones from the new mode of life he has embraced, the new government he obeys, and the new rank he holds. The American is a new man, who acts upon new principles...Here individuals of all nations are melted into a new race of men."<sup>4</sup>

Crèvecoeur was not alone. George Washington also favored the doctrine of the "new race." "The bosom of America," he wrote, "is open...to the oppressed and persecuted of all Nations and Religions."<sup>5</sup> Let them bring their language, habits and principles (good or bad) with them but let them be prepared for "intermixture with our people." Then they would be "assimilated to our customs, measures and laws: in a word, soon become one people."<sup>6</sup>

This is not to say that the Founding Fathers favored wide open immigration. They did

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<sup>3</sup> Hector St. John de Crevecoeur, "Letters from an American Farmer," in *The Heath Anthology of American Literature*, ed. Paul Lauter (Lexington, MA: D.C. Heath and Company, 1994 [1782]), 820-50. The term "race" as used in the eighteenth and nineteenth centuries meant what we mean by "nationality" today. The "English race" meant people from England.

<sup>4</sup> Crevecoeur, "Letters from an American Farmer."

<sup>5</sup> Arthur M. Schlesinger Jr., *The Disuniting of America* (New York, NY: W.W. Norton and Company, 1992), 24.

<sup>6</sup> Schlesinger Jr., *The Disuniting of America*, 24.

not.<sup>7</sup> They worried about foreigners as indeed the leaders of any revolutionary cause must. Thus, some of their statements and laws must be seen not as anti-immigrant but as cautions. Jefferson urged that immigrants from countries with absolute monarchies should not be encouraged to come because “They will bring with them the principles of the government they leave, or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as usual, from one extreme to the other. It would be a miracle were they to stop precisely at the point of temperate liberty.”<sup>8</sup> John Adams was similarly cautious. “Americans,” he wrote, “will find that their own experience will coincide with the experience of all other nations, and foreigners must be received with caution, or they will destroy all confidence in government.”<sup>9</sup>

By the mid-nineteenth century some people believed that the melting pot process was working well and were even romanticizing the ideal. Herman Melville wrote, “You can not spill

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<sup>7</sup> In a publication funded by the American Immigration Control Foundation the case is made that the Founding Fathers were at least restrictionists if not outright opposed to immigration. The collection of citations to relevant statements is a convenient starting point and serves as a counterweight to some of the mythology about the American tradition. But, the statements need to be read with caution Wayne Lutton, *The Myth of Open Borders: The American Tradition of Immigration Control* (Monterey, VA.: American Immigration Control Foundation, 1988).

<sup>8</sup> From Notes on the State of Virginia, 1782. Quoted in Lutton, *The Myth of Open Borders: The American Tradition of Immigration Control*, 7.

<sup>9</sup> Lutton, *The Myth of Open Borders: The American Tradition of Immigration Control*, 6. In 1798 during Adams’s administration, the Alien and Sedition laws were passed giving the President power to deport all aliens he judged dangerous to the peace and safety of the country, or that he had reason to think were plotting against the government.

a drop of American blood without spilling the blood of the whole world. On this Western Hemisphere all tribes and people are forming into one federated whole....”<sup>10</sup>

Ralph Waldo Emerson compared the process of making the new American race to the burning of the temple at Corinth where the silver and gold had melted and intermixed and produced “a new compound more precious than any.” He observed that in America, “this asylum of all nations, the energy of Irish, Germans, Swedes, Poles, & Cossacks, & all the European tribes—of the Africans, & of the Polynesians, will construct a new race...as vigorous as the new Europe which came out of the smelting pot of the Dark Ages...”<sup>11</sup>

Alexis de Tocqueville wrote back to France: “Imagine, my dear friend, if you can, a society formed of all the nations of the world...people having different languages, beliefs, opinions: in a word, a society without roots, without memories, without prejudices, ... without a national character, yet a hundred times happier than our own.”<sup>12</sup>

### 19<sup>th</sup> Century Responses to Immigration

For a country that hoped to build a new race, to incorporate differences and find

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<sup>10</sup> Schlesinger Jr., *The Disuniting of America*, 24.

<sup>11</sup> Schlesinger Jr., *The Disuniting of America*, 24.

<sup>12</sup> Schlesinger Jr., *The Disuniting of America*, 24.

commonalities, the treatment of the Indians was a contradiction of principle. U.S. immigration policy would eventually produce many others until the civil rights revolution of 1960s brought the country closer to its ideals. By then the Chinese and other of Asians had been excluded. The admission of Italians, Slavs and Eastern European Jews had been limited on the grounds of their alleged inferiority; and Mexicans, inviting in to build the railroads, work the mines and harvest the crops, and evicted when the economy went bad.

In U.S. history immigrants were met with lynchings, discrimination and riots. Washington, Jefferson, and Adams might well have worried as much about native-born Americans as foreigners not being ready to live up to American ideals. Native born Americans unleashed a reign of violence and vilification upon the foreigners who began arriving en masse in the second quarter of the nineteenth century.

Between 1820 and 1860 the population of the United States tripled from about 9,600,000 to about 31,500,000. Immigrants accounted for a large part of this increase.<sup>13</sup> Immigration between 1840 and 1860 was the highest, relative to the existing native population, the United States has ever experienced.<sup>14</sup> Most of the immigrants were poor, unskilled, Irish, Catholics fleeing the potato famine. They concentrated in the largest urban areas such as New York,

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<sup>13</sup> Conrad Taeuber and Irene B. Taeuber, *The Changing Population of the United States* (New York, NY: Wiley, 1958), 118.

<sup>14</sup> Kitty Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924* (Orlando, FL: Academic Press, 1984), 26.

Boston and Philadelphia. They dramatically changed the religious composition of the country.<sup>15</sup> Native born Protestant Americans reacted with loathing and violence.

In 1837 in Boston a confrontation between an Irish funeral procession and local firefighters touched off the Broad Street Riot. Over 15,000 rioters marched through the Irish sections of the city, burning and sacking Irish homes.<sup>16</sup> In his book, Foreign Conspiracy (1841), Samuel Morse, inventor of the telegraph and editor of the New York Observer claimed the Pope planned to flood the country with enough Catholics to overthrow the government.<sup>17</sup> The Boston Police Department was formed shortly thereafter in order to manage the growing conflict with immigrant groups.<sup>18</sup>

In the 1840s and 50s, responding to the arrival of a wave of destitute Irish and German Catholic immigrants Protestant nativists formed the American Party whose slogan was "America for Americans." They rallied support for their political agendas with research documenting the disproportionate rates of foreign born people involved in crime, pauperism and mental illness. In Boston between 1841 and 1845 the foreign born constituted two thirds of the paupers; two

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<sup>15</sup> In 1820 there were only 195,000 Catholics in the United States. By 1860 there were 3,000,000. Between 1820 and 1840 only 56,000 Irish emigrated to the United States; but in the 4-year period between 1845 and 1849 about 600,000 arrived; and in the next five years almost a million more came Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924*, 26.

<sup>16</sup> Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924*, 27.

<sup>17</sup> Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924*, 27.

<sup>18</sup> Roger Lane, *Policing the City: Boston, 1822-1885* (New York, NY: Atheneum, 1971).

thirds of the inmates of the House of Industry; 65 % of the inmates in the Lunatic Asylum; and all 16 cases in Police Court on the day of the study. At the state level in 1849 the foreign born made up two-thirds of the prisoners and 20% of the inmates in the Reform School.<sup>19</sup> For the country as a whole in 1850 of the 27,000 persons convicted for criminal offenses more than half were foreign-born, although foreigners constituted only about eleven per cent of the population.<sup>20</sup>

In the 1850s a number of secret fraternal societies restricted in membership to native-born Protestants sprang up. Members pledged to vote for no one except native born Protestants for public office. When asked about their societies they were to respond, "I know nothing." Thus the party was referred to as the Know Nothings. It quickly scored electoral successes and just as quickly faded from view. It favored temperance and opposed tax support for Catholic schools. But the main purpose was to reduce the power of foreign-born voters in politics. Federal law required five years to become naturalized citizens. But democratic judges obligingly issued naturalization papers almost as soon as immigrants got off the boat.<sup>21</sup>

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<sup>19</sup> Edith Abbott, Ed., *Historical Aspects of the Immigration Problem: Select Documents* (Chicago, IL: University of Chicago Press, 1969 [1926]).

<sup>20</sup> DeBow, *Compendium of the Seventh Census*, 165-167, cited in Ray A. Billington, *The Protestant Crusade: 1800-1860: A Study in the Origins of American Nativism* (Gloucester, MA: Peter Smith, 1963 [1938]), 324.

<sup>21</sup> Immigrant voters increased dramatically. In Boston, for example, they increased by 195 percent from 1850 to 1855. In contrast native-born voters rose by only 14 percent James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York, NY: Ballantine Books, 1988), 136.

In the South nativist sentiments flourished especially in cities with large immigrant populations. In 1854 a political handbill proclaimed:

“Citizens of New Orleans !! You have an important duty to perform tomorrow in the election of the District Attorney....Father Mullen and the Jesuits can no longer rule this city....The Irish are...making our elections scenes of violence and fraud.... Americans! Shall we be ruled by Irish and Germans?”<sup>22</sup>

Nativist riots and election-day violence were common. In Baltimore gangs such as the Plug Uglies enforced Know-Nothing dominance at the ballot box. During the mid-1850s ethnic political violence killed four people in New Orleans, ten in St. Louis, seventeen in Baltimore and twenty-two in Louisville.<sup>23</sup>

The impact of the immigrants on the employment of natives provoked the greatest violence.<sup>24</sup> Throughout the century much of the conflict between immigrant groups arose from the fact that newly arriving immigrants were used break strikes or lower the wages. Native and foreign born workers battled repeatedly on the railroads and in the textile mills. Riots were

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<sup>22</sup> Overdyke, *The Know-Nothing Party in the South*, quoted in McPherson, *Battle Cry of Freedom: The Civil War Era*, 141.

<sup>23</sup> McPherson, *Battle Cry of Freedom: The Civil War Era*, 141.

<sup>24</sup> The rank and file support for the Know Nothings came mostly from the laboring classes. Their newspapers carried the motto, “Protection to American Labor, by protecting the American laborer.” A typical article read:

“Our laboring men...are met at every turn...with recently imported workmen from the low wages countries of the world....They fill our large cities, reduce the wages of labor, and increase the hardships of the old settler.” Quoted in Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924*, 28.

common. By the 1850s almost every state had experienced armed conflict between native and immigrant workers.<sup>25</sup>

In the mid-1850s the Know Nothings split over slavery. The logical place to go for the anti-slavery, northern Know Nothings was the newly emerging Republican party. But their nativism posed a dilemma for Republicans. If you are anti-slavery, how can you be anti-immigrant? Abraham Lincoln responded to them as follows:

“Our progress in degeneracy appears to me to be pretty rapid. As a nation, we began by declaring that ‘*all men are created equal.*’ We now practically read it ‘all men are created equal, *except negroes.*’ When the Know-Nothings get control, it will read ‘all men are created equal, except negroes, *and foreigners, and catholics.*’ When it comes to this I should prefer emigrating to some country where they make no pretense of loving liberty—Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy.”<sup>26</sup>

Getting Americans to live up to American ideals was not achieved by the Civil War. The 13<sup>th</sup> Amendment adopted in 1865 provided that “Neither slavery nor involuntary servitude... shall exist within the United States...” But it did not prohibit discrimination; it did not extinguish involuntary servitude; and it could not prohibit mean-spiritedness. In the South white

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<sup>25</sup> Calavita. *U.S. Immigration Law and the Control of Labor: 1820-1924*, 27.

<sup>26</sup> McPherson. *Battle Cry of Freedom: The Civil War Era*, 141.

supremacists with the aid of the terrorist tactics of the Ku Klux Klan disenfranchised emancipated blacks and created a legally segregated society that did not begin to be dismantled until the 1960s. Most of us are familiar with that troublesome part of our history. But the rest of the story of American intolerance is not about blacks, whites and the South. It is about immigration.

As millions of immigrants poured into the United States in the second half of the nineteenth century, a shift in the countries of origin occurred. An increasing number came from southern and eastern Europe. In the 1870s Slavs and Italians began to move into Pennsylvania and the northeast. Russo-Polish Jews settled New York's lower East Side. The new immigrants were peasants who were socially backward, strange looking and educationally deficient. Ethnic stereotypes were expressed publicly without fear of social reproach. The culture regarded bigotry and discrimination as normal and acceptable. Advertisements for jobs included notices such as: Irish Need Not Apply. One ad in a New York City newspaper in 1895 read:

Common labor, white, \$1.30-\$1.50

Common labor, colored, \$1.25-\$1.40

Common labor, Italian, \$1.15-\$1.25.<sup>27</sup>

Italians were quickly branded as blood thirsty criminals. The ethnic stereotype linked them to the Mafia, the stiletto and the vendetta. The Baltimore News wrote of Italians, "The

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<sup>27</sup> Quoted in Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924*, 77.

disposition to assassinate in revenge for a fancied wrong is a marked trait in the character of this impulsive and inexorable race.”<sup>28</sup> Italians were often lynched when connected, however remotely, with murder charges. In 1895 during labor strife in Colorado a group of miners massacred six Italians implicated in the death of a saloonkeeper. In 1896 a mob in Louisiana dragged three Italians from a jail and hanged them. In New Orleans in 1891 a mob lynched eleven Italian suspects after a jury refused to convict them.<sup>29</sup>

Some of the complaints about the immigrants sound familiar to those about Mexican migrant workers in California and Arizona today. In 1882 the *New York Tribune* reported:

“Numerous complaints have been made in regard to the Hebrew immigrants who lounge about Battery Park, obstructing the walks and sitting on the chains. Their filthy condition has caused many of the people who are accustomed to go to the park to seek a little recreation and fresh air to give up this practice. The immigrants also greatly annoy the persons who cross the park to take the boats to Coney Island, Staten Island and Brooklyn. The police have had many battles with these newcomers, who seem determined to have their own way.”<sup>30</sup>

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<sup>28</sup> Quoted in John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick, N.J.: Rutgers University Press, 1955), 91.

<sup>29</sup> Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 90.

<sup>30</sup> Quoted in Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 67.

## The Dillingham Commission: Racism As Crime Prevention

At first the shift in ethnicity went unnoticed. But by the mid-nineties northern White patricians, like Senator Henry Cabot Lodge, began to worry about the fate of the Anglo-Saxon race. The "new immigrants"--as the southern and eastern Europeans were called--were from "alien races." They represented a deep threat to the status of Anglo-Saxons. Madison Grant, a Park Avenue socialite, zoological administrator and a supporter of the assault on immigration published a book in 1916 entitled The Passing of the Great Race. The Anglo-Saxons were on a course of race suicide, he wrote. Everywhere the ruling race of the western world was on the wane. Concocting a crude interpretation of Mendel's laws of genetics, he explained that the mixing of two races "gives us a race reverting to the more ancient, generalized and lower type." Thus, "the cross between any of the three European races and a Jew is a Jew."<sup>31</sup>

The resurgent *fin de siècle* nativism sought to restrict immigration from these inferior races by imposing a literacy test on immigrants. After intense political wrangling the nativists almost succeeded.<sup>32</sup> Instead a commission was established to make an exhaustive investigation of immigration. The Commission had a staff of about 300 and spent a million dollars over three years. It published its findings in 1911 in forty-two impressive-looking volumes. Its work was seriously flawed. In his damning critique Oscar Handlin writes: "Despite its scientific pretensions...the [Commission's] report began by taking for granted the conclusions it aimed to

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<sup>31</sup> Quoted in Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 156.

<sup>32</sup> Immigration Act of 1907 (34 Statutes-at-Large 898).

prove--that the new immigration was essentially different from the old and less capable of being Americanized."<sup>33</sup>

One entire volume was devoted the criminality of immigrants. It analyzes "racial" (ethnic or national) differences in criminal behavior. A separate volume, the Commission's Dictionary of Races discusses racial propensities. Its author and the consultant to the latter report agreed that there are innate, ineradicable race distinctions that separate groups of men from one another. They asserted that it was necessary to classify races with regard to which are the fittest and most worthy to survive. The Commission's task, therefore, was to ascertain "whether there may not be certain races that are inferior to other races...to discover some test to show whether some may be better fitted for American citizenship than others."<sup>34</sup>

The Commission concluded that the new immigrants were indeed inferior and should be restricted. Support for this conclusion came from its report on the criminality of immigrants. That report can only be described as worthless at best and cynically dishonest at worst. The Commission glossed over two insurmountable obstacles to reaching its conclusion.

First, its work had begun in 1907. By then the 1900 census data were worthless for making the kinds of comparisons needed to make legitimate conclusions about the proportionate

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<sup>33</sup> Oscar Handlin, *Race and Nationality in American Life* (Boston, MA: Little, Brown, 1948), 101.

<sup>34</sup> Handlin, *Race and Nationality in American Life*, 105.

representation of various ethnic groups in crime. Secondly, a major national study had recently reached a conclusion that contradicted what the Commission wanted to prove. The United States Census Report on Prisoners had concluded that "immigration has not increased the volume of crime..." and that Americans "exhibited in general a tendency to commit more serious crimes than did the immigrant."<sup>35</sup>

These awkward facts are acknowledged by the Commission in its opening comments.<sup>36</sup> But then the report spins a tangled web to try to make it appear that the data prove the opposite.<sup>37</sup> Regarding the question of race and crime, the Commission admits that it could not address this question because it did not have the facts to do so. But lack of evidence did not prevent it from suggesting that certain racial groups were unusually prone to certain kinds of crime. The Italians, for example, were indeed the violent cutthroats of the stereotype. "The increase in offenses of personal violence in this country," says the report, "is largely traceable to

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<sup>35</sup> Quoted in Handlin, *Race and Nationality in American Life*, 125.

<sup>36</sup> It wrote: "No satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population. Such comparable statistics of crime and population as it has been possible to obtain indicate that immigrants are less prone to commit crime than are native Americans" U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, S. Doc. No. 750, 61st Cong., 3d sess. (Washington, D.C.: Government Printing Office, 1911e), 1.

<sup>37</sup> The Commission says that while immigration may not have increased crime in the United States, it has changed its character. But it describes these changes as *increases* in crime. It writes: "From the data gathered it is evident that immigration has had a marked effect upon the nature of the crimes committed in the United States. This effect has been to increase the commission of offenses of personal violence (such as abduction and kidnaping, assault, homicide, and rape) U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, 2.

immigration from southern Europe, and especially from Italy."<sup>38</sup>

While immigration may not have increased crime in the United States, it has changed its character the Commission concluded. But the changes described are stated in terms of *increases* in certain types of crimes. It writes:

"From the data [it] gathered it is evident that immigration has had a marked effect upon the nature of the crimes committed in the United States. This effect has been to increase the commission of offenses of personal violence (such as abduction and kidnaping, assault, homicide, and rape), and of that large class of violations of the law known as offenses against public policy (which may include disorderly conduct, drunkenness, vagrancy, the violation of corporation ordinances, and many offenses incident to city life). It is also probable that immigration has somewhat increased offenses against chastity, especially those connected with prostitution."<sup>39</sup>

The convoluted logic continues. When it comes to the criminality of certain racial groups the Commission initially says that it could not address this question because it did not have the facts to do so and that "[w]ithout them all conclusions regarding the relative amount of crime committed by immigrants and natives must be largely conjectural."<sup>40</sup> Yet this statement appears

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<sup>38</sup> U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, 2.

<sup>39</sup> U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, 2.

<sup>40</sup> U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, 1.

inconsistent with the series of flat assertions about the criminal proclivities of certain racial groups that follow which reads:

"Some of the changes in the character of crime may be traced to immigration from specific countries. although the difficulty of obtaining data regarding race has rendered the determination of racial influence almost impossible. The increase in offenses of personal violence in this country is largely traceable to immigration from southern Europe, and especially from Italy. This is most marked in connection with the crime of homicide; of all the various race and nationality groups appearing in the data collected, the Italian stands out prominently as having the largest percentages of cases of homicide among its crime. Abduction and kidnaping likewise have evidently become more prevalent because of Italian immigration. The increase in offenses against public policy is perhaps more due to the growth of cities and the resultant increase in the number of forbidden acts than it is to immigration. To immigration, however, some increase in the commission of these acts is evidently due and may be largely traced to immigration from Ireland, Scotland, Italy, France, and Russia. The Irish and Scotch immigrants are notable in penal records for intoxication, the Italian for offenses of violence against public policy, and the Greek and Russian for violation of corporation ordinances in large cities. Such probable increase in offenses against chastity as appears due to immigration is chiefly of crimes connected with prostitution, and has evidently been largely caused by immigration

from France and Russia."<sup>41</sup>

Half a century after Lincoln's assassination the Commission feigned to prove scientifically that all men were not created equal; and it recommended that the less equal be restricted. Its recommendation was enacted into law in two forms: as a literacy test in 1917 and as quotas based on national origins in 1924.<sup>42</sup> The quotas were designed to preserve the dominance of northwestern European races and to reduce the influx of the inferior southern and eastern European races.<sup>43</sup>

### III. Paradigm Revolutions

Today the United States is experiencing an immigration flow exceeding that which led to the restrictionist legislation of the turn of the century. The economic and political consequences of this new immigration crisis have been the subject of numerous analyses. Its impact on crime

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<sup>41</sup> U.S. Congress. Senate. Immigration Commission, *Immigration and Crime*, 2.

<sup>42</sup> According to a Senate Report, the Dillingham Commission "paved the way for the Immigration Act of 1917 which established a literacy test to exclude people from those areas and races that were alleged to be more difficult to assimilate into American culture. It was particularly directed at people from Southern and Eastern Europe U.S. Congress. Senate. Committee on the Judiciary, *The Immigration and Naturalization Systems of the United States*, S. Rept. 1515, 81st Cong., 2d Sess. (Washington, DC: Government Printing Office, 1950), 54.

<sup>43</sup> The quotas were based on two percent of the number of foreign-born persons of such nationality resident in the continental United States as of 1890. The year 1890 was chosen rather than the more recent census of 1910 in order to reduce the number of southern and eastern Europeans who would be eligible for admission Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 322.

and the administration of justice has received comparative little attention. This under-response is in striking contrast to times past when increases in immigration provoked studies of the criminal tendencies of immigrants and the need for better policing.

In the 1850s, the 1880s, and again in 1911 studies were conducted with that focus.<sup>44</sup> Indeed the early development of the academic discipline of criminology in America owes much to the efforts of sociologically-oriented theorists like Donald Taft,<sup>45</sup> Edwin Sutherland<sup>46</sup> and Thorsten Sellin<sup>47</sup> to challenge the biologically based explanations of immigrant criminality of earlier studies especially that of the Dillingham Commission. The criminologists countered with social and cultural explanations. Sutherland and Cressey describe Sellin's theory of culture conflict as a response to America's "immigrant problem."<sup>48</sup>

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<sup>44</sup> Abbott, *Historical Aspects of the Immigration Problem: Select Documents.*; Edith Abbott, *Immigration: Select Documents and Case Records* (Chicago, IL: University of Chicago Press, 1924); Convicts U.S. Congress. House. Select Committee to Inquire into the Importation of Contract Laborers, Paupers, *Report of the 'Ford Committee.'* House Report No. 3792, 50th Cong. 2d Sess. (Washington, DC: Government Printing Office, 1984); U.S. Congress. Senate. Immigration Commission, *Immigration and Crime.*

<sup>45</sup> Donald R. Taft, "Does Immigration Increase Crime?" *Social Forces* 12 (Oct. 1933): 69-77; Donald R. Taft, "Nationality and Crime," *American Sociological Review* 1 (1936): 724-36.

<sup>46</sup> Edwin H. Sutherland, "Is There Undue Crime Among Immigrants?" in *Proceedings of the National Conference on Social Work* (1927).

<sup>47</sup> Thorsten Sellin, *Culture Conflict and Crime* (New York, N.Y.: Social Science Research Council, 1938). See also C.C. Van Vechten, "The Criminality of the Foreign Born," *Proceedings of the American Prison Association* 70 (1940): 505-16.

<sup>48</sup> Donald R. Cressey, "Culture Conflict, Differential Association, and Normative Conflict," in *Crime and Culture: Essays in Honor of Thorsten Sellin*, Chapter 4, ed. Marvin E. Wolfgang (New York, N.Y.: Wiley, 1968), 43-54; Edwin H. Sutherland and Donald R. Cressey, *Criminology*, 10 (Philadelphia, PA: J.B. Lippincott, 1978), 113.

Popular and theoretical interest in the link between immigration and crime have fluctuated albeit not in synchronization. Popular opposition to immigration has a long history in America.<sup>49</sup> The belief that immigrants are criminally inclined has been an important part of that opposition. The most far reaching instance of this was the Dillingham Commission.

Theoretical interest in immigrant criminality usually followed popular interest. It emerged as researchers began to gather data to assess popular beliefs or to theorize alternative explanations of the presumed or established association between criminality and immigrant status. Theoretical interest has waxed and waned peaking in the nineteen thirties and forties and tapering off as immigration plummeted after the Quota laws. Interest has revived. Today's interest is more balanced reflecting the new awareness of global interdependence and a new sensitivity to the evils of racism and xenophobia.

Fluctuations in theoretical interest are reflected in the changing attention devoted to the topic in criminological texts and research. By 1872 emergent professional criminologists regarded criminal types and immigrants as almost the same thing. Charles Loring Brace, for example, noted that:

An immense proportion of our ignorant and criminal class are foreign born; and of the

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<sup>49</sup> Rita J. Simon. *Public Opinion and the Immigrant: Print Media Coverage, 1880-1980* (Lexington, MA: Lexington Books, 1985).

dangerous classes here, a very large part, though native born, are of foreign parentage.<sup>50</sup>

In 1907 John E. Brown wrote:

In the poorer quarters of our great cities may be found huddled together the Italian bandit and the bloodthirsty Spaniard, the bad man from Sicily, the Hungarian, Croatian and the Pole, the Chinaman and the Negro, the Cockney Englishman, the Russian and the Jew with all the centuries of hereditary hate back of them.<sup>51</sup>

In 1911 the Dillingham Commission devoted an entire volume to, "Immigrants and Crime."<sup>52</sup> Two decades later the first national commission on crime, the U.S. Commission on Law Observance and Enforcement, (the Wickersham Commission) devoted two volumes to the subject, one on "crime and the foreign born," the other on the enforcement of the deportation laws.<sup>53</sup> By 1959, however, the authors of a leading textbook reported that the issue of immigrant criminality was no longer a concern. Immigration had slowed. The problematic "new immigrants" were middle aged or older and their children and grandchildren were mostly native

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<sup>50</sup> Charles Loring Brace, *The Dangerous Classes of New York and Twenty Years Work Among Them* (New York: Wynkoop and Hallenbeck, 1872), 35.

<sup>51</sup> John E. Brown, "The Increase of Crime in the United States," *The Independent* (1907), 822-23.

<sup>52</sup> U.S. Congress. Senate. Immigration Commission, *Immigration and Crime..*

<sup>53</sup> U.S. Commission on Law Observance and Enforcement, *Report on Crime and The Foreign Born* (Washington, D.C.: Government Printing Office, 1931); U.S. National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws*, No.5 (Washington, D.C.: Government Printing Office, 1931e).

born. Barnes and Teeters concluded:

"Many of the fears that were expressed during the period between 1880 and 1920 concerning the criminality of the immigrant and his native-born children are no longer of much consequence, even though there may have been some justification for such apprehension at that time. These latest immigrants have become well assimilated and their children have assumed most, if not all, of the conventional traits usually assigned to Americanism. Large numbers of them have become leaders in all professions and business enterprises."<sup>54</sup>

As they wrote, the problem of illegal immigration had already emerged on the U.S. - Mexico border and the number of legal immigrants annually admitted was beginning its long rise from the nadir of the 1920s. Yet Barnes and Teeters optimistically predicted:

"Some day, in the not too distant future, we are going to find that we are, in truth, an amalgam people, that the Old American stock has vanished, that we have very few immigrants in our midst, and that even second generation immigrants are disappearing. When that time comes all the studies of the relationship between immigrants and crime will have only an historical interest."<sup>55</sup>

By 1959 the Federal Bureau of Investigation (FBI) had stopped differentiating between

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<sup>54</sup> Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology*, 3d ed. (Englewood Cliffs, NJ: Prentice-Hall, 1959), 164.

<sup>55</sup> Barnes and Teeters, *New Horizons in Criminology*, 164.

native-born and foreign born criminals in its annual Uniform Crime Reports. In 1967 Lyndon Johnson's Crime Commission did not mention immigration or immigrants in any of its ten volumes.<sup>56</sup> Early criminological textbooks routinely addressed the criminality of the foreign born and their children.<sup>57</sup> By the 1970s and '80s few texts did so. Their references were either to foreign studies from the 1950s or '60s or to the American studies of the 1920s and '30s.<sup>58</sup> By the late 1980s, the criminality of the foreign born was no longer included in many texts.<sup>59</sup> In a kind of culture lag American criminologists had gotten out of phase with the realities of immigration.<sup>60</sup> Both legal and illegal immigration were soaring; the public was alarmed; but immigration's connections with crime and the administration of justice had fallen off the agenda. A decade later it was back.

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<sup>56</sup> President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: Government Printing Office, 1967a).

<sup>57</sup> Edwin H. Sutherland, *Principles of Criminology*, 4th ed. (Chicago, IL: J.B. Lippincott, 1947).

<sup>58</sup> James Carey, *Introduction to Criminology* (Englewood Cliffs, NJ: Prentice Hall, 1978); Sutherland and Cressey, *Criminology*; John E. Conklin, *Criminology*, 6 (Boston, MA: Allyn and Bacon, 1998).

<sup>59</sup> Charles H. McCaghy, *Crime in American Society* (New York: Macmillan, 1980); Don C. Gibbons, *Society, Crime, and Criminal Behavior*, 4th ed. (Englewood Cliffs, NJ: Prentice-Hall, 1982); Paul Brantingham and Patricia Brantingham, *Patterns in Crime* (New York: Macmillan, 1984); Sue Titus Reid, *Crime and Criminology* (New York, NY: Holt, Rinehart and Winston, 1985); Robert F. Meier, *Crime and Society* (Boston, MA: Allyn and Bacon, 1989); Frank Schmalleger, *Criminology Today* (Englewood Cliffs, NJ: Prentice-Hall, 1996); Steven E. Barkan, *Criminology: A Sociological Understanding* (Englewood Cliffs, NJ: Prentice-Hall, 1997); Larry J. Siegel, *Criminology*, 6th ed. (Belmont, CA: West/Wadsworth, 1998).

<sup>60</sup> The last look at the crime and immigration link in the U.S. context was a Ph.D. dissertation by Savitz completed in 1960. See Leonard D. Savitz, *Delinquency and Migration*, Ph.D. diss. (Philadelphia, PA.: University of Pennsylvania, 1960).

The renewed academic interest was happening in countries which had been destinations for immigrants like Australia as well as in former source countries such as Germany, Italy, and Ireland. The immigration and crime connection was approached from new perspectives reflecting major cultural, political and economic changes on an international scale as well as developments in the discipline, particularly the coming of age of victimology. The collapse of the Soviet Union, the emergence of the global economy, the revolution in human rights, and new levels of respect for human diversity influenced the new perspectives. Immigration now served as a nodal subject in a complex web of interrelated issues linked to crime and justice and to many other problems. Sorting out those interrelated issues is essential for appreciating just how multifaceted the links are between local law enforcement and the various ramifications of the problem of illegal immigration.

Immigrant criminality continued to get attention. But other concerns were added. In Western Europe foreigners of all kinds from guest workers to asylum seekers to illegal immigrants and refugees had become problematic as economies slowed; populations aged; the iron curtain fell; streams of refugees, asylum seekers and illegal immigrants rose; and Europe moved towards unification with open internal borders among states. Guest workers invited to Germany during the economic miracle from the second world war through the 1960s did not return home as expected when the economy stalled and unemployment rose in the 1970s. Peoples from former French colonies had migrated to France drawing with them illegal immigrants who would not leave even though France's unemployment rate was the highest

Europe.<sup>61</sup>

After the Soviet Union collapsed western Europeans feared a massive wave of illegal immigrants flooding east. Many illegal immigrants were already there.<sup>62</sup> In February 1993 interior ministers from 35 European countries agreed to crack down on the wave of illegal immigration coming from the former Soviet states. They agreed to make organized smuggling of illegal immigrants a criminal offense across Europe and also agreed that commercial carriers should be liable to fines under new rules regarding transporting illegal aliens. Also they agreed to set up special police units, to exchange information and to adopt a common procedure regarding border checks.<sup>63</sup> The European Union has sought to harmonize the immigration laws; but individual countries have gone their own ways, tightening immigration rules and forcibly expelling illegal migrants who in turn resisted.<sup>64</sup>

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<sup>61</sup> Wayne A. Cornelius, Philip L. Martin and James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford, CA.: Stanford University Press, 1994); Reuter, "NA," CISNEWS@cis.org (Paris, June 27 1996).

<sup>62</sup> Rone Tempest, "E. Europeans See Paris, Then Look For Work" (July 22, 1991).

<sup>63</sup> Nicholas Denton, "Immigrants Crackdown Agreed," *Financial Times*, Feb. 17 1993, 2.

<sup>64</sup> Reuter <CISNEWS@cis.org>, "Paris Expels Illegal Zaireans," Article <199603041917.OAA23046@us.net>, in <CISNEWS>, Mar. 4 1996; Alan Riding, "France Unveils Strict New Rules on Immigration," *The New York Times*, Jan. 11 1991, A5; Reuter, "Paris Expels Illegal Zaireans."; Reuter, "African Migrants in France Protest Expulsion," Article <12:18:28.63>, in <CISNEWS>, Aug. 9 1996; Reuter <info@us.net>, "France Rejects European Parliament Restrictions on Immigration Policy," Article <01:58:50.19>, in <CISNEWS>, Oct. 4 1996; John Follain <msk@us.net>, "Overseas Immigration News," Article <199702181817.NAA02266@us.net>, in <CISNEWS>, Feb. 18 1997; The Associated Press <msk@us.net>, "Overseas Immigration News," Article <199702181817.NAA02266@us.net>, in <CISNEWS>, Feb. 18 1997; Charles Trueheart and Anne Swardson, "Police Storm Paris Church to Evict African Protesters: Raid Ends Summer-Long Standoff Over Immigration," *The*

The Soviet collapse made it easier to cross borders and to smuggle goods and humans. The smuggling of humans became a growth industry for organized crime in Europe and elsewhere. One part of the business specialized in the trafficking of women and children for sexual exploitation reviving a criminal practice which used to be referred to as "white slave trade". Another part specialized in helping illegal immigrants make false claims of political asylum.

Wars in Yugoslavia, Iraq, Somalia and elsewhere added thousands of migrants to the stream of people from around the world who were seeking a better life and willing to pay smugglers to deliver them. In Sweden, Iraqi Kurds, Somalis, and Albanians began arriving illegally by busloads and shiploads. The number of asylum applicants jumped from about 30,000 per year in 1991 to 83,000 in 1992.<sup>65</sup> In Germany between 1979 and 1987 the number of asylum seekers fluctuated around 50,000 per year. In 1991 it reached almost 450,000. The rate of legal immigrants per 100,000 population to Germany between 1983 and 1988 was 1,022 compared to 245 for the United States for the same period.<sup>66</sup>

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*Washington Post*, Aug. 14 1996, A17; Associated Press, "French Police Pressure Illegals," 199702251651.LAA22979@us.net, CISNEWS@cis.Org (February 23, 1997).

<sup>65</sup> Henry Kamm, "'People Smugglers' Send New Tide of Refugees Onto Nordic Shores," *The New York Times*, Feb. 15 1993, A1.

<sup>66</sup> William Drozdiak, "Germany Begins to Accept Changing Ethnic Makeup," *The Washington Post*, April 28 1997; Rick Atkinson, "Haunted By History: Germans Grapple with Guilt, Foreigners and Neo-Nazis," *The Washington Post*, Jan. 27 1996, A14.

The increased presence of foreign migrants in Europe fueled xenophobia, racism and intolerance. Right wing political parties began attracting substantial votes by promising to expel illegal immigrants and even unemployed foreigners.<sup>67</sup> The image of foreigners as criminals and drug dealers gained currency. Anti-foreigner violence increased. In Germany right wing attacks against foreigners soared following reunification in 1990 reaching almost 2,300 incidents in 1992 including more than 500 arson attacks (often firebombs).<sup>68</sup> The violence included the arson deaths of three Turks in Moelln in November 1992 and five in the Solingen fire in May 1993.<sup>69</sup>

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<sup>67</sup>In Sweden in 1991 a new party, the New Democrats, campaigned against the asylum for foreigners policy and won 6.7 percent of the vote in the parliamentary elections. Henry Kamm, "People Smugglers' Send New Tide of Refugees Onto Nordic Shores," *The New York Times*, Feb. 15 1993, A1.

In Austria's 1994 election Jorg Haider's Freedom Party jumped to a quarter of the vote with promises to expel illegal immigrants and even unemployed legal immigrants. Belgium's Flemish Bloc advanced the same position Jessica Mathews, "Immigration and the Press of the Poor," *The Washington Post*, Nov. 21 1994, A25. In France's 1995 elimination round election for prime minister the far-right leader, Jean Marie Le Pen, made his best showing ever capturing more than 15 % of vote. Head of the anti-immigrant National Front party, Le Pen campaigned for the expulsion of France's 3 million immigrants as a way to create jobs for native born French. The party also promised to crack down on delinquency and to prevent the flood of immigrants that might happen with the open borders of the European Union William Drozdiak, "Migrants Influencing French Vote: Far-Rightist Le Pen Finding Support Among Alarmed Southerners," *The Washington Post*, April 17 1995, A10.

<sup>68</sup> Non-violent crimes against foreigners including such as denying the Holocaust rose from a little less than 2,500 in 1991 to about 6,700 in 1993. Rick Atkinson, "Haunted By History: Germans Grapple with Guilt, Foreigners and Neo-Nazis," *The Washington Post*, Jan. 27 1996, A14.

<sup>69</sup> In January 1996 ten foreigners died when a hostel for asylum seekers in the north German city of Luebeck burned under suspicious circumstances. The incident provoked additional controversy when it appeared as if the fire had not been set by neo-Nazis but by a disgruntled foreigner. Conservatives complained that Germans were assumed always to be racists and were being forever bashed by "the Nazi cudgel." The mayor of the city received death threats when he insisted that Germany bore some of the responsibility for the disaster.

A Turkish restaurant owner in Moelln told a reporter that a young Nazi about 20 years old

Between 1990 and May 1997 more than 30 foreigners, many of them Turks, were killed in arson attacks.<sup>70</sup> In Sweden for several years, "skinheads" attacked foreigners, often firebombing refugee centers or burning crosses near them.<sup>71</sup> Racists attacks were also occurring in Britain.<sup>72</sup>

By the 1990s the immigration-crime nexus had many facets. The new complexity was presented at the United Nations 9<sup>th</sup> Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, Egypt, May, 1995) under the umbrella of an Ancillary Meeting on "Migration and Crime." It was attended by about 60 participants representing governmental and non-governmental groups and academic institutes. The International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Program (ISPAC) offered a framework for sorting out the issues and a rationale for revisiting the topic. The discussion paper reads:

"ISPAC believes that the problems posed by some migrant groups in crime can not be studied in isolation but have to be presented in their entirety. For this purpose ISPAC structured this symposium in a way that tried to do justice to the complexity of the relationship between migration and crime....

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had come into the restaurant, looked them in the eye and said, "This shop is going to burn." Atkinson, "Haunted By History: Germans Grapple with Guilt, Foreigners and Neo-Nazis."

<sup>70</sup> Drozdiak, "Germany Begins to Accept Changing Ethnic Makeup." By April 1997 eighteen attacks causing four deaths and seven injuries had already occurred.

<sup>71</sup> Kamm, "'People Smugglers' Send New Tide of Refugees Onto Nordic Shores."

<sup>72</sup> Eugene Robinson, "Racism Rising in Britain: Assaults, Right-Wing Rhetoric Cause Alarm," *The Washington Post*, October 25 1993, A1, A15. See also Neil King Jr., "As Refugees Pour In, Tolerance In Holland Begins to Wear Thin," *The Wall Street Journal*, Dec. 2 1998.

ISPAC holds that migration-linked crime is likely to be a major world problem in the years to come, affecting host-, transit- and countries of origin in ways that call for a coordinated response from the international community. Unilateral repressive national response measures will often only produce a displacement of problems. It is therefore mandatory that government develop a common set of responses that recognized the political, socio-economic and human rights dimensions of the problem of migration and crime.”<sup>73</sup>

The report divided the subject into four areas: 1) Hard times in Countries of Origin (including the push factors behind migration such as lack of economic opportunities but also ethno-religious conflict, crimes of governments including ethnic cleansing and genocide); 2) Hazards of Transit including the ways in which criminal organizations that smuggle people also exploit and abuse them); 3) Host Country Crime Problems (including both the criminal activities of migrants but also migrants as victims of crimes especially by criminal organizations who smuggle them); and 4) Host Country Xenophobic Reactions (including the exploitation by political parties of xenophobic reactions for political gain as well as right-wing and xenophobic violence against foreigners.)<sup>74</sup>

A year later ISPAC sponsored a conference (Courmayeur, Italy) to pursue the topic in

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<sup>73</sup> Alex P. Schmid, Editor, *Migration and Crime* (Milan, IT: International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, 1996), 1.

<sup>74</sup> Schmid, *Migration and Crime*, 2.

depth. Of 28 papers presented to representatives from 32 countries, only eight addressed the traditional question of the criminality of immigrants. The others focused upon immigrants as victims of one kind or another from exploitation by smugglers to racist attacks by extremists to discriminatory treatment by authorities to genocide inflicted by states. The crime and migration link was back but the paradigm had shifted.

Old assumptions about the nation state, the crime problem and the immigrant were no longer taken for granted. International borders were not only more porous than ever but less useful for defining problems and responsibilities of governments towards people. Borders do not determine one's human rights;<sup>75</sup> and by definition they can not contain transnational problems. Three new perspectives informed the new paradigm: human rights, victimology and globalization. Immigrants do not lose their human rights just because they crossed a border, even if illegally. Law enforcement agencies must be as diligent in protecting them from victimization as in arresting them for criminality. Foreigners should be studied as victims of crime especially hate crime. The connection between immigrants and transnational smuggling or other criminal networks represented a special challenge in newly emerging field of transnational law enforcement.

A few years ago transnational crime was largely ignored by both academics and practitioners. Both assumed that crime could be studied and dealt with solely within the confines

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<sup>75</sup> David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore, MD: The Johns Hopkins Press, 1996).

of national borders. For instance, in 1967 the Task Force on Organized Crime of Lyndon Johnson's Crime Commission defined organized crime wholly in domestic (as opposed to transnational) terms. None of its eighteen policy recommendations had any international dimensions.<sup>76</sup> By the 1990s that had changed. Everyone was adopting a global perspective.<sup>77</sup>

Transnational organized crime was identified as a threat to American national security and to world security.<sup>78</sup> The United States had been moving into the international law enforcement arena on a major scale stationing over 2,000 law enforcement personnel abroad and negotiating international law enforcement agreements with dozens of countries.<sup>79</sup> In 1998 President Clinton issued the country's first "international crime control strategy" and asked

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<sup>76</sup> President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime* (Washington, DC: Government Printing Office, 1967f).

<sup>77</sup> William F. McDonald, "Globalizing Criminology: The New Frontier Is the Frontier," *Transnational Organized Crime* 1, no. 1 (Spring 1995): 1-22; William F. McDonald, "Crime and Justice in the Global Village: Towards Global Criminology," in *Crime and Law Enforcement in the Global Village*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997), 3-21.

<sup>78</sup> U.S. Congress. Senate. Committee on Government Affairs, *Criminal Aliens in the United States*, S. Hrg. 103-493, 103rd Cong., 2d Sess. (Washington, DC: Government Printing Office, 1993); Frank Pearce and Michael Woodiwiss, Eds., *Global Crime Connections: Dynamics and Control* (Toronto: University of Toronto Press, 1993); Linnea P. Raine and Frank J. Cilluffo, Eds., *Global Organized Crime: The New Evil Empire* (Washington, DC: Center for Strategic and International Studies, 1994).

<sup>79</sup> Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: The Pennsylvania State University Press, 1993); U.S. President, "X. Optimizing the Full Range of U.S. Efforts," Speech at the United Nations (October 22, 1995).

Congress to enact it with the "International Crime Control Act."<sup>80</sup>

The United Nations took significant leaps towards greater international cooperation in law enforcement in 1988 when it opened for signing the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in 1990 when it adopted a Model Treaty on Mutual Legal Assistance in Criminal Matters.<sup>81</sup> In 1995 it convened a world congress to urge nations to cooperate in the fight against global organized crime and subsequently began crafting a convention on organized crime.<sup>82</sup> The European states had pioneered international police cooperation at the end of the nineteenth century and led the way again after World War II as they moved to harmonize their laws and legal institutions in the course of unification.<sup>83</sup>

The internationalization of law enforcement in the 1960s and '70s was driven by the structural changes in the world economy as well as by the world wide explosion drug trafficking.

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<sup>80</sup> U.S. President, "The International Crime Control Strategy: Goals and Objectives" (1998); U.S. President, "Transmittal on International Crime Control Act" (June 9, 1998).

<sup>81</sup>See also United Nations. Economic and Social Council. Committee on Crime Prevention and Control, *Report of the Committee on Its Eleventh Session*, E/1990/31/Add.1. Feb 5-16, 1990 (Vienna: Author, 1990).

<sup>82</sup> New York Times, "138 Nations Confer on Rise in Global Crime," *CJ Europe*, no. 1, Jan./Feb. 1995; Dimitri Vlassis, "Convention on Organized Crime," International Conference on Responding to the Challenges of Transnational Crime (Courmayeur, Italy, Sept. 24-27 1998).

<sup>83</sup> Mathieu Deflem, "International Policing in Nineteenth-Century Europe: The Police Union of German States, 1851-1866," *International Criminal Justice Review* 6 (1996): 36-57; Hsi-Huey Liang, *The Rise of Modern Police and the European State System from Metternich to the Second World War* (Cambridge: Cambridge University Press, 1992); Cyrille Fijnaut, "Police Co-Operation Within Western Europe," in *Crime In Europe*, ed. Frances Heidenshon and Martin Farrell (London: Routledge, 1993), 108-20.

By the 1990s international terrorism, the possible smuggling of nuclear materials from the former Soviet Union and fear that rogue states or groups might obtain extremely lethal weapons added to the urgency of developing effective transnational law enforcement cooperative institutions. But also by the 1990s immigration had become a major part of the international crime business which required a harmonized and coordinated response from the nations of the world. That was the rationale for ISPAC's conferences.

The trafficking in migrants had developed into a major branch of transnational organized crime. According to one estimate in 1992/93 about 500,000 people had been smuggled into Western Europe from countries like China and India at fees ranging up to \$25,000. Most of them were young males looking for work; but it also included women and children for the sex industry. Based on those European figures alone it was estimated that organized crime was earning at least \$5-7 billion a year.<sup>84</sup> Human smuggling began to rival drug smuggling as a transnational crime. Profits were high; risks were low. In many countries human smuggling is not a crime or is viewed leniently as a victimless-crime.<sup>85</sup>

In the United States in the early 1970s the human smuggling business was already well

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<sup>84</sup>Estimate by Jonas Widgren, Director of the International Center for Migration Policy Development, Vienna, cited in Schmid, *Migration and Crime*, 17ff.

<sup>85</sup> Jonathan M. Winer, *Alien Smuggling: Elements of the Problem and the U.S. Response*, U.S. Working Group on Organized Crime (Washington, D.C.: National Strategy Information Center, 1998).

established and estimated to be worth \$125 million a year.<sup>86</sup> Smugglers earned about \$120,000 per truckload (about 45 people) transported from San Diego to Los Angeles.<sup>87</sup> Some smuggled migrants were bought and sold like slaves.<sup>88</sup> Others were enslaved at their destinations.<sup>89</sup> By the 1990s human smuggling into the United States had grown to an estimated \$2-3 billion a year business. Hundreds of thousands of illegal aliens were smuggled per year. Many came by way of Central American countries from which they had fraudulently obtained necessary visas and other travel documents. Others came through Canada, Europe or directly by ships that transferred their human cargoes to small boats off the coast for the final leg.<sup>90</sup> The most lucrative business was the traffic in Chinese who paid between \$35,000 and \$50,000 per person.<sup>91</sup>

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<sup>86</sup> Jack Webb, "Flesh Peddlers I: People-Smuggling Racket Is \$125 Million Business," *Austin Statesman*, May 29 1973, 15.

<sup>87</sup> Jack Webb, "Flesh Peddlers III: Sometimes Death Waits Along Live Cargo Route," *Austin Statesman*, May 31 1973, A28.

<sup>88</sup> Evan Maxwell, "U.S.-Mexico Smuggling: The Buying and Selling of Humans: Borderlands Are A Free-Fire Zone Where Living Bodies Become the Goods in a Kind of Slave Trade," *Los Angeles Times*, Feb. 22 1977, Pt. 1, 3; William F. McDonald, "Illegal Immigration: Crime, Ramifications and Control (The American Experience)," in *Crime and Law Enforcement in the Global Village*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997), 65-86.

<sup>89</sup> Wendell Rawls Jr., "Migrant Slavery Persists on Southeast Farms," *The New York Times*, Nov. 19 1981, A1.

<sup>90</sup> Paul J. Smith, *Human Smuggling: Chinese Migrant Trafficking and the Challenge to America's Immigration Tradition* (Washington, DC: Center for Strategic and International Studies, 1997); William Branigin, "Report to Clinton Urges Global Attack on Growing Trade in Alien-Smuggling," *The Washington Post*, Dec. 28 1995, A1, A4.

<sup>91</sup> Douglas Farah, "A Free-Trade Zone in the Traffic of Humans: Central America Has Become Conduit for World's Illegal Migrants" (Oct. 23, 1995); McDonald, "Illegal Immigration: Crime, Ramifications and Control (The American Experience)."

The issue caught national attention in June 1993 when the Chinese human smuggling ship, the *Golden Venture*, with 300 passengers ran aground off Queens, New York. The passengers had endured incredible hardships and eight drowned trying to come ashore. Many requested political asylum but only a few received it.<sup>92</sup> At President Clinton's direction an interagency working group was established to develop options for the U.S. response to the human smuggling problem. In December 1995 the group reported a grim picture of a "growing trade in human cargo" and recommended an aggressive global response including augmenting U.S. enforcement capability abroad; increased training programs in foreign countries and networking U.S. law enforcement agencies with foreign counterparts. The report noted that the human smuggling was earning billions of dollars annually and was made possible by "staggering levels of official corruption" that because it is not a crime in most places smuggling organizations "operate with near impunity."<sup>93</sup>

The deputy assistant secretary of state for international narcotics and law enforcement, Jonathan Winer, described the strategy as follows:

"In order for transnational criminals to be successful in moving aliens halfway around the world, they have to build networks. It's absolutely critical that governments do the same thing. [Building networks of diplomacy and law enforcement] is the core

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<sup>92</sup> Paul J. Smith, "Chinese Migrant Trafficking: A Global Challenge," in *Human Smuggling*, ed. Paul J. Smith (Washington, D.C.: Center for Strategic and International Studies, 1997), 1-22.

<sup>93</sup> Branigin, "Report to Clinton Urges Global Attack on Growing Trade in Alien-Smuggling."

strategy that President Clinton has signed off on and instructed us to carry out....The White House recognizes that this is becoming a national security problem, not just an immigration problem."<sup>94</sup>

One aspect of the trade in human smuggling singled out for special attention is the traffic in women and children. As of 1998 the United Nations High Commissioner for Human Rights estimated that some 4 million people a year are being "trafficked" for diverse purposes including "forcing women and children into sexually or economically ...exploitative situations...as well as other illegal activities."<sup>95</sup> The Clinton administration also singled out women and girls for added protection from violence world wide including preventing their being trafficked.<sup>96</sup>

This is not the first time nations have tried to control trafficking in humans. The suppression of the international slave trade represents an example of a reasonably successful international regime. The attempt to stop the international trade in women for immoral purposes begun at the turn of the last century has been less successful. Its fate is undocumented and

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<sup>94</sup> Branigin, "Report to Clinton Urges Global Attack on Growing Trade in Alien-Smuggling."

<sup>95</sup> Office of the High Commissioner for Human Rights United Nations, "Trafficking in Peoples: The Human Rights Dimension," International Conference on Responding to the Challenges of Transnational Crime (Courmayeur, Italy, Sept. 24-27 1998).

<sup>96</sup> U.S. President, "Steps to Combat Violence Against Women and Trafficking in Women and Girls." Executive Memorandum (March 11, 1998). Congress has also expressed concern for this matter U.S. Congress (105th), *Worldwide Trafficking of Persons, That Has a Disproportionate Impact on Women and Girls*, S.CON.RES. 82, 2d ed. (1998).

represents a experiment to be dissected for its lessons.<sup>97</sup> The concern about the traffic in women eventuated in a series of United Nations conventions.<sup>98</sup> Concern for the generic category of all aliens is of more recent origin. In 1993 the General Assembly adopted Resolution 48/102 on the Prevention of Alien Smuggling.<sup>99</sup>

Measures of the amount of human smuggling and of its suppression are difficult to find

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<sup>97</sup> Combating the trafficking in women was once high on the agenda of the budding international police cooperation movement. The First International Congress for the Suppression of the White Slave Traffic attended by eleven nations was held in London in 1899. A police conference on the subject was held in Paris in 1902 at which a convention on white slavery was signed by the dozen European states and Brazil who attended. One result was the creation of anti-women trafficking offices in most European police departments with a mandate to facilitate international cooperation against the trade Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: The Pennsylvania State University Press, 1993).

<sup>98</sup> The 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.; the 1975 International Labor Organization Convention Concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers; and the 1991 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

<sup>99</sup> It urges states to amend laws to criminalize or increase penalties for trafficking; improve procedures for detecting forged documents; prevent traffickers from using transit points; strengthen existing international conventions; and more aggressively monitor their airports, ports, and ships and aircraft of their registry. At the 1997 session of the General Assembly, the Austrian government proposed a draft International Convention Against Smuggling of Illegal Migrants which was to be considered by the UN Commission on Crime Prevention and Criminal Justice. "Austria Proposes Convention Against Trafficking," *Trafficking in Migrants*, no.17, December 1997/January 1998.

Today governments are seeking joint anti-smuggling policies in many fora. E.g., the Inter-Governmental Consultations on Asylum, Refugee and Migration in Europe, North America and Australia; the International Organization for Migration; the Puebla Process involving the countries of North America and the Caribbean; and the Budapest Process involving the countries of eastern and western Europe.

and are of unknown validity and reliability. Measurement problems begin at its definition. Smuggling needs to be distinguished from trafficking and mere facilitating of illegal immigration. Trafficking would seem to be a subset of smuggling but it gets blurred on the question of whether the trafficked immigrant acted freely and with informed consent.

The man who beguiles a girl friend into traveling to another country and then hands her over to a prostitution ring for profit would not be considered guilty of “trafficking” under U.S. law because he did not use force. Women’s rights groups have petitioned Congress to revise the law to include inducing immigration by deception as qualifying for punishment as a “trafficking” offense.<sup>100</sup> This change would harmonize American law with IOM’s position.<sup>101</sup> Senior U.S. officials have recently begun to argue that trafficking in women is not just another form of illegal migration and that measures traditionally used to combat illegal migration/trafficking may be inappropriate in the case of women. A growing number of non-governmental organizations want trafficking in women treated as a special case.<sup>102</sup>

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<sup>100</sup> Global Survival Network. Unpublished list of activities Summer, Washington, D.C., 1998.

<sup>101</sup> IOM’s definition of trafficking of women and children includes the following activities: facilitating the illegal movement of migrant women and children to other countries, with or without their consent or knowledge; deceiving migrant women and children about the purpose of the migration, legal or illegal; physically or sexually abusing migrant women and children for the purpose of trafficking them; selling women and children into, or trading in women and children for the purpose of, employment, marriage, prostitution or other forms of profit-making abuse. International Organization for Migration, “Trafficking in Migrants: IOM Policy And Activities,” Geneva, May 1997 (on website).

<sup>102</sup> Communication from Frank Laczko, International Organization for Migration, Aug. 26, 1998.

Human smuggling is not a specific offense that appears in any of the usual statistical reports of crime. It is not in the *Uniform Crime Reports* nor the *Sourcebook of Criminal Justice Statistics*.<sup>103</sup> It is an activity related to other activities such as running prostitution rings or sweatshops, counterfeiting, fraud and inducing illegal entry of aliens. Thus when members of a smuggling operation get arrested they may be recorded under various offenses making it difficult to get a comprehensive statistical look at the phenomenon. Even getting measures of component parts of the process is difficult. In the report of the Immigration and Naturalization Service (INS) there are two relevant categories. "Smugglers of aliens located" and "Aliens located who were smuggled into the United States." The former went from 10,373 in 1988 to 21,901 in 1990 to 14,143 in 1994. The latter went from 50,122 in 1988 to 92,934 in 1994.<sup>104</sup>

The criminal impact on the community of human smuggling has many ramifications beyond the act of smuggling itself. They include the large scale forgery of documents of all kinds (relating to birth, identity, citizenship, etc.), the corruption of public and private officials; the trafficking in women and children for sexual exploitation; the enslavement of workers in houses of prostitution, sweatshops or as domestic servants; and the abuse and distortion of the political asylum process. These are the forms in which the local police are likely to encounter the end product of international human smuggling. They may come across the trinket vendor,

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<sup>103</sup> Kathleen Maguire and Ann L Pastore, *Sourcebook of Criminal Justice Statistics 1995* (Washington, D.C.: Government Printing Office, 1996).

<sup>104</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.: Government Printing Office, 1996), T.74.

the call-girl, or sweat shop worker. Reformers are urging the local police recognize these activities as linked to international criminal networks and to pursue the larger criminal network rather than settling for the easier prosecution for a minor crime.<sup>105</sup>

#### IV. Conclusion

From the point of view of local law enforcement officials, today's immigrant represents a far greater challenge than the immigrant of a century ago. The concern about the link between immigration and crime continues to be a concern but the perspectives are more varied. The police need to protect not only the receiving country from the possible criminality of the immigrant but the immigrant from possible xenophobic attacks by citizens. What is more, the link between immigrants and transnational criminal networks also links the police to task of combating transnational crime.

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<sup>105</sup> Louise I. Shelley, "Transnational Organized Crime in the United States: Defining the Problem," Unpublished paper., National Research Council Workshop on Transnational Organized Crime (Washington, DC, June 17, 18 1998).

## Chapter 4

### Criminal Aliens: The Bramblebush of Meanings

#### I. Introduction

[Senator Roth] Let me ask you [INS Commissioner Meissner] this question, because I understand not all criminal aliens are deportable. Only those criminal aliens who commit so-called crimes of moral turpitude, aggravated felons with certain limitations are deportable. I find it somewhat confusing to understand these definitions and I have been told that is somewhat true among the INS personnel as well.

Would you agree with that? Do you think Congress should simplify the definitions for which criminals can be deported?

[Commissioner Meissner] I am sorry, I am not in a position to give you a definitive answer about that. The aggravated felon definition is a fairly recent one. It is helpful to us because it eliminates certain forms of relief that have been time consuming where effective.

-- Senate Committee on Government Affairs, 1993<sup>1</sup>

It is time for us to say that illegal immigrants should be sent back to their home countries...[T]hat is especially true of any immigrant who is here illegally who has been arrested for a crime. Their crime originally was to come here illegally in the first place.

--Rep. Dana Rohrabacher (R-Huntington Beach, CA, 1997)<sup>2</sup>

Mexico affirms categorically that the migratory phenomenon ... should not be confused with criminality, which is what the new 'operation' (Operation Rio Grande for border control) is doing as it dangerously exacerbates anti-immigrant feelings in certain sectors of the American population.

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<sup>1</sup> U.S. Congress. Senate. Committee on Government Affairs, *Criminal Aliens in the United States* (Washington, D.C.: Government Printing Office, 1993), 51.

<sup>2</sup> Esther Schrader and D'Jamila Salem Fitzgerald, "House Bill Calls for Wider INS Jail Role," *Los Angeles Times*, May 1 1997.

Defining one's terms is an essential but usually unremarkable part of any study. But when it comes to "criminal aliens," the politics of defining the problem is a study in itself. The subject is controversial and so confusing that even the experts can not keep it straight. Some INS officials carry their own personally created "cheat sheets," laundry lists of laws and distinctions to try to keep it straight. Sorting out terms is instructive for more than the usual reason. It not only defines the scope of the subject-matter; it demonstrates the complexities involved. The definition itself is a crucial part of the problem from several perspectives.

From the point of view of the task of deporting or excluding (refusing entry to) criminal aliens, the intricate distinctions of the law represent a obstacle to efficient and effective policy. They make for a horrendous search and decision-making job. It can not be done by local police; nor can it be reduced to an algorithm on the computer. Only a manual inspection of records and searches of multiple data bases by specially trained immigration officials can produce a reasonable estimate as to whether a particular person is a criminal alien. Since 1992 the INS has been testing a program, the Law Enforcement Support Center (LESC) intended to help bridge this problem (discussed later).

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<sup>3</sup> Associated Press, msk@us.net, "Mexico Holds Meeting About U.S.," 199708271658.MAA27105@us.net, CISNEWS@cis.Org (27 Aug., 1997).

From the point of view of measuring the nature and extent of alien criminality or its costs to justice systems the problem of identifying who qualifies as an "alien" requires the same enormous bureaucratic effort of searching immigration records and making judgments requiring expertise in immigration law. Valid estimates depend upon determining whether arrestees or offenders in any given sample are indeed aliens. A special study to identify the alien status of inmates of the Los Angeles County Men's Central Jail during May 1990 illustrates the problem. Thirty-one INS officers were deployed at the jail 24 hours a day, 3 shifts per day, 7 days a week for the month. Even with that extraordinary effort the study reported that the number of foreign-born inmates identified by the study was "probably a very conservative figure" because place of birth information is established by voluntary declaration by the arrestee or by local law enforcement at the time of arrest or booking.<sup>4</sup>

From the point of view of policy making the definition of who is a "criminal alien" has been the focal point of battles waged over the years by interests with various agendas. In Colonial and early state legislation it was intended to protect against the threat of criminality and the tax burden of pauperism. Early federal legislation continued this dual focus. With the illegal immigration crisis of the 1980s, the term has been given new meaning whose real significance appears to be more to meet the political demand for immigration control than to control of alien criminality.

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<sup>4</sup> California. Los Angeles County. Countywide Criminal Justice Coordination Committee. *Criminal Aliens in the Los Angeles County Jail Population: Final Report*, Ad Hoc Subcommittee on Criminal Aliens (Los Angeles, CA.: County of Los Angeles, 1990), ii.

The mere phrase, "criminal alien," is problematic to ethnic groups and others concerned with the power of language to stigmatize and offend. The word "alien," strikes some as offensive. The phrase, "illegal immigrant," also conjures pejorative connotations. They prefer the phrase, "undocumented immigrant."<sup>5</sup>

For the criminologist and the policy maker attempting to understand the relationship between migration and crime, the definitional and practical measurement problems are inter-related. What are the relevant categories: alien, illegal alien, foreign born, immigrant, internal migrant, recent migrant or something else? How about race, ethnicity, or nationality, all of which are implicated in and sometimes interchangeable with discussions of "immigration and crime"?<sup>6</sup> The concept of "criminal alien" is far too simple.

All these categories over aggregate the phenomena they address. "Foreign born", for example, includes children of U.S. citizens born abroad. They are foreign born but not aliens. They may not represent anything approaching the effects of being "foreign" or of being an immigrant. "Foreign born" also includes citizens who have lived in the country for many years and may be thoroughly assimilated even be naturalized citizens.

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<sup>5</sup> We sympathize with these concerns. Nevertheless, we shall use "criminal alien" and "illegal immigrant" because of they are commonly used to discuss these subjects. We employ them for the sake of efficiency of communication. We disclaim any negative connotations associated with these phrases.

<sup>6</sup> Michael Tonry, "Introduction," in *Ethnicity, Crime, and Immigration: Comparative and Cross-National Perspectives*, ed. Michael Tonry (Chicago, IL: University of Chicago Press, 1996), 1-29.

On the other hand, naturalized citizens may indeed have strongly foreign cultural values and behaviors and live in subcultural enclaves but they are not "aliens." Illegal aliens include a diverse group of people with nothing in common but their illegal status. It is fair to assume that there are considerable class, race/ethnic, and cultural differences among them given that almost half of them are "visa overstayers." That means, they had the wherewithal to obtain visas and visit the country as students or tourists or seamen. The rest arrive mostly by foot from Mexico and Central America. The bulk of illegal immigrants come from 20 different countries from around the world.<sup>7</sup>

This chapter describes the complexity and evolution of the concept of the criminal alien and its relationship to immigration control and crime control. After cutting through the terminological thicket it presents the best available data on the deportability of criminal aliens. The data on deportability underestimate the size of the deportable criminal alien population by an unknown but probably substantial amount. They are based on the law prior to the Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which further increased the scope of the conditions qualifying criminal aliens for deportation. The data are presented, nevertheless, to provide some insight into the broad dimensions of the problem; to underscore the logistical difficulties; and to hint at the potential scale of future improvements.

## II. Definitions

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<sup>7</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.: Government Printing Office, 1996), 178.

## Aliens: Legal and Illegal

An alien by INS definition is "any person who is not a citizen or has been naturalized."<sup>8</sup>

Legal aliens have permission to be in the country. That permission can be documented in different ways. Temporary visitors and tourists have passports or visas. Other legal aliens have "green cards" (which are now pink).

Illegal aliens are people who do not have permission to be in the country. They may have no documentation, or fraudulent documentation, or documentation that was at one time valid but has expired and is no longer valid. Thus, the common phrase, "undocumented aliens" is misleading. Some illegal aliens are not literally "undocumented."

It is also misleading to use synonymously the phrases, "illegal aliens" and "illegal immigrants." Not all aliens are immigrants. An alien who seeks temporary entry to the United States for a specific purpose is defined by the INS as a "non-immigrant" alien. If such a person is in the country without permission, he/she is an "illegal alien" but not an "illegal immigrant"

Some illegal aliens commit a federal crime merely by the way they enter the country. In other words, they are criminals by virtue of their method of entry. Aliens who fail to register are guilty of a misdemeanor punishable by \$1,000 fine or up to six months in prison or both.<sup>9</sup> Aliens

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<sup>8</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994*, Appendix 3.

<sup>9</sup> U.S.C.A. 8 § 1306. As amended.

who enter at an improper place or time, or who misrepresent or conceal facts about themselves are guilty of a misdemeanor punishable by up to \$500 or six months in prison or both for the first offense. If they are convicted for the same offense again, they are guilty of a felony and are punishable by up to two years in prison or a \$1,000 fine, or both.<sup>10</sup>

Technically, these illegal aliens could be referred to as “criminal aliens” because in fact they have committed a crime. However, the phrase “criminal alien” is virtually never used in this sense. Indeed, Wolf suggests that it should not be used in this sense because illegal entry is not a real crime. It does not involve a “substantive” offense.<sup>11</sup>

In contrast to those who enter illegally, aliens who enter legally but violate the terms of their admission by overstaying their approved period, are not subject to criminal prosecution. Although they become illegal aliens at the time they violate the terms of their permission, they are not subject to any penalty for doing so.<sup>12</sup> They are not criminals by virtue of the way they

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<sup>10</sup> U.S.C.A. 8 § 1325. As amended.

<sup>11</sup> He writes. “When I speak of undocumented alien crime, I am referring only to substantive crime committed inside the United States. ‘Crossing’ is a crime of a different nature from crimes such as burglary and theft” Daniel Wolf, *Undocumented Aliens and Crime: The Case of San Diego County* (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, San Diego, 1988), 26. Notwithstanding Wolf’s caveat, it should be noted that at one time (1920s) there were so many criminal prosecutions of aliens who had entered illegally that dockets and jails were described as overflowing with cases against illegal entries Jane P. Clark, *Deportation of Aliens from the United States to Europe* (New York, N.Y.: Arno Press and The New York Times, 1969 [1931]), 266.

<sup>12</sup> They are subject to deportation, but deportation is an administrative action, not a criminal prosecution.

come to be illegally in the country.<sup>13</sup> This difference may be a legislative oversight possibly related to an underestimate of the extent of the overstay problem. Policy makers seem to have assumed that the “illegal alien problem” is virtually entirely an “illegal entry problem” as opposed to an “overstaying problem.”

The problem of overstays had been clearly identified as early as 1930 as a serious one. Foreign students and tourists were described as “prolific sources” of illegal immigration.<sup>14</sup> The Commissioner General of Immigration had called attention to the problem warning that “the number [of visitors] is sufficiently large to warrant a more careful check-up on them than is possible at the present time with the force available”.<sup>15</sup>

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<sup>13</sup> See generally, 8 U.S.C.A. § 1201.

<sup>14</sup> In her treatise on deportation, Clark, *Deportation of Aliens from the United States to Europe*, 270. [1931] pointed out that “two fertile sources of illegal entry are found in the provisions of the 1924 immigration act allowing persons to enter outside the quota as students and as temporary visitors.” She reports that many people entering as students either never attend or leave the educational institutions they were to attend, and slip off into the community. As of 1924, 10,831 persons had been admitted as students, of which only 4,825 had completed their studies and left the country as of July 1, 1930. The Immigration Service had issued arrest warrants for 335 students seeking to deport them for failing comply with requirements and being illegally in the country.

Clark goes on to say that “the great class of persons entering temporarily for business or pleasure or as tourists...provide another prolific source of illegal entry” (1931: 272). It is noteworthy that Clark (1931: 273) states that “perhaps the more numerous source of illegal entries is that of seamen deserting their ships in port in the United States.” Another “numerous group” were stowaways.

<sup>15</sup> In 1930 there were 23,442 “temporary visitors for business” and 47,381 “temporary visitors for pleasure” admitted to the U.S. Clark, *Deportation of Aliens from the United States to Europe*, 273.

Since then the overstay problem was lost sight of or underestimated. In their book, Illegal Aliens in the Western Hemisphere, Johnson and Williams virtually ignore overstays. They describe "illegal immigration [as] including clandestine, unsanctioned, fraudulent, and/or undocumented entry...."<sup>16</sup> Similarly, although mentioning overstays, Chiswick states that it is the illegal enterers who constitute the "vast majority of the annual flows as well as the majority of the stock of illegal aliens residing in the U.S."<sup>17</sup>

It was not until 1995 that the extent of the overstay problem was finally measured and found to constitute a substantial proportion of the stock of illegal aliens. Using methods not tried before, Robert Warren of the INS estimated that roughly half of the illegal aliens in the U.S. in October, 1992 were people who had arrived as non-immigrants and stayed beyond the specified period of admission.<sup>18</sup> The rest were the kind of illegal aliens who are generally thought of as constituting the entire stock of illegal aliens. They are ones who enter surreptitiously across the land borders usually between the official ports of entry (referred to in INS parlance as "EWIs", entry without inspection) plus those who enter with inspection but with fraudulent documents or

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<sup>16</sup> Kenneth F. Johnson and Miles W. Williams, *Illegal Aliens in the Western Hemisphere: Political and Economic Factors* (New York, NY: Praeger, 1981), 1.

<sup>17</sup> Barry R. Chiswick, *Illegal Aliens: Their Employment and Employers* (Kalamazoo, MI: W.E. Upjohn Institute, 1988), 2.

<sup>18</sup> Excluding people who were in the country for brief periods but were not in a legal status for whatever reason, such as tourists who stay a few days or weeks longer than their period of admission Robert Warren, "Estimates of the Undocumented Immigrant Population Residing in the United States, By Country of Origin and State of Residence: October 1992," On file with Statistics Division, U.S. Immigration and Naturalization Service, Annual Meeting, Population Association of America (San Francisco, CA, April 1995).

under other fraudulent circumstances.<sup>19</sup>

## Asylum Fraud

In addition to the illegal aliens who enter by the "back door" of illegal entry, and those who enter by the "front door" of legal entry and overstaying, there is a third category of illegal aliens who enter by the "side door" of asylum abuse. They are not normally discussed as "illegal aliens." Yet true asylum abuse is logically indistinguishable from an illegal entry based on fraudulent representations. The person who claims that he/she is fleeing persecution when in reality is fleeing economic hardship or simply looking for a better life is attempting to gain entry on a fraudulent representation. Given the backlog in the system, such claimants succeed in getting admitted and fade off into the community.

The grounds for asylum are sufficiently judgmental that it is not readily apparent as to which asylum claimants are truly abusing the system, which are clearly within the criteria for

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<sup>19</sup> The problem of overstayers has also come to be recognized in Europe as a contributor to the stock of illegal immigrants since the collapse of the Soviet Union. People from Central and Eastern Europe seeking to immigrate to the West do so by gaining entry legitimately as tourists, then seek jobs and remain Wayne A. Cornelius, Philip L. Martin and James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford, CA.: Stanford University Press, 1994). In Japan, where illegal immigration is a recent phenomenon the government estimates that virtually all of it is the result of overstays Wayne A. Cornelius, "Japan: The Illusion of Immigration Control," in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Philip L. Martin and James F. Hollifield (Stanford, CA.: Stanford University Press, 1994), 325-410.

asylum, and which fall in the gray area which might or might not result in the granting of asylum. Hence, it is difficult to know how many of the successful or the unsuccessful asylum claimants should be counted as true frauds. The measurement problems are compounded further by the fact that a person who has illegally entered the country may, upon arrest apply for asylum, which may be granted notwithstanding the illegal entry.

INS statistics report the number of asylum cases filed, approved and denied. The rate of approval since 1973 has varied from a low of 10.6% to a high of 55.2% with most years rates in the '20s and '30s.<sup>20</sup> However, INS statistics do not distinguish between unsuccessful claims for asylum based on fraud and those based on good faith applications that were denied.<sup>21</sup> Also, INS

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<sup>20</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994*, T. 28.

<sup>21</sup> However, an indication of the possible extent of asylum fraud is suggested by other data provided by the INS. In response to a dramatic increase in the illegal entry of Central Americans in South Texas, the INS initiated steps, from December 1988 to June 1989, to restrict the flow. Many of these Central Americans were requesting asylum--requests which the then INS Commissioner considered to be essentially fraudulent. The INS instituted a 1-day expedited review of asylum applications directed specifically at those aliens who entered the United States illegally and managed to get to the INS Asylum Office without being apprehended. The "successful" result was that the average number of non-Mexican apprehensions in South Texas dropped from 147 a day during the period from February 22 to March 15, 1989, to 72 a day for the period from March 16 to April 15, 1989 U.S. General Accounting Office, *Immigration Control: Immigration Policies Affect INS Detention Efforts*, GAO/GGD-92-85. Report to the Chairman, Subcommittee on International Law, Immigration, and Refugees, Committee on Judiciary, House of Representatives (Washington, DC: Government Printing Office, 1992), 36.

Responding to the influx of Cubans and Haitians entering the country illegal and usually seeking asylum, the INS in May 1981 began detaining excludable aliens. The monthly number of excludable Haitians had risen from 308 in February 1980 to 2,280 in October 1980. But by October 1981 after the new policy had taken its effect, it was down to only 306; and by August 1982, it was zero U.S. General Accounting Office, *Immigration Control: Immigration Policies Affect INS Detention Efforts*, 36.

statistics on asylum cases do not include those cases where the alien applied for asylum at the time of deportation before an immigration judge.<sup>22</sup>

Notwithstanding these difficulties, however, people knowledgeable about immigration matters, believe that a substantial proportion of the asylum applications are fraudulent. Senator Simpson, one of the Senate's experts on immigration matters, is of the opinion that the number of fraudulent claimants far outweighs the number with legitimate claims.<sup>23</sup> The belief in extensive fraud in asylum claims is supported by reports in various places about books circulating in China and elsewhere instructing people seeking to immigrate to America what to say in order to successfully meet the asylum standards, and of smugglers who instruct illegal

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<sup>22</sup> However, at a July 27, 1993 White House Briefing, a senior administration official distinguished between "affirmative asylum claims" and "defensive asylum claims." The affirmative claims are from aliens who are in the country legally or illegally but who voluntarily come before the INS and ask for asylum. Defensive claims are those which arise either when an alien has been arrested by the INS or other police or when they arrive at the border and say "I'd like to request asylum" U.S. White House. Press Secretary, "Immigration Background Briefing" (Washington, D.C., July 27 1993).

While this distinction is not equivalent to that between fraudulent and non-fraudulent claims, it is regarded as a strong indicator. For example, the official responded that a person who shows up at JFK Airport with fraudulent documentation and then says he/she want to request political asylum would be a "defensive claim." Between October 1, 1992 and March 31, 1993, he said, there were 15,000 male fide entries through New York City and about 10,000 of them applied for asylum. Overall, the official estimated that there were 30,000 cases of "defensive asylum" before immigration judges (Id.)

<sup>23</sup> In attempting to reform the law so as to crack down on fraudulent asylum claims, Senator Simpson asserted that the number of valid asylum claims are far outnumbered by "charlatans who are gimmicking the system" William Branigin, "Senate Votes to Make Female Genital Mutilation a Federal Crime." *The Washington Post*, May 2 1996, A7.

aliens as to how to claim asylum.<sup>24</sup> Despite this strong belief, asylum cases continue to be discussed as something other than normal illegal entry cases.

#### “Criminal Aliens” in Popular and Legal Terms

The phrase, “criminal alien,” has been used popularly to refer to a bewildering variety of facts that do not correspond in any simple way to the distinctions made above. The phrase is not synonymous with “illegal alien,” although illegal entry is a crime. Rather it is used loosely to refer to an alien who has committed a conventional crime, such as murder, rape, robbery or other violation of some penal code. This is what politicians, polemicists and others here and abroad mean when they inveigh against the “criminality of aliens”.

This usage does not restrict the phrase to illegal aliens. It includes any alien and can refer to crimes committed by an alien before or after entering the country. Criminal aliens may be “excluded” from the country if when they try to enter they are determined to have been convicted of crimes in the past; and, aliens who are admitted legally can be “deported” later, if they become “criminal aliens” once inside the country.

Legal references to criminal aliens have evolved from the simple to the impossibly

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<sup>24</sup> Even the television magazine, 60 Minutes, aired a segment on fraudulent asylum claims. Filmed at Kennedy Airport in New York, they showed people arriving from foreign lands who evidently had disposed of their passports in the airplane’s bathrooms.

complex. In Colonial and early state legislation the idea of the criminal alien was addressed in two ways. The simple and largely unambiguous way was the laws prohibiting the landing of “convicts.” Less direct were the prohibitions against paupers and people who could not support themselves and were likely to become a public charge. At the time notions of criminality, vagrancy and pauperism were thought of as running together. Many of the convicts that were dumped on the states by European powers had been jailed for nothing more than vagrancy. Others were from workhouses or almshouses for whom the city fathers had purchased a one-way trip to America.<sup>25</sup>

The first federal restriction on immigration continued the focus on criminality. The Act of 1875 excluded criminals and prostitutes from admission.<sup>26</sup> The Act of 1882 added to the classes of inadmissible aliens, including lunatics, idiots, and persons unable to take care of themselves and likely to become a public charge.<sup>27</sup> The last category provided enormous discretion which immigration officials -- often the collusion of local police -- wielded to exclude or deport people suspected of crime, lacking respect for the law or who were simply people officials thought should not be allowed in the country.<sup>28</sup> They construed “public charge” to

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<sup>25</sup> Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93 (Dec. 1993): 1833-.

<sup>26</sup> Act of March 3, 1875 (18 Statutes-at-Large 477).

<sup>27</sup> Immigration Act of August 3, 1882 (22 Statutes-at-Large 214).

<sup>28</sup> For accounts of the arbitrary and capricious application of the early federal immigration laws see William C. Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure* (New York: The Commonwealth Fund, 1932); Clark, *Deportation of Aliens from the United States to Europe*; Kate Holladay Claghorn, *The Immigrant's Day in Court*,

include detention in a police station, jail, or prison although the alien may have had ample ability to earn a living.

In 1891 the meaning of "criminal alien" for legal immigration purposes exploded into a vast and indeterminate thing. It happened as the ironic and unintended consequence of the good intentions of people who trying to be friends of the politically oppressed. A traditional weapon against political activists has been the criminal law. Governments have declared their acts to be crimes and convicted them. Political prisoners occupied a place in the history of convict transportation.<sup>29</sup> Even if they were not transported, the fact that their governments had declared them as criminals posed a problem. With the growing list of restrictions on immigration for persons convicted of crimes, activists caught in the struggle to promote liberal reforms in the authoritarian states of Central and Eastern Europe might be barred from seeking refuge in the United States.<sup>30</sup>

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Americanization Studies, 9 (Monclair, NJ: Patterson Smith, 1971 [1923]); U.S. National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws*, No.5 (Washington, D.C.: Government Printing Office, 1931e).

<sup>29</sup> Francis gives several examples of political prisoners transported to Australia: the Scottish Martyrs (1794-5) for advocating fiscal and electoral reform; Luddites (1812 & 1817); the Tolpuddle Martyrs for taking unlawful oaths in union against a threatened cut in wages; trade unions and Chartists (1830s and '40s) and Canadian rebels Ronald D. Francis, *Migrant Crime in Australia* (St. Lucia, Queensland: University of Queensland Press, 1981).

<sup>30</sup> For an account of the efforts of European states to suppress political activism through criminal law enforcement, see Hsi-Huey Liang, *The Rise of Modern Police and the European State System from Metternich to the Second World War* (Cambridge: Cambridge University Press, 1992).

Federal immigration restrictions had been amended to address this problem. The Immigration Act of 1875's prohibition on the importation of alien convicts was modified by the Act of 1882. It provided that "all foreign convicts except those convicted of political offenses, upon arrival, shall be sent back to the nations to which they belong and from whence they came."<sup>31</sup> The Immigration Act of 1891 extended the list of inadmissible classes of persons to felons, persons convicted of other crimes or misdemeanors, polygamists, and others.<sup>32</sup>

However, reformers concerned that political criminals not be excluded inserted the phrase, "moral turpitude" into the law.<sup>33</sup> Thus, among those excluded were "persons who had been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude." But it also provided that "nothing in this act shall be construed to apply to or exclude persons convicted of a political offense, notwithstanding said political offense may be designated as a 'felony crime, infamous crime, or misdemeanor involving moral inturpitude' by the laws of the land whence he came or by the court convicting."<sup>34</sup>

The category, "crime of moral turpitude" does not correspond to any specific legal

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<sup>31</sup> Immigration Act of August 3, 1882. 22 Statutes-at-Large 214. Sec.4.

<sup>32</sup> Immigration Act of March 3, 1891. 26 Statutes-at-Large 1084.

<sup>33</sup> Clark, *Deportation of Aliens from the United States to Europe*.

<sup>34</sup> Immigration Act of March 3, 1891. 26 Statutes-at-Large 1084. Sec. 1.

offense and has no precise legal meaning. It is conduct that is "inherently wrong."<sup>35</sup> It refers to those changing moral standards of conduct which society has set up for itself through centuries.<sup>36</sup> Yet, it must refer to the standard of moral turpitude found in the United States, not elsewhere.<sup>37</sup> Immigration officials have interpreted the phrase as covering a wide range of crimes extending from trivial offenses, such as disorderly conduct, to more serious crimes including: assault, bribery, counterfeiting, forgery, embezzlement, fraud, perjury, bad checks, theft, burglary, murder and manslaughter, statutory rape, tax evasion, carrying concealed weapons, and also such offenses as bigamy, consensual sodomy, lewd conduct, and others.<sup>38</sup>

In 1907 the category of a crime of moral turpitude assumed a significance to which its earlier proponents might well have objected. It was now used as a catch-all for exclusion. In addition to imbeciles, feeble-minded persons, persons with physical or mental defects which might affect their ability to earn a living, persons afflicted with tuberculosis, children not accompanied by their parents and women coming to the United States for immoral purposes, the Immigration Act of 1907 also excluded anyone who admitted commission of a crime of moral turpitude.<sup>39</sup>

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<sup>35</sup> *Guerrero De Nodhal v. Immigration and Naturalization Service* (1969, CA9) 407 F2d 1405.

<sup>36</sup> *United States ex rel. Manzella v Zimmerman* (1947, DC Pa.) 71 F. Supp.

<sup>37</sup> *Mercer v. Lence* (1938, CA 10 Utah) 96 F2d 122, cert. Den. 305 U.S. 611, 83 L. Ed. 388, 59 S. Ct. 69.

<sup>38</sup> 8 U.S.C.S. § 1251, n50- n70.

<sup>39</sup> 34 Statutes-at-Large 898.

In 1917 law that was supposed to bring order to the crazy quilt of immigration laws that had been passed since 1875 was enacted. The law itself was described as “an impossible jumble, unintelligible, confusing and unreadable.”<sup>40</sup> It provided for the deportation of legal aliens for being convicted of a “crime of moral turpitude” committed within five years after entry; or being involved in certain ways with prostitution or other immoral activities; or being involved in narcotic traffic. It also excluded certain other categories of people known today for their vagueness such as constitutionally psychopathic inferiors, vagrants; persons who had had one previous attack of insanity; and people entering for immoral purposes. It also excluded illiterates and chronic alcoholics.<sup>41</sup>

In 1952 the patchwork of immigration laws was codified by the Immigration and Naturalization Act (INA) which serves as the basic reference point for contemporary immigration law.<sup>42</sup> Section 241 of INA specifies the types of crimes which if committed by a legal alien may be grounds for deportation.<sup>43</sup> Conviction of a crime of moral turpitude after entry

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<sup>40</sup> Secretary of Labor quoted by [Clark 1931: 54].

<sup>41</sup> Act of February 5, 1917 (39 Stat. 875).

<sup>42</sup> Immigration and Nationality Act of June 27, 1952 (INA), 66 Statutes-at-Large 163.

<sup>43</sup> Criminal Grounds for Deportation of Aliens

Criminal grounds for deportation of aliens are enumerated in Section 241 of the Immigration and Naturalization Act (INA). They include the following, which is not an exhaustive list. Failure to register under the Selective Service Act and falsification of documents, for example, also constitute grounds for deportation.

**Crimes involving moral turpitude** (see Section B): requires conviction of such crimes within five years of entry into the U.S. and that the alien is either incarcerated or sentenced to

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incarceration for one year or longer.

**Multiple criminal convictions for crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether the sentence includes incarceration, or whether the convictions were in a single trial.**

**Convictions of an aggravated felony any time after entry.** At any time after U.S. entry, a conviction of a violation (or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to controlled substances, other than a single offense involving possession for one's own use of thirty grams or less of marijuana.

**Conviction at any time after entry, under any law, of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, in violation of any law, any weapon, part, or accessory that is a firearm or destructive device.**

**Conviction under United States Code or violations of the Military Selective Service Act.**

The Immigration and Nationality Act defines certain serious criminal offenses as aggravated felonies. There are severe immigration consequences that result from convictions for crimes that are defined as aggravated felonies. Eligibility for discretionary relief from deportation is severely limited for aliens convicted of aggravated felonies. Further, the INS provides for mandatory detention and expedited deportation proceedings against aliens convicted of such offenses, which include murder, drug trafficking, illicit trafficking of firearms or destructive devices, money laundering, violent crimes carrying a prison term of five years or more, or any attempt or conspiracy to commit such acts.

**B. Crimes involving Moral Turpitude-** Generally, conviction of the following crimes may make an alien amenable to exclusion or deportation. This list is not all inclusive.

**Crimes against the person:**

Murder or intentional homicide  
Voluntary manslaughter  
Manslaughter (depends on degree)  
Homicide by reckless conduct  
Attempted murder  
Kidnaping  
Mayhem  
Assault with intent to commit murder  
Assault with intent to commit abortion  
Attempted assault, second degree-  
(with intent to commit carnal abuse and rape)

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Indecent assault (falls short of rape)  
Atrocious assault and battery  
Carrying a concealed weapon with intent to use against the person of another (where the intent to use the weapon is presumed)  
Assault in the second degree (with a weapon or other instrument likely to produce grievous bodily harm)  
Assault with a deadly and dangerous weapon  
Assault (with a weapon likely to produce bodily harm)  
Rape  
Interfering with a law enforcement officer  
Attempting to obstruct or impede the progress of justice

**Crimes against property:**

Arson  
Blackmail  
Forgery  
Robbery  
Embezzlement  
Larceny  
Receiving stolen goods (with knowledge)  
Burglary  
Extortion  
Fraud  
Grand theft  
Transporting stolen property  
Malicious destruction of property  
Obtaining money by false pretenses  
Bribery of an amateur athlete  
Malicious trespass

**Sexual and Family Crimes:**

Practicing prostitution  
Maintaining a house of prostitution  
Renting rooms with knowledge that they were to be used for prostitution  
Adultery  
Bigamy  
Statutory rape  
Oral sexual perversion  
Soliciting commission of crimes against nature  
Soliciting people to engage in lewd or dissolute conduct  
Gross indecency

is retained: but there has to be two convictions for separate crimes of moral turpitude arising from distinct courses of action. However, there is no longer any time limitation for committing

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Contributing to the delinquency of a minor (sexual acts)  
Taking indecent liberties with a child  
Incest  
Abandonment of a child

**Crimes against the authority of government:**

Alien smuggling, transporting, or harboring  
Defrauding the U.S. by falsely issuing a narcotics prescription  
Offering a bribe to a governmental official  
Making, passing, or possessing counterfeit coins  
Conspiracy to violate internal revenue laws  
Use of mail to extort  
Possession of counterfeit obligations (with knowledge)  
Counterfeiting  
Conspiracy to pass counterfeit coins  
Smuggling merchandise  
Willful misapplication of funds of a savings and loan association  
Impersonating a federal officer  
False statements in the acquisition of a firearm  
False statements or entries  
Harboring a fugitive from justice  
Mail fraud  
Uttering and selling false or counterfeit immigration documents  
Influencing or injuring an officer, juror, or witness  
False statements to obtain a passport  
False statements under oath in an alien's application for permanent residence  
Perjury  
Theft from U.S. mail  
Interfering with trade and commerce by violence and threats  
Taking kickbacks  
Trafficking in narcotic drugs  
Knowingly failing to report income  
Union official unlawfully accepts a loan  
Violation of Selective Service Act (false statement)  
False statement to obtain unemployment benefits.  
From Texas. Criminal Justice Policy Council, *Criminal Alien Project for the State of Texas* (Austin, TX.: Author, 1995): Appendix .

the crimes. The five year limitation was dropped.<sup>44</sup>

As of 1952, then, a “criminal alien” was an alien convicted of a charge that would render him/her deportable under Section 241 (as amended) of INA. It includes crimes of moral turpitude, narcotics violations, specified firearms violations and two or more instances of prostitution. The category of aggravated felons was added and expanded in the mid-1980s and 1990s.

#### Aggravated Felons

With rising concern about illegal immigration, drug trafficking, particularly across Mexican border, and a estimated eightfold increase in the number of “criminal aliens,” Congress took the offensive. It began getting tougher with aliens who committed crimes. It directed the INS to improve its handling of criminal aliens and to participate more fully in the effort against drug trafficking.

The Immigration Reform and Control Act (IRCA) of 1986 required expeditious proceedings for aliens convicted of deportable criminal offenses. The Anti-Drug Abuse Act of 1986 revised the immigration law to facilitate the deportation of alien narcotics violators. The Anti-Drug Abuse Act of 1988 created a special criminal alien category, “Aliens Convicted of

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<sup>44</sup> § 241(a)(4) INA of 1952. 8 U.S.C.S. § 125(a)(4).

Aggravated Felonies.” It provided for expedited deportation, “no bond” provisions, presumption of deportability and criminal penalties for re-entry after deportation. The Immigration Act of 1990 broadened the definition of “aggravated felony,” imposed new legal restrictions on aliens convicted of such crimes, and revised the criminal and deportation provisions.

The Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) expanded the criminal alien provisions further. The definition of aggravated felony was amended to include crimes where the sentence is one year instead of five. A crime that fits the definition of an aggravated felony applies regardless of the date of conviction. Long-term resident aliens who are aggravated felons are now subject to removal from the U.S., regardless of when the conviction took place.<sup>45</sup>

The new (1988) and subsequently expanded category of Aliens Convicted of Aggravated Felonies includes a long and indiscriminate list of offenses which have no obvious criminological basis for being lumped together or described as “aggravated felonies”.<sup>46</sup> The

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<sup>45</sup> P.L. 104-208, Title III, Subtitle B.

<sup>46</sup> The list includes: murder; any drug trafficking; any illicit trafficking in firearms or destructive devices; crimes of violence (as defined in Section 16 of Title 18 but not including purely political offenses) for which a sentence of imprisonment for at least 5 years was imposed; theft or burglary offenses for which a term of imprisonment of at least 5 years was imposed; certain crimes involving ransom; certain crimes involving child pornography; certain crimes relating to racketeer influenced corrupt organizations for which a sentence of 5 years’ imprisonment or more may be imposed; certain offenses related to prostitution, peonage, slavery, or involuntary servitude; certain offenses related to transmitting national defense information or disclosing classified information or the identity of undercover agents; offenses that involve fraud or deceit in which the victim losses more than \$200,000 or tax evasion in which the loss exceeds

logic underlying the category is not crime control but immigration control. Cases that meet the criteria can be more rapidly moved through the deportation process because the law has stripped away the remedies and appeals by which aliens had been able to forestall the process. This causes confusion when discussing this topic. One often finds oneself slipping into the easy error of discussing criminal aliens as if they were synonymous with illegal aliens. Figure 4.1 clarifies the distinctions.

#### Undocumented (Illegal) Criminal Aliens

In 1994 Congress introduced the phrase, “undocumented criminal aliens,” in connection with legislation to reimburse the states for the costs of housing illegal criminal aliens.<sup>47</sup> This reimbursement was only for the costs of housing illegal aliens incarcerated in state or local prisons. It was only for illegal criminal aliens, not legal criminal aliens. The former represented an “unfunded mandate” resulting from the federal government’s failure to control illegal immigration.

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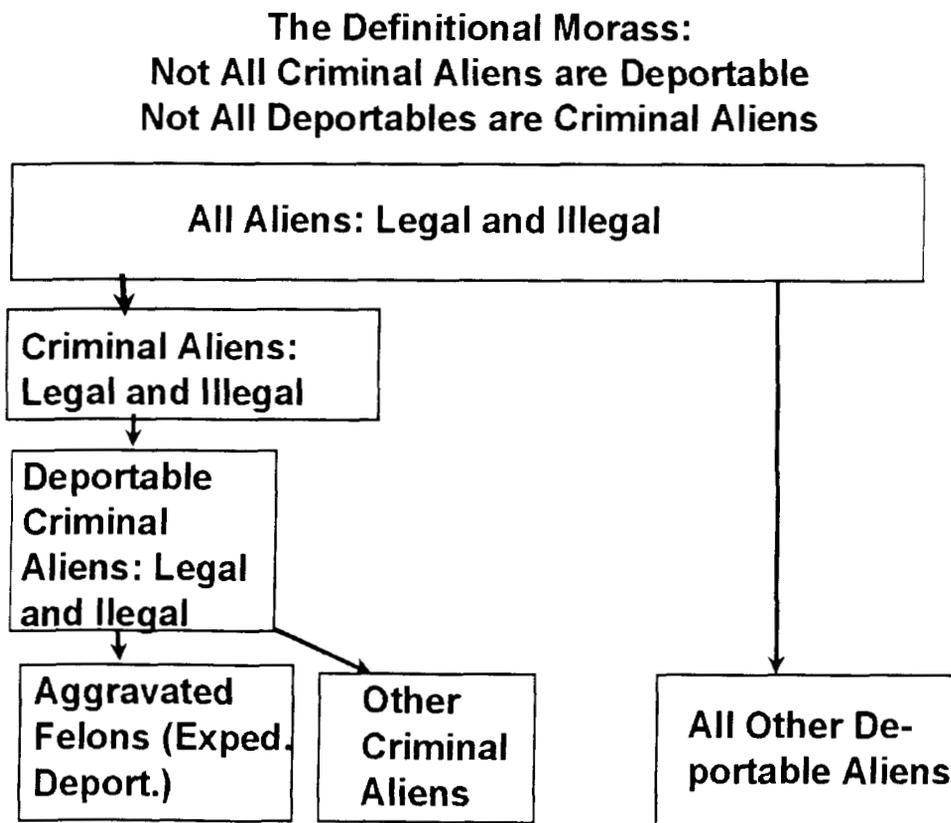
\$200,000; offenses related to alien smuggling; offense of document fraud or trafficking if the term of imprisonment imposed is at least 5 years; an offense relating to failure to appear by a defendant for service of a sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and, finally, an attempt or conspiracy to commit any of the offenses described above. Plus, the term applies to an offense described above regardless of whether a state or federal law was involved; and, further, it applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. 8 U.S.C.A. § 1001(a)(43).

<sup>47</sup> Section 20301, Subtitle C, Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322.

## Deportable Criminal Aliens: Illegal and Legal

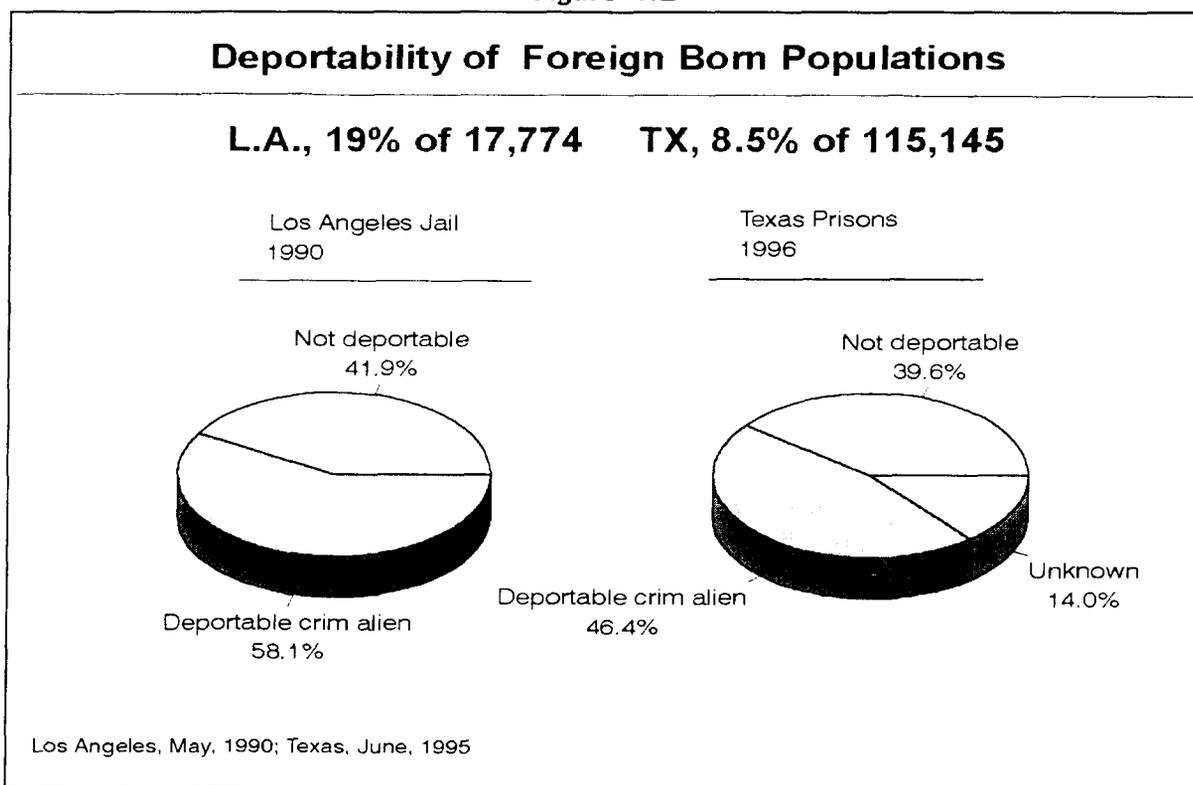
Of all the discussions of “criminal aliens” that tend towards confusion and misunderstanding those about the deportation of aliens are the most susceptible. There is a tendency to forget that all aliens are potentially deportable if they violate the conditions of their immigrant status. Policies that are spoken of as if they were targeted exclusively at “criminal aliens” or at illegal aliens may also apply to aliens who are not criminal or not illegal (see Figure 4.1)

**Figure 4.1 Aliens and Deportation**



When special efforts have been made to identifying criminal aliens who were deportable, several studies have found that substantial proportions of them are not deportable. The 1990 special study of the releasees from the Los Angeles County jail found that 19% of the 17,774 releasees in May were foreign born but 42% of them were not deportable (see Figure 4.2).<sup>48</sup> A 1995 examination found that of all 115,145 inmates in Texas state prisons (excluding those held in county jails) only 8.5 percent were foreign born. Of those 39.6% were not deportable; 48.4% were deportable; and 14% were undetermined.<sup>49</sup>

Figure 4.2



<sup>48</sup> California. Los Angeles County. Countywide Criminal Justice Coordination Committee. *Criminal Aliens in the Los Angeles County Jail Population: Final Report.*

<sup>49</sup> Texas. Criminal Justice Policy Council, *Criminal Alien Project for the State of Texas.*

### III. Conclusion

There are only so many words in the English language. On their face the words, “criminal alien,” are appropriate terms for talking about the criminality of people who are not citizens. The phrase is a convenient label for what may seem to be a singular topic. But the topic is not singular. It has many dimensions with links to still other d issues. Depending upon who is using the term, one or another set of those dimensions may be the referent. Using those words as keywords for literature searches yields studies and hearings whose scopes are incongruent. Attempting to decipher the meaning of the phrase leads one into a bramble bush of definitions and distinctions.

The complexity of the legal definitions of the phrase reflects an accumulated history of trying to cope with two distinct policy concerns which happen to intersect at this point, immigration control and crime control. From time to time the emphasis has shifted. Immigration controls have been used primarily to control crime, at least the crime or potential crime attributed to aliens. At the present crisis of immigration, the criminality of aliens is being used as a major lever against immigrants.

Immigration law and criminal law are not of the same species but they are joined together like a centaur. Keeping the distinctions straight while maintaining a central theme to one’s analysis is a challenge. The problem is particularly tricky when dealing with the matter of deporting criminal aliens addressed in Chapter 5. As far as local police are concerned, while

they may have no responsibility for dealing with illegal immigration per se. They are responsible for dealing with criminals of all kinds, immigrants or otherwise. Criminal aliens are the direct connection between the local police the social problems associated with immigration both legal and illegal.

## Chapter 5

### The Evolution of American Immigration Controls

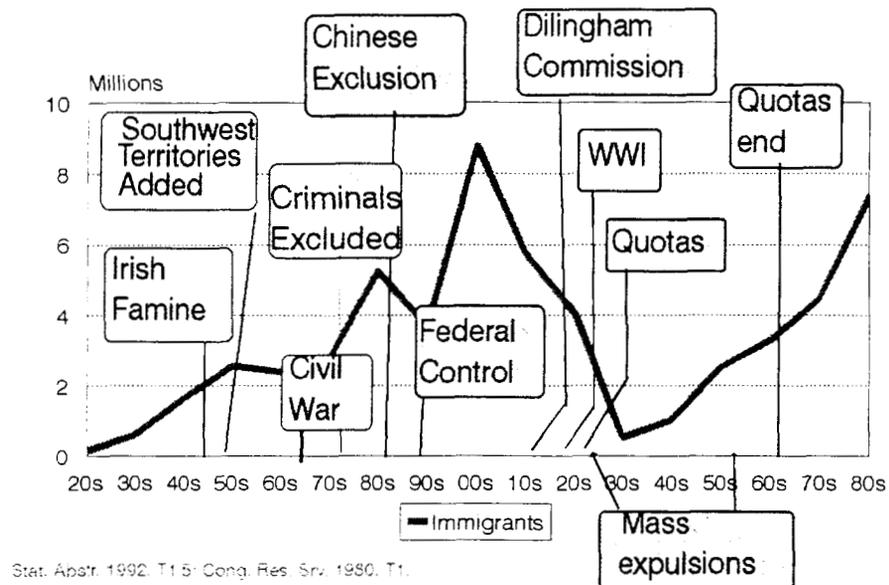
#### I. Colonial and Early State Restrictions

Contrary to myth, the American gates have never been completely open. Emma Lazarus's generous sentiment is an ideal, not an account of what happened. From the beginning Americans tried to keep from their shores the teeming refuse that European countries were dumping on them. Almost all the Colonies and the States enacted legislation restricting the immigration of certain categories of people. Foremost among them were criminals and potential criminals such as paupers and vagrants as well as the infirm and other dependents. These were the first immigration policies in America and their primary rationale was to protect public safety and avoid welfare costs.

When the federal government assumed responsibility for controlling immigration at the end of the nineteenth century, it picked up where the colonies and states left off, expanding the classes of unwelcome refuse to include a wide assortment of criminal, immoral, destitute, infirm, and dependent persons. In addition under the racist and xenophobic politics of the time,

Figure 5.1

## Total Legal Immigration to USA 1820-1990



restrictions were enacted to exclude people of certain races.<sup>1</sup> The Chinese and then virtually all Asian people were excluded explicitly. Southern Europeans, specifically the Italians, and Eastern European Slavs and Jews, were restricted indirectly, first with a literacy test which failed to satisfy restrictionists, and then with the national quota system, which restricted the number of immigrants from each nation in a way that favored people from Northern Europe.

<sup>1</sup> See generally, John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick, N.J.: Rutgers University Press, 1955); Maldwyn Allen Jones, *American Immigration*, 2d ed. (Chicago, IL: University of Chicago Press, 1992).

Before contemporary Americans can begin to deal with immigration related policies, they must unlearn what they believe to be their history. Myths and symbols often distort realities. The Statue of Liberty has become the great symbol of immigration, welcoming the downtrodden of the world. But it was never intended to be that by its sculptor, Bartoldi, or his liberal supporters. It did not assume current symbolism publicly until the 1930s and 40s after the golden doors had been closed to a narrow crack and the flow of immigrants reduced dramatically. Its promotion as a symbol for immigrants emerged as part of the campaign to Americanize immigrant whose presence in the country caused fear and alarm.<sup>2</sup>

The struggle between local and central governments over the costs of immigration and crime began for Americans in the 17th century. Britain found it cost effective to ship her prisoners to the Colonies where they were often sold into involuntary servitude. In 1615 Parliament authorized pardons for condemned felons banished to the New World. The Colonies resisted. Plymouth removed foreign paupers (1639); Maryland prohibited the landing of convicts (1676); Massachusetts excluded the lame, infirm and dependent (1700). Parliament countered by establishing transportation as punishment for serious crimes (1718). Pennsylvania responded with a tax on every criminal landed and held the ship owner liable (1722). Virginia, South Carolina, Georgia, and New York enacted penalties for the landing of convicts (1788).<sup>3</sup>

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<sup>2</sup> John Higham, *Send These To Me: Jews and Other Immigrants in Urban America* (New York, NY: Atheneum, 1975).

<sup>3</sup> Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93 (Dec. 1993): 1833-; A. Rodger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford: Clarendon Press, 1987);

Nevertheless between 1700 and 1800, 50,000 convicts were transported to America.<sup>4</sup>

From the Revolution to the 1880s European countries continued dumping prisoners and others. It was opposed from the start. In 1787 Georgia provided for the arrest and removal of felons transported or banished from another state or a foreign country and directed the death penalty for reentry. In 1788 the Congress of the Confederation recommended to the states that they "pass proper laws for preventing the transportation of convicted malefactors from foreign countries into the United States."<sup>5</sup> Virtually all the states did so but unsuccessfully. Shiploads of convicts kept arriving late into the nineteenth century.<sup>6</sup>

Virginia passed a law in 1788 prohibiting ship masters from landing of convicts. South Carolina, Georgia, Pennsylvania and New York passed similar laws within two years. Massachusetts did so in 1791. The exportation of paupers was also fought by the states. In 1820 Massachusetts passed an act "to prevent the introduction of paupers from foreign ports or

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Roy L. Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States* (New York, NY: MacMillan Company, 1927); Edith Abbott, Ed., *Historical Aspects of the Immigration Problem: Select Documents* (Chicago, IL: University of Chicago Press, 1969 [1926]); Edith Abbott, *Immigration: Select Documents and Case Records* (Chicago, IL: University of Chicago Press, 1924).

<sup>4</sup> Keith S. Christianson, "The American Experience of Imprisonment, 1607-1776," Ph. D. Diss. (Albany: State University of New York, 1981).

<sup>5</sup> Neuman, "The Lost Century of American Immigration Law (1776-1875)," fn.43.

<sup>6</sup> Neuman, "The Lost Century of American Immigration Law (1776-1875)."; Samuel C. Busey, *Immigration: Its Evils and Consequences*, The American Immigration Collection (New York: Arno Press and The New York Times, 1969 [1856]).

places.”<sup>7</sup> In 1824 New York passed a related measure. It required ship masters to give a list containing the name, age, and occupation of every alien transported and to either give sureties of up to \$300 for each alien landed. A similar law was passed in 1833 in Maryland and in 1836 in Massachusetts. The latter provided for an official appointed by the city to examine each arriving passenger to determine whether the ship carried any lunatics, idiots, maimed, aged, infirm, incompetent persons or persons who had been paupers in any country. Such people were not permitted to be landed unless the ship masters posted a \$1,000 for each such person. The bond was to be forfeited if the person became a charge to any city, town or the State within ten years. In addition ship masters were required to pay two dollars for each passenger landed. The money was to be used to pay for the support of foreign paupers.<sup>8</sup>

In the same year the Massachusetts legislature resolved to ask the Congress to prevent the admission of paupers into the country. The resolution was presented to the United States Senate in 1836 along with a report condemning the British Parliament for authorizing its parishes to raise taxes to defray the costs of shipping their paupers to America and for directing the parishes to select “the most idle, debauched, and corrupt -- the incurable portion”-- for that purpose.<sup>9</sup>

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<sup>7</sup> Mass. Laws, 1820, Chap. 190, cited in Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 36.

<sup>8</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 75.

<sup>9</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 37.

Appeals by state and local governments to the federal government for assistance in dealing with criminal and destitute immigrants were made repeatedly through the century and well into the twentieth century after it was settled that the federal government was responsible for immigration matters. In 1837 a ship load of 260 Hessian convicts arrived in the port of Baltimore. They had been in manacles and fetters until the day before arrival. Mayor Smith appealed to Washington, D.C. for help. He was told there was no remedy and that he had to allow the convicts to land and be turned loose.<sup>10</sup>

In New York City every mayor from Aaron Clark in 1837 to Fernando Wood in 1855 had complained bitterly about the European dumping of criminals and paupers. The complaints were well founded. In 1835 more than one-half of the paupers in the almshouses of New York, Philadelphia, Boston, and Baltimore were foreign-born. In 1850 there were three times as many foreign-born inmates in the New York state prisons as there were natives.<sup>11</sup>

During the fall of 1854 a ship landed in New York City with 150 paupers and 15 convicts still wearing their chains. A few months later another ship, belonging to the Sardinian government, landed 34 convicts. They were "not convicts for political offenses, but convicts for crime of the most dangerous description."<sup>12</sup> Mayor Fernando Wood had had enough. He wrote

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<sup>10</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 38.

<sup>11</sup> Jones, *American Immigration*, 130.

<sup>12</sup> Busey, *Immigration: Its Evils and Consequences*, 70.

President Franklin Pierce requesting federal assistance arguing New York was unfairly burdened with a federal responsibility. However, at the time immigration control was in the hands of the states. So he had to rest his argument on a failure of foreign policy, i.e. the federal government had not stopped foreign governments from imposing their wills. He wrote:

Dear Sir: There can be no doubt that, for many years, this port has been made a sort of penal colony for felons and paupers, by the local authorities of several of the continental European nations....

It is unnecessary to refer to the gross wrong thus perpetrated upon this city. It requires from me no allusion to the jeopardy of our lives and property from this cause. Men who by a long career of crime and destitution, have learned to recognize no laws, either civil or natural, cannot fail to produce feelings of terror at their approach.

... New York has submitted long enough. The disease and pauperism arriving here almost daily, from abroad, is, of itself, a sufficient evil; but when to it is added crime, we must be permitted to remonstrate. We ask the interference of the General Government. As it is its duty to protect us from foreign aggression...so is it its duty to protect us against an enemy more insidious and destructive, though coming in another form."<sup>13</sup>

Not until a century and a half later would the federal government begin to reimburse the states and local governments for the costs incurred in dealing with immigration; and then, it would be only for the costs of illegal immigration. In the 1850s, however, there was no such thing as illegal immigration.

The federal government did respond to the pleas of the localities being inundated with undesirable immigrants. In 1856 the Congressional Committee on Foreign Criminals and Paupers investigated the situation and concluded that the costs involved could not be counted

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<sup>13</sup> Busey, *Immigration: Its Evils and Consequences*, 70.

simply in tax dollars being spent on welfare and police. There was a larger threat to the moral fiber of the society. The influx of these criminal and pauperized people, it concluded, was a matter:

“affecting not only the fiscal affairs of the nation, but the morals, habits and character of the people, and the safety of our institutions....A nation of freemen, no matter how great and powerful, cannot long continue as such without religion and morality, industry and frugality; for these are indispensable supports of popular government. Crime and pauperism are the bane of a republic and they cannot be too seriously considered, nor too stringently guarded against.”<sup>14</sup>

Nevertheless, the financial responsibility of the federal government for problems at the state level was limited in that era. The Congressional Committee’s conclusion led only to moral support. The problem of dumping of criminals and other unwanted people in the United States continued for decades. Another federal investigation occurred in the 1880s. By then the control of immigration was shifting from the state and local governments to the federal government. Initially a shared responsibility between state and federal government developed. But it failed to control the borders.

In 1889 the House Select Committee to Inquire into the Importation of Contract Laborers, Convicts, Paupers, etc. (the Ford Committee), reported that thousands of criminals, paupers,

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<sup>14</sup> Quoted in Jones, *American Immigration*, 131.

insane persons were migrating to the United States and many of them were still being sent by organized efforts of foreign governments. British and Irish officials were using an association known as the "Tuke Society" to help poor and pauperized people immigrate to the U.S. by furnishing them with transatlantic tickets. The report read:

"In Germany there exists an association whose object is the exportation of their incorrigible convicts, and their vicious and lawless members of society. Quite a number of this class of persons have been assisted by this society to immigrate here, and they have succeeded in effecting a landing. According to the testimony this practice has also been carried on by officials of Great Britain and of the Swiss Republic, and in this manner this country has been made the refuge for a great many criminals whose character was such that they were deemed to be irreclaimable; and therefore the officials of the Governments from whom they came have purchased tickets for them, opened the prison doors, conducted them on board steamers, and shipped them to the United States, some of them being sent as cabin passengers, in order thereby to render detection more difficult. And they have persisted in this course even after having been requested by officials of our Government to discontinue it."<sup>15</sup>

It was not just the tax burdens and the threat of crime that concerned nativists. The broader moral implications of the influx of criminals and paupers were seen as an even greater

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<sup>15</sup> Convicts U.S. Congress. House. Select Committee to Inquire into the Importation of Contract Laborers, Paupers, *Report of the 'Ford Committee,'* House Report No. 3792, 50th Cong. 2d Sess. (Washington, DC: Government Printing Office, 1984). Quoted in Abbott, *Immigration: Select Documents and Case Records*, 184.

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## II. Federal Control Develops

The transition to federal control of immigration and to the criminalization of illegal immigration was slow, staggered and subject to the racist politics of exclusion that occurred at the end of the nineteenth century. For most of the century the States had asserted their right to regulate immigration and the Federal government was content to let them. The little legislation it enacted was to encourage immigration and for a brief time to protect immigrants from fraud and abuse.<sup>16</sup> This changed in the last quarter of the century.

Early discussions of the relative authority of the states and the federal government over the regulation of immigration revolved around the distinction between “internal police matters” as against matters of interstate commerce. Congress held the exclusive power to regulate commerce whereas the states held the power to regulate internal “police matters.” When it came to immigration the two matters were difficult to separate. The state laws regulating the landing of convicts, paupers and other undesirables appeared to regulate commerce. Initially some were held to be constitutional; but those which imposed costs to be used to defray the expense of inspecting arriving immigrants and of supporting foreign paupers were eventually struck down as

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<sup>16</sup> In 1864 Congress passed a law intended to encourage immigration. It established a Commissioner of Immigration under the Department of State and located in New York City. He was to oversee the transportation of immigrants to their final destination in the United States and protect them from fraud and abuse. The office was eliminated four years later U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, A Report, 96th Cong. 2d Sess. (Washington, D.C.: Government Printing Office, 1980), 6.

unconstitutional impositions of taxes on commerce.

In 1824 a ship master appealed the imposition of certain penalties imposed by New York City under a New York law requiring ship masters to report the names, ages, and last legal settlement of every person on board their vessels. He argued the law was an unconstitutional regulation of commerce. The U.S. Supreme Court ruled otherwise. Justice Barbour wrote: “We are of the opinion that the act is not a regulation of commerce but of police....The object of the legislature was, to prevent New York from being burdened by an influx of persons brought thither in ships...to prevent them from becoming chargeable as paupers.”<sup>17</sup> Justice Thompson added rhetorically: “Can anything fall more directly within the police power and internal regulation of a State, than that which concerns the care and management of paupers or convicts or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance?”<sup>18</sup>

By the middle of the century, however, the Supreme Court’s rulings in two cases known as the “passenger cases” set the path towards the eventual elimination of state regulation of immigration. The Massachusetts law requiring bonds and fees for foreign paupers and a New York health law requiring the payment of a dollar per passenger to defray the cost of the medical

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<sup>17</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 69.

<sup>18</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 71.

examiner were held to be unconstitutional regulations of commerce. Immediately after the ruling New York re-enacted its statute in a modified form. It and similar laws in other states were again challenged in 1876 and held unconstitutional.<sup>19</sup>

The first federal restriction on immigration occurred in 1875. It prohibited the entry of convicts and prostitutes. It did not make illegal entry a crime and did not provide any enforcement mechanism for excluding or deporting immigrants. In 1882 Congress excluded lunatics, idiots, and persons likely to become public charges; and Chinese people, making national origin the basis for exclusion for the first time. It also granted the Secretary of the Treasury the power to enforce the law by excluding or deporting within a year any violators. The enforcement mechanism involved using state officials appointed by the governors and paid by a tax of 50 cents collected from each immigrant.

Ineligible immigrants who entered illegally could be deported but not criminally prosecuted until 1918 under the wartime provisions of the Passport Act. It was not until 1929 that unlawful entry was unequivocally established as a crime. Entry by an alien at other than a designated place or by fraud was made a misdemeanor; and reentry of a previously deported alien was made a felony. Meanwhile, a growing list of qualitative and quantitative restrictions on immigration was added; and the grounds for deportation of legally admitted immigrants were

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<sup>19</sup> Garis, *Immigration Restriction: A Study of the Opposition to and Regulation of Immigration Into the United States*, 77ff.

expanded.<sup>20</sup> Illegal entry continues to be a misdemeanor and re-entry after deportation a felony. In 1988 the penalty for reentry was increased up to 20 years for a new category of deportable criminal alien, "aggravated felon."

The states' role in regulating immigration was abolished in stages. In 1876 the Supreme Court ruled that the immigration laws of New York, California, and Louisiana were unconstitutional.<sup>21</sup> In 1889 the Ford Committee concluded that the division of immigration control between the States and the Federal government was to blame for the continuing failure to prevent the immigration of criminals and other undesirables. It presented a bill which became the immigration Act of 1891 that ended the dual state-federal arrangement. The Act established the Bureau of Immigration in the Department of the Treasury and a Superintendent of Immigration who had charge of all immigration matters except the Chinese Exclusion Act. Additionally, 24 border inspection stations were established at ports of entry along the two seaboards and the land borders with Canada and Mexico; and the Superintendent was directed to

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<sup>20</sup> The magnanimous sentiments expressed by the poem that Emma Lazurus contributed to help raise money to build the pedestal for the Statue of Liberty could not have been more out of sync with the anti-immigrant fervor of the times. It was not until the rate of immigration dropped off almost to nothing in the 1930s and 40s and the campaign to "Americanize" immigrants was underway that the Statute of Liberty was reinvented as a welcoming symbol for immigrants. Clearly that was not the meaning intended by its sculptor or by the French liberals who supported his project to celebrate the first centennial of the American republic with a monument to liberty.

<sup>21</sup> *Henderson v. Mayor of the City of New York*, 92 U.S. 259.

deport any alien who entered the United States unlawfully.<sup>22</sup> From this beginning the present federal immigration structure developed. Each new restriction created new opportunities for smuggling, fraud, corruption and exploitation. The federal immigration structure was revised accordingly to try to meet the challenges.

The Chinese Exclusion Act of 1882 quickly spawned a thriving business in the smuggling of aliens. The favored route was through Mexico. Small communities of Chinese cropped up in northern Mexican towns where illegal Chinese aliens waited to be smuggled into the United States. The smuggling was organized by a corporation known as the Chinese Six Companies which was believed to be also responsible for the white slave trade and the smuggling of opium.<sup>23</sup> The traffic in fraudulent immigration documents began shortly after the Act of 1893<sup>24</sup> which required every Chinese person in the United States to obtain from the collector of the internal revenue a certificate of residence and to carry it at all times. The certificate bore a photograph as well as a detailed description of the person. Certificates were regularly forged and duplicated.<sup>25</sup> Initially little was done by to combat this problem beyond the

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<sup>22</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 8.

<sup>23</sup> Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigration and the Shaping of Modern Immigration Law* (University of North Carolina, 1996); Clifford A. Perkins, *Border Patrol: With the U.S. Immigration Service on the Mexican Boundary, 1910-54* (El Paso, TX: Texas Western Press, 1978).

<sup>24</sup> Act of March 3, 1893. 27 Statutes-at-Large 570.

<sup>25</sup> Perkins, *Border Patrol: With the U.S. Immigration Service on the Mexican Boundary, 1910-54*, 9.

efforts of Customs inspectors. Eventually a special unit of the growing Immigration Bureau assumed responsibility.

During the period 1891 to 1924 the shape of the federal immigration structure changed and expanded substantially as new restrictions on immigration added to the task of controlling the border. The title Superintendent of Immigration was changed to Commissioner General of Immigration. In 1900 the Commissioner General was assigned responsibility for administering the Chinese exclusion laws.<sup>26</sup> In 1903 the Bureau of Immigration was transferred to the newly-created department of Commerce and Labor. The Commissioner-General's authority was expanded.<sup>27</sup> That office was given responsibility for apprehending aliens. Formerly this law enforcement function was carried out by the U.S. Customs Service. The Service had a patrol whose members were referred to as "line riders" along the land borders. They traveled between ports of entry on horseback and were responsible for preventing the smuggling of anything into the United States. Their principal responsibility was to prevent the smuggling of cattle for which there was a heavy protective tariff but they also enforced the Chinese exclusion laws.<sup>28</sup>

In 1904 the Commissioner-General established a small group of inspectors (less than 75) to patrol the Southern border on horseback. It was in response to the increasing difficulties

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<sup>26</sup> Sundry Civil Act of June 6, 1900, 31 Stat. 588, 611.

<sup>27</sup> Act of February 14, 1903. 32 Statutes-at-Large 825.

<sup>28</sup> Perkins, *Border Patrol: With the U.S. Immigration Service on the Mexican Boundary, 1910-54*, 9.

regarding illegal crossings of the U.S. - Mexican border which the Commissioner-General had reported the year before. This group, known as the "mounted watch" or "mounted guards," was the forerunner of the Border Patrol. In 1908 the Immigration Service assumed complete responsibility for dealing with illegal aliens with the creation of a section known as the Chinese Division. Its officers were designated as Chinese Inspectors. Together with the Immigrant Inspectors they constituted the Immigration Service's enforcement structure. The Customs Service line riders were eventually abolished.<sup>29</sup>

In 1906 Congress responded to reports of an appalling amount of fraud and lack of uniformity in the naturalization process by assigning responsibility for supervising the naturalization process to the Bureau of Immigration.<sup>30</sup> In 1910 in connection with legislation to suppress white slave traffic, Congress designated the Commissioner-General of Immigration as the federal officer responsible for receiving and centralizing information concerning "the procuring of alien women and girls with a view to their debauchery."<sup>31</sup>

The work of the Bureau was greatly increased as additional wide-ranging restrictions were imposed on immigration. The Immigration Act of 1917 excluded illiterate people and

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<sup>29</sup> Perkins, *Border Patrol: With the U.S. Immigration Service on the Mexican Boundary, 1910-54*, 9.

<sup>30</sup> 34 Statutes-at-Large 596.

<sup>31</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 19.

expanded the existing exclusion of Asian persons to a wide area known as the Pacific-Asian zone.<sup>32</sup> The Quota Law of 1921 established the first quantitative restrictions on the number of aliens entering the United States.<sup>33</sup> It restricted the number of aliens of any nationality to three percent of the foreign-born persons of that nationality who lived in the United States in 1910. Approximately 350,000 such aliens were allowed to enter per year mostly from Northern and Western Europe. The limits did not apply to people who had lived in countries in the Western Hemisphere for one year which meant it did not apply to Mexican nationals. In 1924 the “national origins quota system” which generally revised and refined the quota system of 1921 was established.<sup>34</sup> It governed American immigration policy until 1952 when immigration law was codified by the Immigration and Nationality Act.

The 1917 Literacy Act placed new strains on the resources of the Immigration Bureau as did the 1921 Quota Act. The new restrictions on alien entry were accompanied by an increase in the illegal entries and the establishment of a thriving new smuggling industry. According to the Bureau’s 1923 Annual Report, entry across the Mexican border had “formerly been patronized almost exclusively by diseased or criminal aliens. But now the illegal entries involved Europeans who could not gain admission because of the literacy test, or the quota limits or

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<sup>32</sup> 39 Statutes-at-Large 874.

<sup>33</sup> 42 Statutes-at-Large 5.

<sup>34</sup> 43 Statutes-at-Large 540.

passport difficulties. In addition there was an growing number of illegal Mexicans.<sup>35</sup> In 1924 Congress provided for augmenting the Immigration Bureau's small force of mounted guards on the Mexican border and directed that a similar force be created for Canadian border. In June the Commissioner-General established the Border Patrol with a force of 450 employees. Its mission was to prevent smuggling and illegal entry along some 6,000 miles of land boundary.<sup>36</sup>

The next year the Border Patrol's and any federal immigration officer's authority to arrest was clarified. The Act of 1925 provided for arrests without warrants under certain circumstances. An immigration officers could arrest (1) any alien who in his presence or view was entering or attempting to enter the United States illegally, and (2) to board and search any vessel, railroad cars or vehicles in which he believed aliens were being brought into this country. These broad powers were amended and reenacted in the Immigration and Nationality Act of 1952 which provides that "...any officer or employee of the Service (INS) authorized under regulations prescribed by the Attorney general shall have power without warrant...

To interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

To arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating

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<sup>35</sup> Quoted in U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 33.

<sup>36</sup> U.S. Immigration and Naturalization Service, *The Border Patrol: Its Origin and Its Mission* (Washington, D.C.: Author, 1978 (Rev.)), 2.

the admission, exclusion or expulsion of aliens:

To arrest any aline in the United States if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation, and is likely to escape before a warrant can be obtained for his arrest;

To make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion or expulsion of aliens if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest;

Within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United Stats and any railway car, aircraft, conveyance or vehicle;

Within a distance of 25 miles from any external boundary, to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States.<sup>37</sup>

In 1929 entry by an alien at other than a designated place or by fraud was made a misdemeanor punishable by fine or imprisonment or both; and reentry after being deported was made a felony punishable by a fine or imprisonment or both.<sup>38</sup> By 1930 there was such

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<sup>37</sup> Act of February 27, 1925. 43 Statutes-at-Large 1049-1050. See Sections 235 and 287 of INA of 1952.

<sup>38</sup> Act of March 4, 1929. 45 Statutes-at-Large 1551.

confidence that the federal government would be able to control illegal immigration through restrictive legislation backed up by criminal penalties and an effective immigration police that Jane Clark, a professor of government at Barnard College, made the following optimistic prediction in her study of the deportation laws:

“To build a wall around the United States so high and so broad that no alien may climb over has been a difficulty and at times it has seemed an insuperable task. As the Border Patrol increases in numbers and efficiency, however, and as American restrictive immigration policy becomes better known in other countries, it seems probable that illegal entries will diminish.”<sup>39</sup>

In 1933 the Bureau of Immigration and the Bureau of Naturalization were consolidated to form the Immigration and Naturalization Service (INS). It was located in the Department of Labor where the two agencies had been placed in 1913 when the Department of Commerce and Labor was divided into two separate departments.<sup>40</sup> In 1940 the INS was transferred from the Department of Labor to the Department of Justice. The transfer was a national security measure intended to provide more effective control over aliens in light of the outbreak of war in Europe.

### III. Changes in Federal Immigration Control to 1954

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<sup>39</sup> Jane P. Clark, *Deportation of Aliens from the United States to Europe* (New York, N.Y.: Arno Press and The New York Times, 1969 [1931]), 295.

<sup>40</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 19, 41.

The emphasis among the functions of the INS had been shifting for some time. It began as an agency to enforce the restrictions of the immigration law; but it was turned into a crime fighting agency. Its move to the Justice Department signaled the extent to which its mission had been transformed. It was transferred there in the order to improve cooperation with the FBI and the U.S. Attorneys in combating criminal aliens and subversive elements.<sup>41</sup>

Once a federal agency to control immigration had been established its responsibilities were expanded and its mission was regularly redirected. The annual reports of the Immigration Service show sudden and major shifts in the focus of the agency over time revealing the extensive discretion exercised by immigration officials (see Tables 5.1 and 5.2). The fluctuations read like a barometer of shifting public fears. They track changes in ideas and norms about crime, immorality, mental illness and discrimination. They testify to a faith in scientific knowledge of human behavior and in the ability of officials to reliably identify people who fit such categories as “constitutional psychopathic inferior.”

Studies of the decision making of immigration officials indicate that their decisions were often based on minimal information. They frequently relied upon unchecked hearsay information. Often the official reasons for their decisions were little more than excuses for

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<sup>41</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 47.

Table 5.1

## Aliens Excluded by Cause FY 1892-1984

Year	Total	Subver- sive or Anar- chist	Criminal or narcotics violator	Im- moral	Mental or Physical defect	Likely to Become a Public Charge	Attempt EWI or W/O Docs	Other
1892-1900	22,515	na	65	89	1,309	15,070	na	5,982
1901-1910	108,211	10	1,681	1,277	24,425	63,311	na	17,507
1911-1920	178,109	27	4,353	4,824	42,129	90,045	na	36,397
1921-1930	189,307	9	2,082	1,281	11,044	37,175	94,084	43,632
1931-1940	68,217	5	1,261	253	1,530	12,519	47,858	4,791
1941-1950	30,263	60	1,134	80	1,021	1,072	22,441	4,455
1951-1960	20,585	1,098	1,791	361	956	149	14,657	3,573
1961-1970	4,831	128	383	24	145	27	3,706	418
1971-1980	8,455	32	837	20	31	31	7,237	267
1981-1984	3,425	10	700	3	3	22	2,562	104

Table 5.2

## Aliens Deported By Cause 1908-1980

Year	Criminal Violation	Immoral	Narcotic Violation	Mental or Physical Defect	Not comply w/ Non-immig Status	EWI, Fraud w/ o Docs	Public Charge	Other
1908-10	236	784	0	3,228	0	1,106	474	1,060
1911-20	1,209	0	6,364	178	0	4,128	9,086	5,246
1921-30	8,383	4,238	374	8,936	5,556	37,260	10,703	16,999
1931-40	16,597	4,838	1,108	6,301	14,669	50,639	1,886	21,048
1941-50	8,945	759	822	1,560	13,906	64,497	143	20,217
1951-60	6,742	1,175	947	642	25,260	89,547	225	5,349
1961-70	3,694	397	1,462	236	31,334	55,392	8	3,851
1971-80	2,524	67	3,626	38	33,740	187,507	31	4,229

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getting rid of people of whom immigration officials disapproved.<sup>42</sup> A sampling of findings convey the arbitrariness involved.

In a review of 633 immigration case files, van Vleck (1932) found that one of the official reasons to exclude or deport, namely, "Likely to become a public charge" was a plastic, exploding, catch-all phrase with which immigration officers wielded enormous and arbitrary discretion.<sup>43</sup> It was "used as a kind of miscellaneous file into which are placed cases where the officers think the alien ought not to enter, but the facts do not come within any specific requirements of the statutes."<sup>44</sup> A few examples illustrate the practice.

A fifty-one year old Mexican who had lived in the U.S. for fifteen years. He had supported himself as a laborer. He had built a small house. Yet upon his return from a visit to Mexico he was ordered excluded as likely to become a public charge because the customs officer found he was carrying a small bottle of mescal. (Admitted on appeal.)<sup>45</sup>

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<sup>42</sup> Kate Holladay Claghorn, *The Immigrant's Day in Court*, Americanization Studies, 9 (Monclair, NJ: Patterson Smith, 1971 [1923]); Clark, *Deportation of Aliens from the United States to Europe*; U.S. National Commission on Law Observance and Enforcement, *Report on the Enforcement of the Deportation Laws*, No.5 (Washington, D.C.: Government Printing Office, 1931e); William C. Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure* (New York: The Commonwealth Fund, 1932).

<sup>43</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*.

<sup>44</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 54.

<sup>45</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 55.

A Polish laborer, resident in the U.S., had tried to sneak his wife and child into the country without passports. He was apprehended, prosecuted and sentenced to serve one day in jail. Later, upon a return trip from Canada, he was ordered excluded as a person likely to become a public charge. The immigration officer's recommendation stated: "Indicates he has but little respect for law and therefore exclusion as a person likely to become a public charge is justified."<sup>46</sup>

A Mexican woman was excluded as likely to become a public charge because three years earlier she had been caught trying to smuggle in from Mexico two quarts of liquor. The board of inquiry reasoned that she had shown little respect for the law, would probably get into trouble and was therefore likely to become a public charge. (Admitted on appeal.)<sup>47</sup>

A Canadian who had quit his job, claimed to have \$3,000 in the bank, held a certificate of good conduct from his former employer but was separated from his wife with whom he was having difficulties was denied admission to the U.S. as likely to become a public charge. The board's explanation was that "where there is smoke there must be some fire." He might be trying to avoid payments to his wife. (Admitted on

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<sup>46</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 55.

<sup>47</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 56.

appeal.)<sup>48</sup>

A man was excluded as likely to become a public charge because of testimony that during the ocean voyage to this country he had gambled and gotten drunk. (Admitted on appeal.)<sup>49</sup>

The fact that several of these examples were reversed on appeal is no grounds for reassurance in the fairness or validity of the selection process when one looks at numbers involved. In each of the first five decades of federal immigration control, from 1892 to 1940, more people were excluded from the United States because they were judged likely to become public charges than for any other reason by wide margins (see Table 5.1). Additionally, for the two decades between 1911 and 1931, more people were deported for this reason than for any other (see Table 5.2).

The growth of the criminal and subversive control functions of the INS and its Border Patrol can also be seen in the annual caseload statistics of the agency. During the first thirty years of its development the INS had focused primarily on excluding ineligible aliens. In the language

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<sup>48</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 56.

<sup>49</sup> Van Vleck, *The Administrative Control of Aliens: A Study in Administrative Law and Procedure*, 57.

of immigration policy, this was done either by exclusion or deportation. Both are administrative actions as opposed to criminal procedures. Exclusion is the formal denial of an alien's entry into the United States. Deportation is the formal removal of an alien from the United States. Deportation is not a "penal sanction" even though in particular cases it may impose severe hardships. The term, "exclusion," is not used literally. It does not mean a person was turned back at the port of entry at the time of arrival. An immigrant may be allowed to remain in the country for months or longer while the decision to admit or exclude is being made.

Deportation was originally thought of as a kind of second line of defense. Immigrants who managed to convince immigrant inspectors and medical examiners at the admission decision that they were not convicts; prostitutes; idiots; imbeciles; mentally ill; immoral; impoverished; likely to become public charges; or vagrants, might later turn out to be one of these kinds of people. Deportation gave the government a second chance to correct these errors. It also created a kind of probation period during which the immigrant could show what kind of person they would be. Such people were eligible for deportation if their condition were discovered up to a specified number of years after entry ranging generally from three to five years. Deportation could be taken against other categories of people as well including people who enter without inspection (EWIs).

### The Control of Radicals

The use of deportation as a proactive strategy against aliens who believed to be criminals, radicals or subversives did not occur until World War I. The war with Germany unleashed

waves of anti-foreigner and anti-radicalism sentiments that fed upon each other. A fear of disloyalty among the many immigrants from Germany and the other Central Powers troubled Americans. Foreign-born workers formed about two-thirds of the labor force in strategic industries like steel, munitions factories, coal mines and meat-packing. Foreigners were also prominent in radical and labor movements. A super-nationalism emerged demanding unprecedented levels of unity, loyalty and patriotism, expressed by writers as “100 per cent Americanism.”<sup>50</sup>

Anti-German hysteria flourished and fed suspicions of organized plots by German sympathizers. Theodore Roosevelt recommended that any German American who showed disloyalty should be shot. Germans were lynched, forced to kiss the American flag, flogged for uttering allegedly seditious remarks, interned and deported. Vigilante societies were formed to search for disloyal Americans. One, the American Protective League worked with the federal Department of Justice as a semi-official auxiliary agency checking on men's opinions and reporting on “seditious and disloyal utterances.”<sup>51</sup>

Against this wall of intolerance was a meager anti-war sentiment expressed by left-wing groups including the International Workers of the World (I.W.W. or “Wobblies”); tiny anarchist groups; and the Socialist party. They protested the war as a capitalist blood-bath and refused to

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<sup>50</sup> Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*.

<sup>51</sup> Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 204ff.

put national above class interest. In the summer of 1917 Wobbly union organizers called a work stoppage in the copper mines and launched a series of strikes. Their actions touched off an extraordinary reaction fed in part by the suspicion that the I.W.W. was being financed by Germany. Sheriffs' posses and armed citizens' committees ran more than 1,300 suspected Wobblies out of Arizona. One group was met at the California border by armed citizens who threatened to kill both the guards and the prisoners if they tried to enter. The same thing happened to another group at the New Mexico border. Throughout the West vigilante groups sprang up threatening to hang radical German sympathizers. Western state legislatures passed "criminal syndicalism" laws, penalizing membership in organizations that advocated violence.<sup>52</sup>

The public call for drastic action was answered by Attorney General Gregory in September when his agents began raids on every I.W.W. hall in the United States. More than 300 I.W.W. leaders were arrested for violations of the Espionage Act; and an additional group of aliens associated with the I.W.W. were rounded up through the joint efforts of the Immigration Bureau and the American Protective League. They were held for deportation under the new immigration law of 1917 which permitted the deportation of aliens implicated in certain kinds of radicalism regardless of how long they had lived in the United States.

The idea that deportation might be used to rid the country of radical aliens was first experimented with in 1917 with the immigration law passed in February. The law expanded the

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<sup>52</sup> Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 219-20.

anarchist clause of the immigration law of 1903 in two ways: first, to exclude not only individuals who advocated violent revolution but also those who advocated sabotage or simply belonged to a revolutionary organization; second, to deport any alien who at any time after entry preached such doctrines. In effect, guilt by association became a criteria for deportation as did advocacy of political views that aliens might acquire many years after arriving in America. The law effectively severed the functional link between deportation and enforcement of immigration restrictions. Deportation was no longer to serve just as a backup to the initial admission decision; but as a weapon that could be used to purify the country of undesirables aliens no matter how long they had lived here. At first this proactive use of deportation was directed against radicals; but later it was turned on criminals and gangsters.

The 1917 law was further modified in 1918 at the request of the Labor and Justice Departments. It had not been as easy as expected to deport the I.W.W. aliens arrested in the winter of 1917-1918. Immigrants of long standing could not be expelled simply for belonging to a subversive organization. Evidence had to be adduced that an individual had actually advocated subversive doctrines. That obstacle was eliminated by the 1918 law which authorized the deportation of any alien simply on the grounds of membership in an organization which advocated revolt or sabotage.

When the war ended American fear of radicalism did not. The association between foreigners and radicalism continued. Many foreign born workers and radicals played a prominent part in the post-war labor movement. Most anarchists and communists were recent

immigrants. Radicalism had assumed a new potency and threat with the success of the Communist Revolution in Russia. American troops had participated in the Allies' campaign at the end of the war to overthrow Russia's new bolshevik government. Bolshevism was a hated foreign ideology. The wartime spirit of "100 percent Americanism" continued breed intolerance which eventually crested in the Red Scare of 1919-1920.<sup>53</sup> Deportation continued to figure as an important weapon against foreign radicals.

In 1919 a great wave of 3.630 strikes spread across the country as union workers tried to preserve their wartime gains. In Seattle when the unions organized a general strike the mayor accused them of trying to "duplicate the anarchy of Russia."<sup>54</sup> When 350,000 steel workers struck, mill owners took out ads saying the walkout was a bolshevik plot engineered by "Red agitators." The U.S. House of Representatives refused to seat Milwaukee socialist Victor Berger. The New York legislature expelled several socialist members. The U.S. Justice Department arrested hundreds of suspected communists and radicals. In December 249 Russian-born aliens were deported including Emma Goldman.

On January 2, 1920 a nationwide dragnet coordinated by the Justice Department was launched. Local police and federal marshals in thirty-two cities broke into the homes and offices

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<sup>53</sup> Paul S. Boyer, et al., *The Enduring Vision: A History of the American People*, 2d ed. (Lexington, MA: D.C. Heath, 1993); Richard N. Current, T. Harry Williams and Frank Friedel, *American History: A Survey*, 4th ed. (New York: Knopf, 1975).

<sup>54</sup> Boyer, et al., *The Enduring Vision: A History of the American People*, 793.

and ransacked the files of suspected radicals. More than 4,000 people were arrested of whom 550 were deported. The “Red raids” were led by Attorney General. A. Mitchell Palmer, a strong anti-radical. It was not uncommon for local police to initiate raids and arrests on their own, locking up Russian workers overnight.<sup>55</sup> By 1920 the more outrageous forms of the Red Scare had faded but the principle of using deportation to cleanse society of dangerous people had been well established.

The extent of deportation against radicals is not shown in the reports of the INS (see Table 5.2). “Subversive or anarchist” is listed as one of the categories for excluding immigrants (Table 5.1) but inexplicably is not listed among the categories for deportation. Such deportations would likely be listed under the category, “other.” The annual reports show a sudden increase in the 1920s of the number of deportations of criminal and immoral people. No one was deported for immorality during the decade of 1911-1920; yet, an astonishing 4,238 immigrants were deported for that reason in the 1920s. About the same number are deported in the 1930s. But then it drops off over the next three decades. There is a similar pattern regarding deportations for criminal violations (holding narcotic violations separately as done in Table 5.2). The number of deportations for criminal violations soared from 1,209 in the 1910s to 8,383 in the 1920s to 16,597 in the 1930s and then dropped off just as dramatically as it started. Adding the narcotic violations to the other criminal violations, as it is reasonable to do, changes the pattern only slightly. It moves the start of the use of deportation to rid the country of criminals back to the

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<sup>55</sup> Boyer, et al., *The Enduring Vision: A History of the American People*, 793; Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 227.

1910s.

During World War II and the anti-communist era of the 1950s the control of subversive aliens and the protection of national security from enemy aliens became priorities for the INS. Under the Alien Registration Act of 1941 over 600,000 Italians, over 300,000 Germans, and about 90,000 Japanese were defined as enemy aliens subject to restrictions on travel and behavior. They could be arrested, interned and deported depending upon judgments about their risk to national security. By fiscal year 1943, 9,220 of them were in the custody of the INS living in camps surrounded by floodlights and wire fences.<sup>56</sup>

#### **IV. Controlling the Borders and Illegal Immigration**

Controlling the border and preventing illegal immigration have always been primary functions of the INS. During the century the scale of those challenges changed and INS's success at meeting them has varied. In the 1930s, 40s and 50s the INS successfully orchestrated mass deportations of Mexican illegal immigrants in response to public concerns about loss of control of the border. But in the 1970s and 80s when the new crisis in illegal immigration began to mount along with public outrage at the federal government's failure to control the border, the tactics that had worked in the past were no longer politically tenable. With the exception of the Chandler (Az.) roundup (discussed later) they were not used—at least not in the form of mass

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<sup>56</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 50.

roundups on the streets.

The new form of mass deportation without street roundups began happening with the implementation of the 1996 immigration laws. Unprecedented numbers of immigrants are being deported by that policy but they are being identified for deportation during the course of routine encounters with INS officers at border crossings, applications for immigrant services, or through the streamlined processing of criminal aliens. The new strategy involves more an enlarged INS with more resources and greater discretionary authority to refuse entry to the country (discussed further below).

The new strategy known as “employer sanctions” made it a crime to knowingly hire an illegal immigrant. The new policy was not enacted until the Immigration Reform and Control Act (IRCA) in 1986 during which time thousands of illegal immigrants had poured across the border. Over the next ten years congress and two administrations further developed immigration policy. Enormous resources were invested in tightening control of the U.S. - Mexico border. As for the interior, there have been three main policy emphases: removing “criminal aliens”; enforcement of employer sanctions; and blockades at the border. The effectiveness of these strategies has been questioned by studies.

The INS and the Border Patrol have been greatly expanded and upgraded. Illegal immigrants at the U.S. Mexico border are no longer able to enter the country at will. But they do manage to get in; and there is strong political opposition to the INS’s interior enforcement

practices. The INS continues to shift its policy emphasis looking for an strategy that is politically acceptable and effective. Focusing on the crime-related aspects of immigration, particularly the criminality of immigrants and the criminality of smugglers who traffic in illegal immigrants, have been two areas where the immigration policies have met little political opposition. Restructuring its relationship with local police agencies has been another part of the change in policy emphasis.

#### The Old Style Mass Deportations: 1930s, '40s and '50s

Concern about undesirable and illegal immigrants in the U.S. has been notably selective. During the height of restrictive legislation directed at closing the door at Ellis Island and other ports of entry for aliens coming from overseas, immigration across the land borders with Mexico and Canada was less a concern. The little border control that existed was mainly to deter the smuggling of Chinese and Europeans. During the early decades of this century there was a more relaxed attitude towards Mexican immigration. But as economic conditions oscillated, this attitude changed.

The Immigration Act of 1907 established a head tax and prohibited entry of contracted labor. The Immigration Act of 1917 excluded all illiterates. During World War I at the request of U.S. businesses, these restrictions were lifted for Mexican immigrant laborers. Between 1917 and 1921 about 73,000 Mexican immigrants were legally admitted under this special order by the Commissioner-General of Immigration. After the war many of them stayed on and others came

because the policy was not terminated for a long time and employers in the Northwest and Midwest induced Mexican workers to their areas.<sup>57</sup> But when the Great Depression struck in the early 1930s pressures mounted for mass deportations back to Mexico. The INS initiated “Operation Deportation” prompting tens of thousands of legal Mexicans to leave “voluntarily” (See Figures 5.2 and 5.3). They left because jobs were scarce and because of pressures from local officials and citizen groups. Deportation hearings at that time were conducted by the INS field officers and were done in summary mass proceedings.<sup>58</sup> The immigration act of 1929 had expanded the classes of deportable aliens; made it a felony to reenter after deportation; and made entry at other than a designated place a misdemeanor.<sup>59</sup> The Border Patrol’s enforcement of these provisions in the southwest created an atmosphere of fear and mistrust among Mexicans which contributed to the willingness to leave. Commenting on this fear, Robert McLean wrote:

“It may be indefinite, but it is very real; and the quality is standard all the way from California to Texas...and that fear hovers over every Mexican colony in the Southwest....They fear examination by the Border Patrol when they travel; they fear arrest; they fear jail; they fear deportation; and whereas they used to write inviting friends, they now urge them not to come.”<sup>60</sup>

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<sup>57</sup> Julian Samora, *Los Mojados: The Wetback Story* (Notre Dame, IN: University of Notre Dame Press, 1971), 38.

<sup>58</sup> Edwin Harwood, *In Liberty's Shadow: Illegal Aliens and Immigration Law Enforcement* (Stanford, CA: Hoover Institution Press, 1986), 3.

<sup>59</sup> Act of march 4, 1929. 45 Statutes-at-Large 1551.

<sup>60</sup> Quoted in Samora, *Los Mojados: The Wetback Story*, 41.

Figure 5.2 Operation Deportation as Depicted by Mexican Cartoonist



Figure 5.3 Deportation As Seen Mexican Cartoonist (Rio Bravo = Rio Grande)



During World War II agricultural interests in the Southwest persuaded congress that foreign workers were needed to offset the loss of Americans who had gone to fight in the war. In 1942 the United States and Mexico reached a guest worker agreement known as the "Bracero Program." Mexican workers were legally admitted to the United States. In the opinion of some scholars this legal immigration program stimulated illegal immigration.<sup>61</sup>

Mexican workers who immigrated illegally were referred to as "wetbacks." Their numbers were so great between 1944 and 1954 that one author described the period as the "wetback" decade of American immigration. For a while Mexico and the United States agreed to deal with the problem by allowing wetbacks to return to the border briefly and subsequently be "recruited" under contracts with employers in the United States.<sup>62</sup> The practice was known as "wringing out" wetbacks. In some places the Border Patrol performed that service for local employers, bringing apprehended illegal workers to the border for a quick drying out.<sup>63</sup>

By 1947 there was an overabundance of illegal immigrants in the country. A recession was anticipated. There were increasing public worries about crime along the border and about the threat to public health from diseased immigrants. The Border Patrol launched its second mass deportation campaign. Starting in California and moving toward Texas, over 700 officers

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<sup>61</sup> (Samora 1971: 45ff).

<sup>62</sup> Samora, *Los Mojados: The Wetback Story*, 45.

<sup>63</sup> Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York, N.Y.: Routledge, 1992).

were assigned to assist along the border. Small teams of officers conducted sweeps in selected cities in the interior. In less than a month, 355 aliens were apprehended in Sacramento; 325 in Fresno; 322 in Salinas; 159 in Stockton; and 117,000 in San Antonio, Texas. The sum total of the campaign was: 193,675 deportable aliens, 277 alien smugglers, and 1,020 violators of other laws.<sup>64</sup> Thereafter the INS extended its operations to attempt to control illegal immigration not just at the border but throughout the country.

By the early 1950s the illegal immigration along the U.S. - Mexico border was so out of control that "it often seemed as if the 'whole nation of Mexico' was crossing the border."<sup>65</sup> In its 1952 Annual Report the INS noted the "spreading encroachment of Mexican illegal entrants into rural and industrial areas of the United States" and that the number of apprehensions of illegal aliens was increasing by the "tens and hundreds of thousands."<sup>66</sup> In 1954 the Commissioner of Immigration, Joseph Swing, a retired general and former classmate of President Eisenhower, orchestrated the third and largest-ever mass deportation campaign against Mexican illegal immigrants.

Operation Wetback was an all out sweep that began in California, moved through the Southwest and then conducted additional sweeps in cities like Chicago, Kansas City, St. Louis

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<sup>64</sup> Samora, *Los Mojados: The Wetback Story*, 51.

<sup>65</sup> Samora, *Los Mojados: The Wetback Story*, 52.

<sup>66</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 59.

and Spokane. Equipped with airplanes, boats, cars, radio units and assisted by federal, state, county and municipal authorities—including the California Highway Patrol, sheriff and local police departments, the Army and Navy, the FBI and U.S. Customs—the Border Patrol mounted the largest offensive ever against the “wetback invasion.”<sup>67</sup> Cooperating radio coverage and the press helped achieve the “fear of God” tactic the Border Patrol had used in the 1930s to encourage voluntary departures by aliens not apprehended. Employers were urged to rid themselves of illegal employees. Aliens were warned of the threat of deportation. According to General Swing, “these (voluntary) departures were a planned part of the over-all operation and provided a saving to our government.”<sup>68</sup>

“As the news of the operation of the Special Force spread, unknown thousands left the country voluntarily to avoid arrest and transfer to the interior of Mexico. Many family groups were encountered and counseled to return to their homes.”<sup>69</sup>

The operation began on June 17. A task force of 800 Border Patrol officers assembled at El Centro and Chula Vista, California. They blocked off areas and swept through them. During

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<sup>67</sup> Samora, *Los Mojados: The Wetback Story*, 52; U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 66; Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin, TX.: University of Texas Press, 1971); Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.*

<sup>68</sup> Quoted in Samora, *Los Mojados: The Wetback Story*, 53.

<sup>69</sup> U.S. Department of Justice, I & N Annual Report, 19564:32 quoted in Samora, *Los Mojados: The Wetback Story*, 52.

the first week they apprehended an average of almost 2,000 illegal aliens per day. During the first 30 days of the operation in Texas, more than 60,000 aliens returned to Mexico through the ports of entry and others fled directly across the Rio Grande. In Chicago, St. Louis, Spokane, Kansas City and other cities, 20,174 illegal Mexican aliens were removed from industrial jobs.<sup>70</sup> All told the operation netted tens of thousands of “wetbacks” and thousands more returned to Mexico on their own accord.<sup>71</sup>

General Swing regarded the operation as a complete success. Implying that the problem had been permanently solved, he proudly announced in the 1955 INS Annual Report: “The so-called ‘wetback’ problem no longer exists...[T]here is no longer, as in the past, a problem of border control. The border has been secured.”

Indeed for a few years it appeared as though the problem had been greatly reduced. The number of illegal Mexican apprehensions (the measure of deterrence often used) dropped dramatically (from one million in 1954, to 250,000 in 1955, to 73,000 in 1956, to 30,000 in 1960).<sup>72</sup> But, after 1963 the number continually increased. After the Bracero Program was finally terminated in 1964, the number of illegal immigrants crossing the border began to shoot

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<sup>70</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 66.

<sup>71</sup> Samora, *Los Mojados: The Wetback Story*; Craig, *The Bracero Program: Interest Groups and Foreign Policy*, 129.

<sup>72</sup> Craig, *The Bracero Program: Interest Groups and Foreign Policy*, 129.

up—as Mexican laborers who had become accustomed to working in the United States when they were able to enter legally returned illegally.

#### IV. Measuring Illegal Immigration

In the mid-1930s reports circulated that vast numbers of illegal immigrants were pouring into the country. It was said that the alien population of the United States was as much as 20 million; that as many as 3.5 to 10 million of them had entered illegally and that 500,000 Mexicans had entered illegally between 1920 and 1930.<sup>73</sup> In the 1935 Annual Report of the INS the Commissioner of Immigration denounced these reports as “fantastic exaggerations” and “sensational accounts” not based on “cold facts.” The only cold facts that he offered was the size of the alien population in the country which he said was about five million. Estimates of the number of illegal immigrants in the country were not given. The science of making such estimates reliably was not developed until the late 1980s.<sup>74</sup> Long before then estimates were offered but were notoriously suspect.<sup>75</sup> (Between 1974 and 1984 estimates of the size of the

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<sup>73</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 45.

<sup>74</sup> Robert Warren, "Estimates of the Undocumented Immigrant Population Residing in the United States, By Country of Origin and State of Residence: October 1992," On file with Statistics Division, U.S. Immigration and Naturalization Service, Annual Meeting, Population Association of America (San Francisco, CA, April 1995).

<sup>75</sup> Arthur F. Corwin, "The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981," in *U.S. Immigration Policy*, ed. Richard R. Hofstetter (Durham, NC: Duke University Press, 1984), 223-97.

illegal population ranged from 3 to 12 million.<sup>76)</sup>

Regardless of their actual validity government estimates of the size of some problem must be taken seriously. They represent the official view of the magnitude of the problem and thereby shape the perceptions of policy makers. In his compilation of official estimates of the number of Mexican illegal aliens in the country, Julian Samora notes that the categories used by government reports to determine that number varied inconsistently over the period covered: 1924 to 1969. The categories used varied among the following: aliens deported; aliens apprehended; required departures; aliens debarred; voluntary removals; forced departures; illegal aliens apprehended; deportable aliens found and/ or located.<sup>77</sup>

In the following sections we will use the numbers given in the INS's annual reports under the category "illegal aliens apprehended" as a roughly suggestive measure of the increase in illegal immigration over time. The number of illegal aliens apprehended by the INS is not a valid measure either of the number of illegal immigrants in the country or the number attempting to enter the country. One person is usually responsible for multiple attempted entries and multiple apprehensions. It is believed that illegal immigrants repeatedly attempt to enter illegally until they succeed. The apprehension rate is as much a reflection of the resources and policies of

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<sup>76</sup> Michael Piore. "Can International Migration Be Controlled?" in *Essays on Legal and Illegal Immigration*, ed. Susan Pozo (Kalamazoo, MI.: W.E. Upjohn Institute for Employment Research, 1986), 21-42.

<sup>77</sup> Samora, *Los Mojados: The Wetback Story*, 46.

the INS and the Border Patrol as it is of the number of people seeking to enter illegally and the stiffness of their resolve. The illegal immigrant apprehension numbers have been to immigration law enforcement what arrest statistics in the Uniform Crime Reports have been to the police and criminologists. They were the only game in town.

After World War II illegal immigration and smuggling across the borders increased dramatically. Trying to keep up with the caseload the INS expanded a policy first recorded in 1927. This change may have artificially contributed to the size of the problem. The INS began removing illegal entrants under "voluntary departure" procedures rather than through formal deportation. That is, illegal immigrants who were apprehended were told to leave the country on their own-- unless they had been granted four previous voluntary departures in which case they would be formally deported. If deported they may have been transported to the interior of Mexico making any attempt at reentry somewhat more difficult. If they were merely required to depart, they merely walked across the border into Mexico and could attempt reentry within hours. These cases are listed in INS statistics as people who were "required to depart."<sup>78</sup>

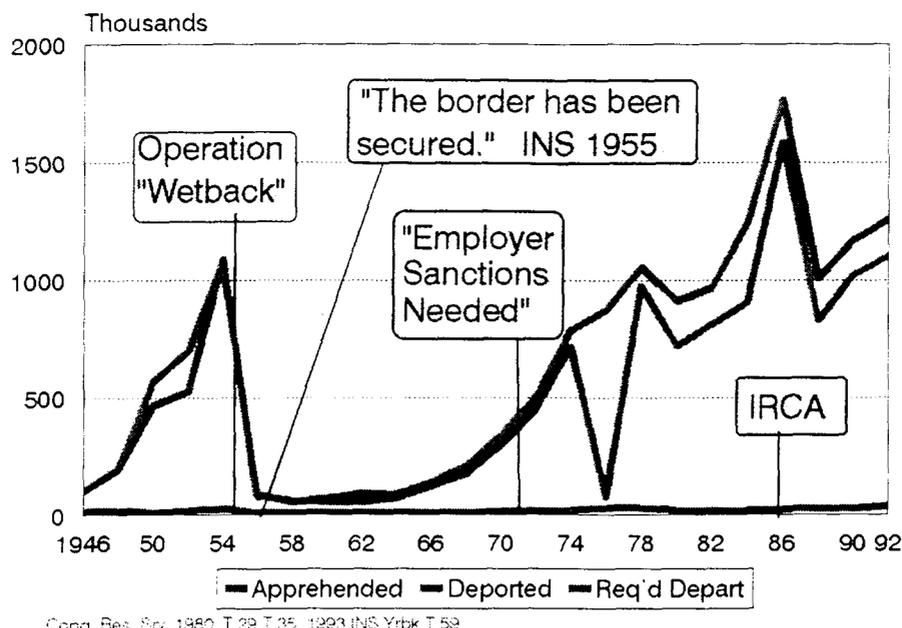
Between 1931 and 1940 a total of 147,457 illegal aliens were apprehended by the INS. During the same period, 210,416 aliens were expelled. Of that number, 117,086 were "deported" whereas 93,330 were "required to depart." Between 1941 and 1950 the number of illegal aliens apprehended increased by a factor of ten. (See Figure 5.4) There were 1,377,210 apprehensions

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<sup>78</sup> U.S. Congressional Research Service, *History of Immigration and Naturalization Service*, 54.

Figure 5.4

Aliens Apprehended, Deported  
& Required to Depart



and 1,581,774 expulsions. The number of people “deported” dropped to 110,849. The number “required to depart” jumped to 1,470,925. Immigration control had become overwhelmingly dependent upon an informal procedure.<sup>79</sup> It is also crucially dependent upon the basic honesty of the people being expelled. If they were not willing to concede their alienage, that is, their foreign birth, the government would be required to conduct a costly investigation to establish their alienage and deportability.<sup>80</sup> The “required to depart” procedure has this administrative advantage. However, it works only for Mexican and Canadian illegal aliens. They can be

<sup>79</sup> U.S. Immigration and Naturalization Service. *Statistical Yearbook of the Immigration and Naturalization Service, 1994* (Washington, D.C.: Government Printing Office, 1996), T. 59.

<sup>80</sup> Harwood, *In Liberty's Shadow: Illegal Aliens and Immigration Law Enforcement*, xv.

returned to the border and told to depart by the Border Patrol. But Mexican immigration officials interrogate these returnees to determine if they are truly Mexican nationals. Any that are judged to be non-Mexicans are rejected and returned to the United States. For most illegal aliens from all other countries, the Border Patrol or INS officers schedule a deportation hearing and release them on their promise to return for the hearing. Many disappear and never return for the hearing.

During the 1950s there was another enormous increase with about 3.6 million apprehensions of illegal immigrants and about 4 million expulsions most of which (3.9 million) were simply required to depart. However after "Operation Wetback" in 1954, the annual number of apprehensions had dropped to one tenth their number before the campaign.

During the 1960s the number of apprehensions was down substantially to about 1.6 million apprehensions and 1.4 million expulsions, 1.3 million of them achieved via "required to depart." However, by the 1970s there was a full blown crisis of illegal immigration. The number of illegal immigrants apprehended leaped to over 8 million. The number of expulsions were about 7.5 million of which 7.2 were "required to depart." The 1980s were worse. There were almost 12 million illegal alien apprehensions and 10 million expulsions, all but 213,000 were "required to depart." As of 1994 the decade of 1990s was off to a rate of 16 million apprehensions and 14 million expulsions.<sup>81</sup>

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<sup>81</sup> U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1994*, T. 59.

## V. Immigration Control Since 1954

The use of mass deportations as a primary strategy for controlling illegal immigration ended with Operation Wetback. In the aftermath of the political backlash against immigrants that prompted congress to enact the 1996 immigration reforms widely seen as harsh and anti-Mexican, President Clinton tried to reassure Mexicans and Central Americans by announcing that there would be no more mass deportations.<sup>82</sup> He may have been referring to the old style street roundups and flush-them-out tactics of the '30s, '40s and '50s.

Since 1954 there have been three new policies that have replaced the old style mass deportation as means for controlling illegal immigration: employer sanctions; blockading the border and the removal of criminal aliens. Evaluations of the impact of the employer sanctions and the blockades suggest they are not succeeding at their primary purpose. There have been no evaluations of the criminal alien removal policy but unsystematic information suggests its value is problematic. The blockades, however, have at least restored control and orderliness to the border. In this era of increasing commercial traffic with Mexico resulting from NAFTA (the North American Free Trade Agreement), this is a substantial benefit as well as an important symbolic victory after decades of failure to control it. While these are important successes in their own right, they should not be confused with success at deterring illegal immigration.

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<sup>82</sup> U.S. Immigration and Naturalization Service, "INS Removes Record Number of Criminal, Illegal Aliens," *U.S. Newswire*, May 13 1997; William Branigin, "INS Vows Not To Carry Out Any 'Mass Deportations,'" *The Washington Post*, Sept. 23 1997, A2.

## Employer Sanctions

In 1952 an alternative strategy for controlling illegal immigration was considered by congress.<sup>83</sup> The strategy was to eliminate the main "pull factor," namely jobs. Congress made it a felony to bring in or willfully induce an alien unlawfully to enter or reside in the United States or to harbor them. This law was a step in the direction of making employers criminally liable for employing illegal immigrants. It never got that far because agribusiness interests managed to get inserted into the law the infamous "Texas proviso" which read as follows: "[T]he usual and normal practices incident to employment were not deemed to constitute harboring." Illegal immigrants could be living in housing provided by employers on their property, yet that would not constitute evidence of a violation of this law. In effect, the first attempt to punish employers of illegal immigrants for hiring them was neutered from the start.

When illegal immigration began to rise again in the late 1960s the employer sanctions strategy got a second look. California enacted such a law in 1971. By 1976 it was a dead letter. No employer was ever convicted under it.<sup>84</sup> Congress finally enacted employer sanctions in 1986

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<sup>83</sup> Act of March 20, 1952. (66 Statutes-at-Large 26).

<sup>84</sup> Kitty Calavita, "Employer Sanctions Legislation in the United States: Implications for Immigration Policy," in *America's New Immigration Law: Origins, Rationales and Potential Consequences*, ed. Wayne A. Cornelius and Ricardo Anzaldue Montoya (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, 1983), 73-81; Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.*; Robert S. Chapman and Robert F. Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," *University of California, Davis, Law Review* 8, no. 127-161 (1975): 127-61.

in the Immigration Reform and Control Act (IRCA). It was supposed to be "the solution" to illegal immigration.

As a policy, criminal sanctions for employers who hire illegal immigrants has political and practical liabilities. Overcoming objections to the policy was one of the reasons for the long delay in enacting it. Employers objected to the burden of having to determine the immigration status of prospective employees and being held criminally liable for failing to do so correctly. Mexican Americans objected that the legislation would result in employers refusing to hire people of Mexican ancestry. Union representatives supported legislation that would stop the hiring of illegal immigrants who allegedly were undercutting wages for legal workers. Immigration restrictionists supported legislation that would reduce the flow of illegal immigrants. Conservatives and civil rights advocates objected to the establishment of a national identity card that might solve the problem for employers of determining who was a legal worker.

IRCA does not make it a crime to hire an illegal worker but rather to fail to verify that a worker is legal. The Achilles tendon of the law is that Congress refuses to authorize a national system for verifying employment eligibility of workers. That would be too close to a national identity card which continues to be an anathema in American politics. Instead employers merely have to see and make a record of any one of a dozen different documents--all easily forged--that suggest that the worker is legal. Employers are not expected to be able to recognize forgeries. They are faulted only if they fail to keep records or if there is a pattern or practice of hiring large

numbers of illegals.

Several assessments of the impact of IRCA on illegal immigration concluded that its only measurable effect was a temporary drop in rate of apprehensions of illegal entries believed to be due entirely to effect of its amnesty provisions.<sup>85</sup> (See Figure 5.5) IRCA eliminated a couple of million illegal immigrants by granting them amnesty. But otherwise employer sanctions have not appeared to have persuaded many potential illegal immigrants that would be difficult for them to find employment in America. IRCA has not even filtered through to potential American employers that it is criminal to hire illegal workers. Even President Clinton's nominee for Attorney General, Zoe Baird, had employed an illegal as did Governor Pete Wilson.<sup>86</sup>

The INS has scored a few big hits against some major employers of illegals. They have imposed a few big fines and other smaller ones. But overall picture not does not suggest that IRCA has significantly controlled illegal immigration.<sup>87</sup> Many of the fines go uncollected. Between 70% and 80% of agricultural workers in California are illegals these days despite the

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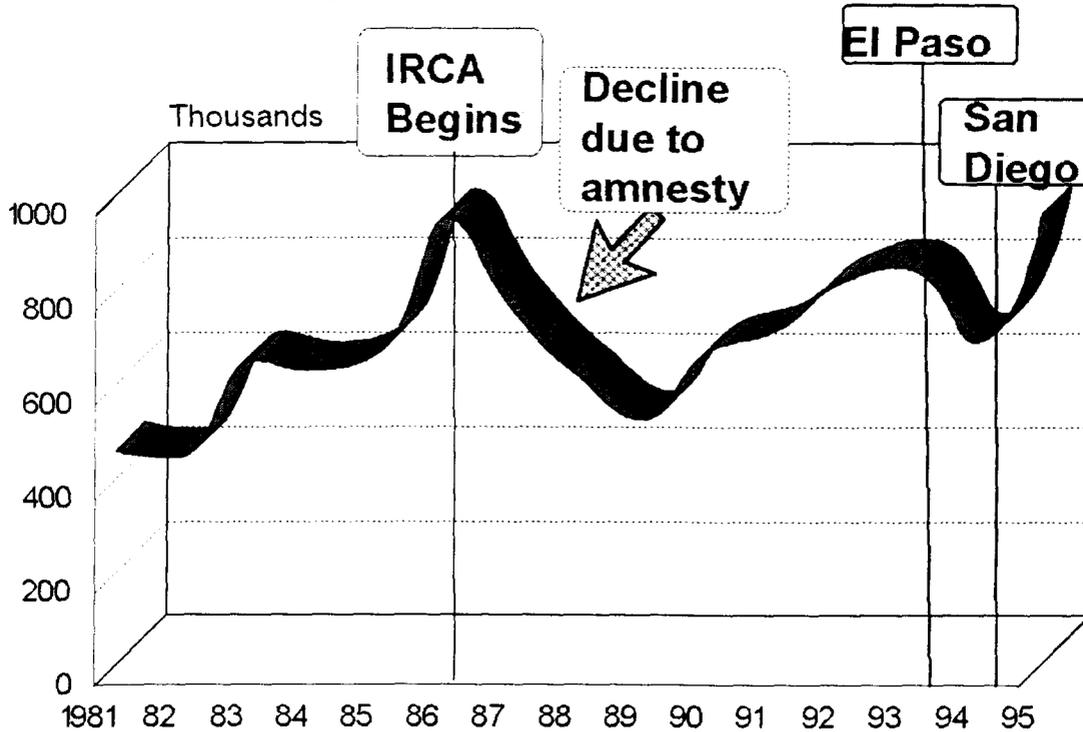
<sup>85</sup> Jeffrey S. Passel, "Recent Efforts to Control Illegal Immigration in Adn the United States," Paper, OEECD Working Party on Migration (Paris, June 1996).

<sup>86</sup> New York Times, "The Clinton Record: Overview," *The New York Times*, July 28 1996, 28.

<sup>87</sup> Aurelio Rojas, "Crime Without Punishment: The INS and Employers," *San Francisco Chronicle*, March 18 1996, A1; Aurelio Rojas, "Growers Hire Illegals With Impunity: Workers Pay the Price for Lax Scrutiny of Farm Industry," *San Francisco Chronicle*, March 19 1996, A1; Aurelio Rojas, "Boomtowns Count on Illegals: Anti-Immigration Noor Vs. Labor Needs," *San Francisco Chronicle*, March 20 1996, A1.

Figure 5.5

Impact of IRCA and 2 Blockades  
on Apprehensions at US - Mex Border



Passel, 1996, 75

existence of the guest worker program,<sup>88</sup> and there is still a net increase of 275,000 illegals per year.

Most importantly, employer sanctions and the related work site raids have backfired badly on the government's enforcement agency, the INS. Americans want the problem of illegal immigration solved in the abstract but do not want to be inconvenienced by a raid on workers at

<sup>88</sup> Martha Groves, "42% of Farm Laborers Worked Illegally in 1995-97, Study Says," *Los Angeles Times*, Dec. 16 1998.

the McDonald's when they have stopped for a meal<sup>89</sup> or by a sweep that eliminates their local farmers' work force.

With the lowest unemployment rates in years, even politicians who have been strongly anti-immigrant have turned against the INS's interior enforcement efforts and forced them to develop new policy. A raid on onion pickers in Vidalia, Georgia, at the height of the \$90 million harvest in May 1998, for example, prompted complaints within hours from Republicans politicians.<sup>90</sup> The larger enforcement operation was terminated immediately. The INS ended up agreeing to grant amnesty to the illegal workers who were then in the fields, approximately half of the 10,000 migrants who work the fields and to allow the farmers to police themselves.

In exchange the farmers agreed to abide by guest worker laws, which regulate work and housing conditions for migrant workers. Those regulations were originally intended to apply to seasonal foreign guest workers whom the farmers could have hired legally to harvest the crops, the H2-A program established precisely to meet the need for seasonal labor, but which has been

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<sup>89</sup> James S. Granelli and Geoff Boucher, "Labor: Authorities in Orange County Arrest 79 Undocumented Workers at 12 Construction Sites and 4 McDonald's Eateries," *Los Angeles Times*, Feb. 14 1997.

<sup>90</sup> Lori Henson, "Punishment or Publicity?" *Savannah Morning News*, May 17 1998; Lori Henson, "Bittersweet Harvest: Agreement Over Migrants Only the Beginning," *Savannah Morning News*, May 17 1998; Lori Henson, "Debate Begins to Fix Migrant Problems: Agreement Is Short-Term Solution to Longtime Headache," *Savannah Morning News*, May 20 1998; Associated Press, "Vidalia Growers Dropped Emergency Appeal," *The Associated Press*, June 2 1998; Douglas Holt, "INS Is Scaling Back Its Workplace Raids," *Chicago Tribune*, Jan. 17 1999.

largely a failure because farmers founded it too bureaucratic.

The INS's interior enforcement strategy used to have two prongs: employer sanctions and work site removals. But both have been unpopular and opposed by political coalitions of odd bedfellows prompting the INS to virtually abandon its work site round-ups of illegal workers. The new strategy concentrates on businesses that employ large numbers of illegal aliens and on criminal organizations that smuggle them.

A draft of the new policy states that by directing resources against alien smugglers this strategy "will have a far greater long-run impact on the consequences and effects of illegal migration than current efforts."<sup>91</sup> It not only cuts off a stream of illegal immigrants but reduces the criminal harms done to immigrants and to associated communities in which the smugglers operate.

### Blockading the Border

Between 1954 and the enactment of IRCA in 1986 illegal entries across the U.S. - Mexico border had swollen from a trickle to a torrent. Hundreds of aliens crossed the border at will. It had become a national scandal. President Reagan's Attorney General, William French Smith, came back from a visit and reported that the federal government has "lost control of the

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<sup>91</sup> Holt, "INS Is Scaling Back Its Workplace Raids."

borders." An article in a police magazine in 1984 described the Border Patrol as being "wildly outnumbered" by the illegal aliens streaming through the hills at the San Ysidro-Tijuana border.<sup>92</sup>

Photos showed groups of illegal aliens gathering on the hills and mesas just inside the American border. They were playing soccer and cooking tortillas waiting for nightfall when they would make their dash northwards across the open terrain to the highway and waiting vehicles or to the urban areas around San Diego and eventually Los Angeles. In the midst of dozens of immigrants, two Border Patrol officers strolled preparing for the nightly ritual in which they would try to catch as many as they could like a few lonely fishermen in a stream teeming with fish. In 1985 the venerable National Geographic Magazine featured an article on the San Ysidro border.<sup>93</sup> It also showed illegal aliens gathering on the American side of the border awaiting their chance to run north.

By the late 1980s southern Californians had become impatient by the wave of illegal immigrants and by reports that they were increasingly involved in crime. In less than a two-year period, 250 stories appeared mostly in southern California newspapers bearing such titles as: "Sparks Fly, Grievances Aired at Workshop on Illegal Aliens;" "Aliens Said Preying on School Kids;" "In Forces: Illegal Aliens Invade;" "Troops Are Proposed for Border: Antonovich Asks

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<sup>92</sup> Denny Fallon, "Battle at the Border: Wildly Outnumbered, the Border Patrol Tries to Stem the Tide of Illegal Aliens," *The National Centurion: A Police Lifestyle Magazine*, Aug. 1984, 24-54..

<sup>93</sup> Mark Kramer, "U.S.-Mexican Border: Life on the Line," *National Geographic Magazine* 167, no. 6 (June 1985): 720-49..

Military to Curb Alien. Drug Flow."<sup>94</sup>

In 1989, frustrated with the federal government's failure to control the border, some Californians, led by the widow of a Border Patrolman who had been killed by an illegal immigrant, began parking their cars at night along the border and shining their headlights across the terrain where the illegal immigrants enter. The group grew to over 1,000 protestors and 300 vehicles. They waved American flags and banners reading "Wake Up America.." Soon another group began showing up to protest the protestors. They held up large sheets of black plastic to reflect the headlights back at America. In a sign of the times, they condemned the Light Up The Border people as racists.<sup>95</sup>

Nationally, public opinion had been steadily turning against immigrants as the number of legal immigrants steadily rose from the 1960s onwards (see Figure 5.6). Up until 1993 illegal immigration had been having its strongest impact on public opinion at the regional level. But in that year anti-illegal immigration sentiment suddenly appeared in national public opinion polls as the most important problem facing the nation. In September, a Gallop poll found that 3 of 10

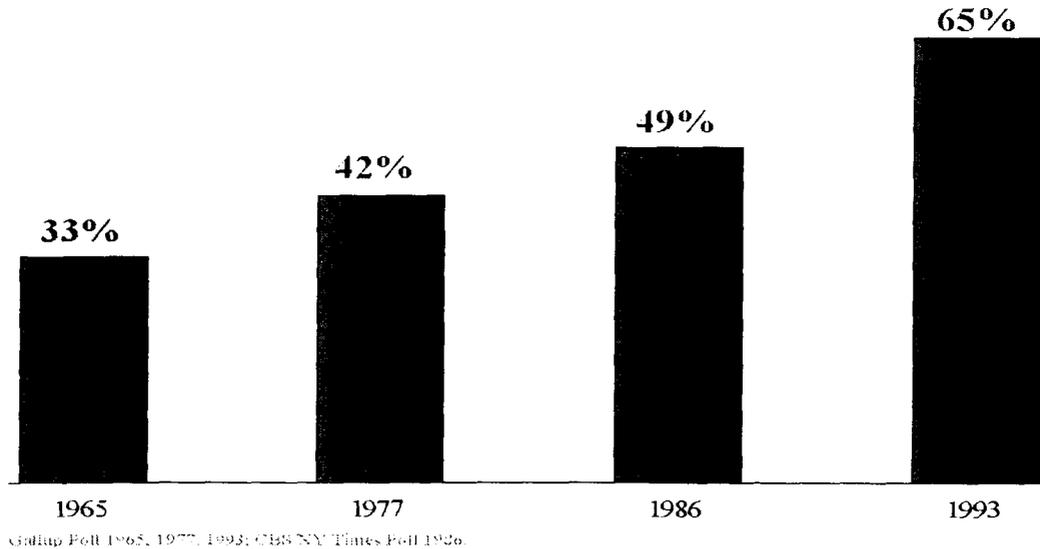
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<sup>94</sup> Susan Pennell, Christine Curtis and Jeff Tayman, *The Impact of Illegal Immigration on the Criminal Justice System* (San Diego, CA.: San Diego Association of Governments, 1989); Daniel Wolf, *Undocumented Aliens and Crime: The Case of San Diego County* (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, San Diego, 1988).

<sup>95</sup> Patrick J. McDonnell, "Protestors Put Border Lights on the Shelf: Organizers of the Movement Say They Will Give Officials a Chance to Make Good on Recent Vows to Deal with the Problem of Illegal Immigration," *Los Angeles Times*, June 23 1990, B1; Patrick J. McDonnell, "Protestors Light Up the Border Again," *Los Angeles Times*, Aug. 24 1990, B3.

Figure 5.6

## National Public Opinion Regarding Immigration Policy Percent In Favor of Restrictions



Americans regarded it as such. An August poll had found that 6 out of 10 Americans or more said there were too many immigrants from Latin America, Asia, and Arab countries. Almost 6 out of 10 or more said that the presence of Mexicans, Haitians, Iranians, and Cubans generally created problems for the country. The majority (76%) of respondents felt that either all immigration to the country should be stopped until the economy significantly improved (26%) or that immigration should be reduced until the economy improved (49%). The majority believed that the government could significantly reduce illegal immigration (69%); but they did not want to erect a wall along the border with Mexico (71%); nor did they want to deny to illegal immigrants the use of American schools and hospitals (57%). They did favor the use of a national ID card to distinguish U.S. citizens from illegal immigrants (57%); and they

overwhelmingly favored patrolling U.S. borders and coastlines more strictly (90%).<sup>96</sup>

By 1994 the illegal immigration crisis was having serious political repercussions. Liberal politicians had been getting tough on illegal immigration, embracing positions traditionally advocated by conservative Republicans. The Commission on Immigration Reform, headed by African-American and former Congresswoman, Barbara Jordan, proposed an aggressive crackdown on illegal immigration including a tamper-proof identity card and a computerized system to check the immigrant status of job seekers. Even Senator Edward Kennedy, long a defender of immigrant interests, favored the plan.<sup>97</sup>

In August President Clinton announced a stunning change in American policy towards Cuban refugees. Those icons of the cold war were no longer to be automatically granted asylum but were to be interned. Also, having resisted Republican legislation to boost the Border Patrol in 1993, Clinton now unveiled "Operation Gatekeeper." Attorney General Reno promised Californians that there would be "a secure border that is fully defensible against illegal immigrants."

The program included adding or redeploying several hundred Border Patrol agents, cracking down on immigrant smugglers, new procedures for catching people who repeatedly

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<sup>96</sup> George Gallop, *The Gallop Poll* (Wilmington, DE: Scholarly Resources, Inc., 1993).

<sup>97</sup> Roberto Suro, "A LOOK AT.The Politics of Immigration: Fortress America? Suddenly, the Golden Door is Closing," *The Washington Post*, Nov. 6 1994, C3.

cross the border illegally, bright lights and a wall that would replace the chain link fence that aliens had easily cut through.<sup>98</sup> The Crime Bill enacted in September contained specialized enforcement provisions regarding immigration and criminal aliens including \$1.2 billion for border control, criminal alien deportation, asylum reform and a criminal alien tracking center plus another \$1.8 million to reimburse states for incarceration of illegal criminal aliens.<sup>99</sup>

The most controversial blow to be struck against illegal immigration in 1994 was the vote in favor of Proposition 187 in California. The Proposition was yet another expression of the frustration of Californians with the failure to control the border. California has by far the largest number of illegal immigrants of all states. Running for reelection, Governor Pete Wilson helped make illegal immigration a national issue with his relentless criticism of the federal government's failure to control the border and his support for Proposition 187. The anti-illegal-immigrant ballot initiative outlawed virtually all public services to illegal immigrants and required that public officials including the police, school teachers and hospital personnel to report suspected illegal immigrants to the state Attorney General.<sup>100</sup>

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<sup>98</sup> Roberto Suro, "A Shiny New Method to Secure the Border: U.S. Uses Bright Lights, Big Fence to Stem Illegal Influx at San Diego," *The Washington Post*, Aug. 23 1994, A1, A24; Roberto Suro, "California Border Crackdown Vowed: With the Administration Under Fire, Reno Promises a New Effort," *The Washington Post*, Sept. 18 1994, A3.

<sup>99</sup> P.L. 103-322 (1994).

<sup>100</sup> Roberto Suro, "Proposition 187 Could Open Pandora's Box for GOP," *The Washington Post*, Nov. 11 1994, A24. A form to be filled out and submitted to the California Attorney General's Office to report illegal immigrants was published and distributed to public agencies. It had the great seal of the State of California on it and was entitled: "Notice to the California Attorney General of Apparent Illegal Immigration Status." It reads: "The following

The magnitude of the vote in favor of Proposition 187 sent shock waves across the country. More than 4.6 million Californians cast ballots in favor of the initiative, more votes than any candidate anywhere in the country received in the November election.<sup>101</sup> Pete Wilson described it as the "two-by-four needed to make them take notice in Washington." Politicians at the national and state levels rushed to show that they had gotten the message. The vote touched off a broad-gauged drive against all immigrants. The movement resulted in immigration reform in 1996 that critics regard as harsh and vindictive. Additional resources were given to the INS. The category of criminal aliens eligible for deportation was greatly expanded. INS officials were given new discretionary powers to quickly assess claims for political asylum at the border.

Operation Gatekeeper in San Diego was modeled after the blockade initiated in September 1993 by Sylvester Reyes, Chief of the El Paso (Texas) Sector of the Border Patrol. He had initiated a major shift in operational policy. Formerly the policy had been to concede the area immediately adjacent to the border to unlawful entries but to apprehend illegal aliens on transportation routes and other locations where they gathered. The new policy stationed Border

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person has been determined to have 'apparent illegal immigration status.' He or she has not been able to show legal status as a citizen of the United States, as an alien lawfully admitted as a permanent resident, as an alien lawfully admitted for temporary periods of time, or otherwise present in the United States in compliance with United States immigration laws." There is a place to identify the subject by name, date of birth, place of birth, sex, height, weight, hair and eye color, social security number, driver's license and CII number.

<sup>101</sup> Suro, "Proposition 187 Could Open Pandora's Box for GOP."

Patrol officers at the border in an effort to deter all illegal entries.<sup>102</sup> It resulted in an immediate drop in apprehensions which suggested a possible drop in illegal crossings.

An evaluation, however, indicated that the blockade was having a differential impact upon immigration depending upon the type of migration behavior involved (see Figure 5.5 ). The Operation had its greatest effect on short distance, local crossers particularly casual crossers (such as vendors, juvenile and petty criminals who entered down town El Paso). It also caused people who crossed daily to work illegally to reduce their crossings. They now crossed at the beginning of the week and stayed with friends or relatives. But the long-distance migrants heading north to the interior simply skirted around El Paso and were not deterred.<sup>103</sup>

In October 1994 "Operation Gatekeeper" was initiated in the San Diego sector. It included a build up of personnel and infrastructure including the construction of a ten foot "wall" of corrugated metal sheets used as landing stripes. The wall begins in the Pacific Ocean and runs 14 miles inland towards Otay Mountain. The technology also includes motion detecting sensors buried along the border; high intensity stadium lights; and infrared night vision periscopes; and a

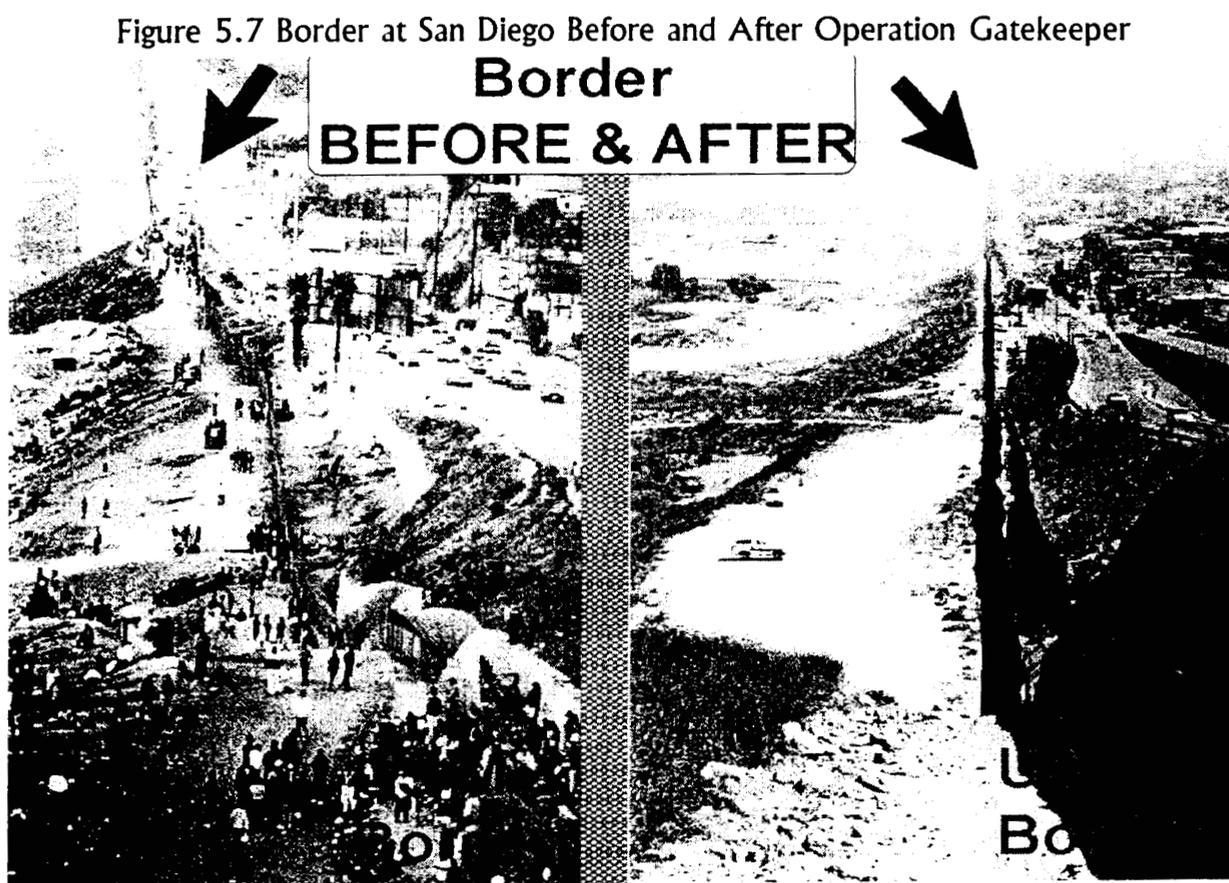
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<sup>102</sup> Border Patrol officers call the tactic "Standing on the X's" referring to its monotony of staying in one place. They preferred the old policy that allowed them to "cut sign" (follow footprints) and move around their sectors during a tour of duty.

<sup>103</sup> Frank D. Bean, et al., *Illegal Mexican Migration & the United States/Mexico Border: The Effects of Operation Hold the Line on El Paso/Juarez*, Research Paper 1 (Washington, D.C.: U.S. Commission on Immigration Reform, 1994).

computerized identification system that fingerprints and photographs apprehended immigrants.<sup>104</sup>

No systematic evaluation of Operation Gatekeeper has been done. There is no denying that the situation at the border has dramatically improved from the days when illegal aliens entered virtually at will. The before and after pictures of the border are striking (see Figure 5.7 ).



<sup>104</sup> The identification system has allowed for the disentangling of the number of apprehensions from the number of individual crossings. Early results suggest that in the San Diego Sector 5% of all individuals account for 22% of apprehensions; and that between 39% and 68% of all apprehensions were repeat violators Thomas W. Brady, "The IDENT System: Putting Structure to the Chaos of the Border," *National of Institute Journal*, Oct. 1998, 21-25..

There have been substantial human costs involved. Immigrants have resorted to desperate measures to get in. Immigrants, known as "Port Runners," gathered on the Mexican side of the San Ysidro Port of Entry and ran into the on-coming traffic heading south from the United States. The government responded by placing caution signs and barriers along the highway. Crucial assistance was given by Mexico's Grupo Beta police who prevented immigrants from gathering on the Mexican side (See Figures 5.8 & 5.9).

Port running is just one of the desperate responses to the tightening of the border. The strategy of the Operation Gatekeeper is to deter illegal entries by closing off the easy routes and forcing immigrants either to give up or to take the dangerous routes through rugged and treacherous terrain. The desperate and determined ones have either been going it alone or paying "coyotes"—as smugglers are known. This has had several costs. Illegal immigration has been displaced eastward. Apprehensions at Tecate, the next main crossing point to the east, shot up by a factor of almost 17 by late 1995!<sup>105</sup> Immigrants trekking through natural habitats have been destroying and polluting the areas. They have also been destroying themselves. Since Operation Gatekeeper began 360 migrants have died trying to enter California. Two groups have filed a complaint with the Inter-American Human Rights Commission charging that the operation violates human rights law.<sup>106</sup>

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<sup>105</sup> Passel, "Recent Efforts to Control Illegal Immigration in the United States."

<sup>106</sup> Ken Ellingwood, "Border Policy Violates Rights, Groups Charge," *Los Angeles Times*, Feb. 11 1999.

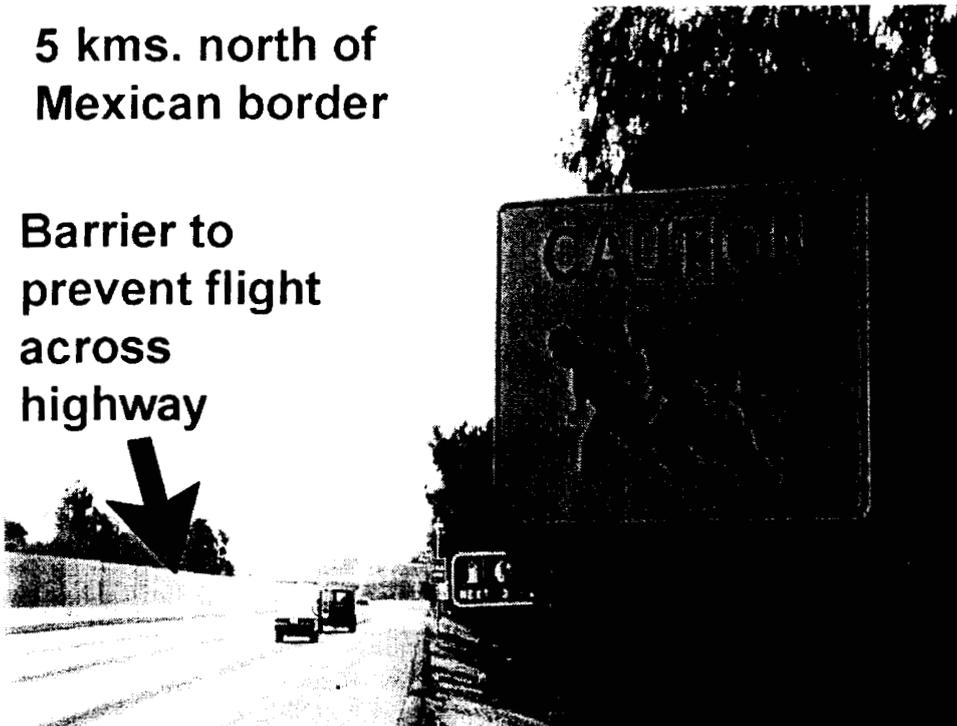
Figure 5.8 Port Runners at San Ysidro, Ca.



Figure 5.9

5 kms. north of  
Mexican border

Barrier to  
prevent flight  
across  
highway



5.63

The U.S. and the Mexican governments have a program of public warnings in Mexico to make immigrants aware of the dangers involved and of unscrupulous smugglers. And the Border Patrol is working on being better prepared to supply emergency first aid to immigrants found in need. The watch word today in the U.S. federal agencies at the border is to make them effective, efficient and safe. It remains to be seen whether these three goals can be met. So far the results are mixed. The border has been made more orderly; and the symbolic victory of being in charge of the border should not be discounted. Perhaps making the border more difficult to cross will eventually deter some would-be immigrants. But for the time being it is clear that border blockades have not succeeded in reducing the flow of illegal migrants from Mexico. Studies have suggested that the tightening has had an unintended outcome. Because getting through the border is more difficult and more expensive, those who do get through appear to be staying longer.<sup>107</sup>

The last area of the border to be blockaded is along the Rio Grande in the Brownsville-McAllen section of Texas. The environmental conditions there are substantially different from those in El Paso and San Diego. Unlike the open desert like conditions in the other locations, the Brownsville - McAllen border has dense, tall, underbrush in which illegal immigrants take cover and are not as easily spotted by the naked eye. The surrounding land is privately owned divided into ranches which are fenced and padlocked with few roads. It makes rapid responses in

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<sup>107</sup> Passel, "Recent Efforts to Control Illegal Immigration in Adn the United States."; Katharine M. Donato, Jorge Durand and Douglas S. Massey, "Stemming the Tide? Assessing the Deterrent Effect of the Immigration Reform and Control Act," *Demography* 29, no. 2 (May 1992): 139-57.

vehicles more difficult. Many stretches of property are designed as nature preserves and conservationists have succeeded in keeping the Border Patrol from stationing their stadium lights in those preserves or from driving through them.

Nevertheless, much of the same strategy used in El Paso and San Diego has been implemented in the Brownsville - McAllen area and with similar effects. It includes a build up of personnel, high intensity portable lights located on the levies overlooking the river, motion sensing devices buried along known paths for clandestine immigration, and military quality heat-sensing night vision scopes mounted on telescoping poles. The scopes have a range of 1.5 miles and can detect immigrants inside railroad box cars. The blockade has put an end to the steady line of illegal immigrants who used to across the river and walk up the banks; but the illegal immigration has not.<sup>108</sup>

#### Criminal Aliens: Reimbursement, Deportation and Exclusion

The INS distinguishes between "deportations", "exclusions" and "removals." People who enter the country illegally may be "deported" for "entry without inspection." People who enter legally but violate a condition of admission such as the commission of a crime may also be "deported." People who enter the country and submit to an inspection may be "excluded," i.e.,

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<sup>108</sup> Mary Lee Grant, "Bordering on Ineffective: Border Patrol Effort Debated," *Corpus Christi Times Caller*, June 7 1998.

refused admission.<sup>109</sup> “Removals” is the sum of deportations plus exclusions.

In the late 1980s Congress and the INS began to give priority to expediting the deportation of criminal aliens. This appears to have been driven by demands by states for reimbursements for the cost of housing criminal aliens. From this beginning a whole series of policies mushroomed. In addition to reimbursing state and local governments for incarcerating illegal criminal aliens, other related policies include the streamlining of the deportation process; an enormous expansion of the INS resources and authority to remove immigrants; a repeatedly expanded list of conditions making immigrants eligible for deportation or exclusion; the establishment of a new immigration record-checking link with local police so that criminal aliens can be identified for deportation earlier in the process.

All but one of these policies will be described below. The link to local police will be addressed in Chapter 6. The policies related to the handling of criminal aliens are confusing to everyone involved. There are mismatches between the purpose of the underlying laws as described by their architects and the actual scope of the law in its application. Laws described as intended to deal with illegal immigration also affect legal immigrants. Laws intended to deal with criminal aliens also affect non-criminal aliens. The most troublesome concept of all is that of the “criminal alien.” The phrase is used routinely to mean many different things. Even the

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<sup>109</sup> In some cases the person is allowed to remain physically in the country while a decision as to formal admission is being made. If the decision is negative, they will be counted as having been excluded, not deported.

experienced reader can get lost in the thicket of meanings.<sup>110</sup>

From a policy that began as an effort to save the cost of prison space has grown an overlapping bundle of policies which are alternatively described as intended to control illegal immigration; protect the community from criminals; and warn legal immigrants to obey the law. Some of these policies tend to be referred to indiscriminately as the “deportation of criminal aliens.” This is misleading. The policies affect immigrants who are either not criminal or not illegal aliens, and because some aliens are not deported but are excluded.

As of 1999 the policy is to “remove” as many “aliens” as possible and to reimburse states for the costs of incarcerating illegal criminal aliens. To understand what is involved in this latest emendation of immigration control policy this section will address the topic in three parts. It will:(1) trace the emergence of the reimbursement policy; (2) describe the operation of the deportation and removal of aliens; and (3) review some unintended consequences.

#### i. Reimbursing For The Costs Of Illegal Criminal Aliens

A century and a half after New York Mayor Fernando Wood demanded that the federal government do something to relieve local governments of the financial burden of criminal aliens, the federal government established a policy of reimbursing state and local governments for the

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<sup>110</sup> See Chapter 4.

costs of incarcerating illegal aliens who had been convicted of crimes. Reimbursements were for illegal aliens not all aliens. Illegal aliens represented a kind of “unfunded mandate” imposed on the states by the federal government’s failure of control the border. Legal immigrants who convicted of crimes, on the other hand, were a different matter. They did not represent a failure to control the borders. After completion of their sentences the federal government could deport them for violation of the terms of legal residency. Some states opted for deportation before the completion of the sentence as a money saving measure.

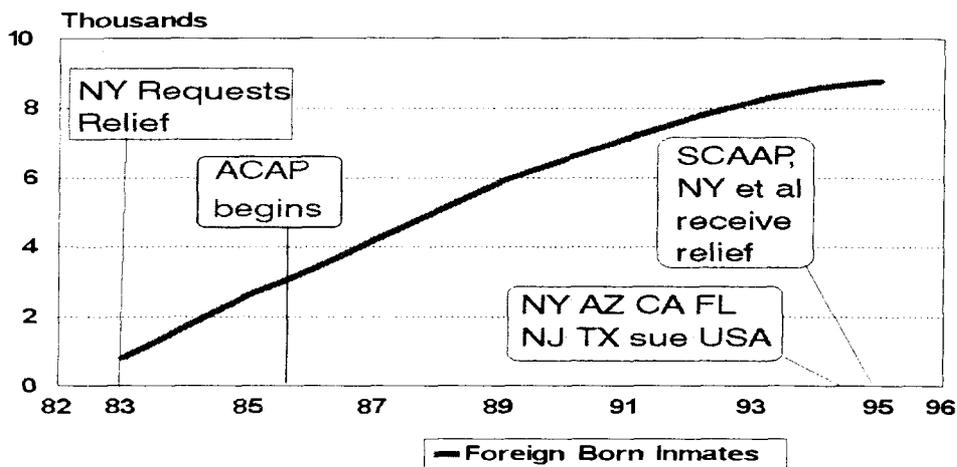
The policy of reimbursing state and local governments for the costs of housing illegal criminal aliens grew out of the collision of the illegal immigration crisis with the prison overcrowding crisis. Its origins can be traced to the 1980s when the New York Department of Correctional Services noticed an rapid increase in the number of foreign born prisoners in its custody (see Figure 5.10 ).<sup>111</sup> Neither the INS nor the Federal Bureau of Prisons would accept responsibility for the custody of the growing number of foreign born prisoners. Prison beds were at a premium. In February 1983 New York Correctional Services appealed to Senator Alphonse D’Amato for help.

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<sup>111</sup> New York. Department of Correctional Services, *Nationality of Foreign-Born Inmates: Executive Summary*, September. Unpublished paper. Division of Program Planning, Research and Evaluation (Albany, N.Y.: Author, 1986); New York. Department of Correctional Services, *The Impact of Foreign-Born Inmates on the New York State Department of Correctional Services*, November. Unpublished paper. (Albany, N.Y.: Author, 1989); New York. Department of Correctional Services, *The Impact of Foreign-Born Inmates on the New York State Department of Correctional Services: Executive Summary*, Prepared by David Clark, Program Planning, Research and Evaluation, April (Albany, N.Y.: Author, 1992); New York. Department of Correctional Services, *The Impact of Foreign-Born Inmates on the New York State Department of Correctional Services*, February (Albany, N.Y.: Author, 1996).

Figure 5.10

## NY Foreign Born Prison Population 1983-1995



NY Dept Correc Serv reports 1986-1996; D'Amato 1983.

The senator had a study done which indicated that there may be as many as 4,000 or more foreign born prisoners in state prisons across the country. He submitted legislation that would make the federal government reimburse the states for costs incurred for imprisoning illegal aliens.<sup>112</sup> The policy was eventually enacted as part of the 1986 immigration reform legislation but was not funded until 1994 Crime Bill which contained special provisions regarding immigration and criminal aliens including \$1.8 billion to reimburse states and local governments for the costs of incarcerating illegal aliens who had committed crimes in the United States and

<sup>112</sup> Alfonse M. D'Amato, "Aliens in Prison--The Federal Response to a New Criminal Justice Emergency," *Detroit College of Law Review* 4 (1983): 1163-69.

had been convicted of felony or misdemeanor offenses.<sup>113</sup> In the early 1990s five states had sued the federal government to recover these costs.

In 1995 the federal government began the reimbursements but only at the rate of 16% of costs. In December 1996 it released \$495 million, half the money went to California and \$12.8 million for Los Angeles County's jails. The rest went to 48 other states. These payments represented a reimbursement rate of 60% of costs submitted.<sup>114</sup> In 1998 over \$492 million was being distributed to forty nine states and 200 localities.<sup>115</sup> By January 1999 the federal government had awarded over \$1.6 billion to states and localities. The FY1999 all 50 states, the District of Columbia, two territories and 244 localities were scheduled to receive federal funds totaling over \$575 million. As always California with the largest population of illegal aliens received the largest award (\$244.4 million). Other large awards went to: New York state (\$96.4 million), Texas (\$53 million), New York City (\$33.4 million), Massachusetts (\$25.7 million), Florida (\$22.4 million), Los Angeles County (\$ 19 million).<sup>116</sup>

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<sup>113</sup> Violent Crime Control and Law Enforcement Act of 1994 (PL 103-322). The funds were to be administered by the Bureau of Justice Administration (BJA) and distributed through the State Criminal Alien Assistance Program (SCAAP).

<sup>114</sup> Marc Lacey, "U.S. Releases Disputed Jail Costs to States," *Los Angeles Times*, Dec. 6 1996.

<sup>115</sup> PRNewswire, "Reimbursement Funds Provided to 249 Jurisdictions That Incarcerate Criminal Illegal Aliens," CISNEWS@cis.org; May 15, 1998 (PRNewswire, May 14)..

<sup>116</sup> Michelle Mittelstadt, "Millions Go to Jail Criminal Aliens," CISNEWS@cis.org; May 15, 1998 (Associated Press, May 14 1998); PRNewswire, "Justice Department Reimburses 297 Jurisdictions That Incarcerate Criminal Illegal Aliens," *PRNewswire*, Jan. 19 1999..

## ii. Mass Deportation of Criminal and Non-Criminal Aliens

The policy of augmenting the deportation of criminal aliens was part of the response to the prison overcrowding crisis. It has been supported by several congresses and two administrations. In 1986 the INS had begun to expedite the deportation of criminal aliens from state prisons with the Alien Criminal Apprehension Program (ACAP). Beginning in 1988 congress has supported an ever larger effort to accomplish a massive deportation of aliens criminal or otherwise. It began by establishing and then expanding the "aggravated felon" category of immigrant criminal,<sup>117</sup> and giving the INS additional resources and authority to streamline the deportation process as well as to increase the capacity to exclude immigrants.

The Clinton administration has given the removal of criminal aliens high priority expanding the policy include not just deportations but exclusions as well. Assessing the merits of these policy initiatives is difficult because several distinct policies were implemented at different times. Their objectives and relative priorities are unclear from the statements of their architects. The original policy was directed at deporting criminal aliens. It seemed to have been intended to achieve several purposes: to save the costs of incarceration of immigrants; to reassert the value of the privilege of immigrant status; to deter immigrants from committing crime; and to

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<sup>117</sup> Craig H. Feldman, "The Immigration Act of 1990: Congress Continues to Aggravate the Criminal Alien," *Seton Hall Legislative Journal* 17 (1993): 201-33; Ira Sandron and Robert Kim Bingham, "The INS Role in Criminal Justice: Deportation and Exclusion of Criminal Aliens," *Federal Bar News & Journal* 37, no. 5 (June 1990): 275-81; Robert Kim Bingham, "The Immigration Consequences of an Aggravated Felony: The Constitutionality of Mandatory Detention," *Federal Bar News & Journal* 38, no. 8 (Oct. 1991): 456-62. See also Chapter 4.

protect the community for criminal immigrants.

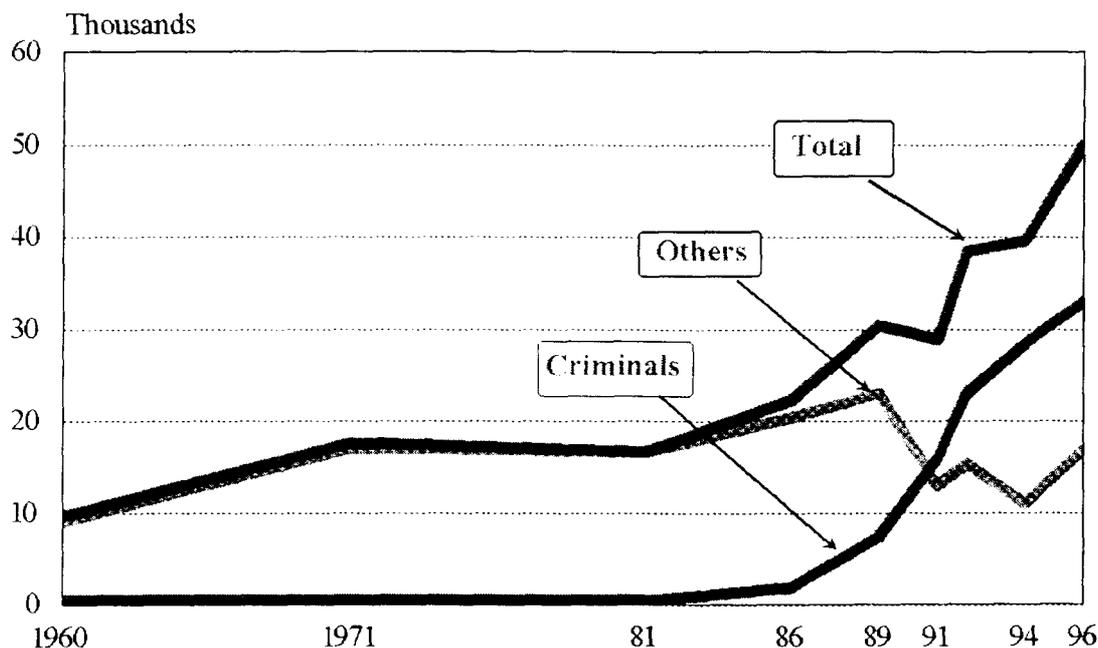
The greatly expanded policy of 1996 is no longer limited in its effect to criminal aliens and therefore should not be judged in the same terms as the deportation policy. The expanded policy is designed to increase the deportation and exclusion of criminal aliens but also to deport and exclude people who are not criminal aliens and are not illegal aliens. Among the purposes attributed to it by its authors are: deterring illegal immigration and ridding the country of as many immigrants as possible.

To assess the policies it is necessary to distinguish two sets of data: deportation statistics and removal statistics. This helps to separate out the relatively quick and easy cases of exclusions versus the more time consuming efforts involved in deportations. The 1996 immigration reforms greatly enhanced the authority and resources of the INS making it possible to exclude a lot more immigrants quickly. Those additional cases have bolstered the number of total removals. Tracking the removal rates tells a different story than does the deportation rates.

From the point of view of giving criminality a higher priority for deportation than it had in the past the efforts of congress and the administrations since 1986 have been an unquestionable success. From 1960 through 1986 only about 300 to 500 immigrants a year were deported as criminal aliens. In 1996 the number had reached 33,025! (See Figure 5.11). Sharp increases in the numbers began to occur in 1986 when four times as many criminal aliens as in

Figure 5.11

## Aliens Deported By Cause FY 1960-1996



1970-1987 - 89/90/91/92/93/94/95/96

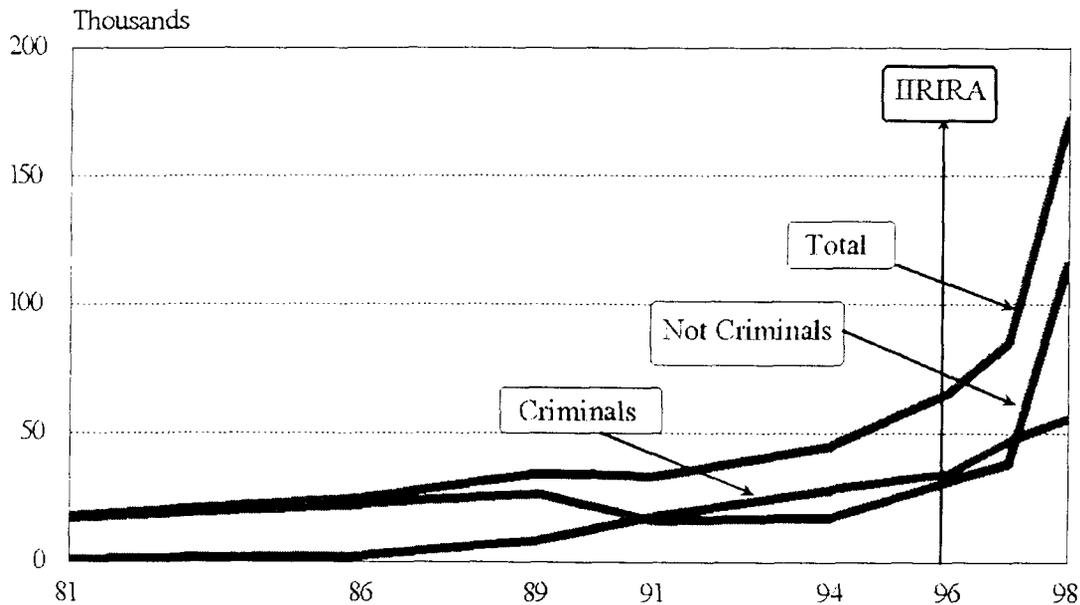
1981 were deported. Again in 1989 four times as many criminal aliens as in 1986 were deported.

Thereafter the annual increases are less sharp but the absolute numbers involved are much greater. Most importantly, the proportion of all deportations that were for criminality had risen.

The mix of cases had been dramatically changed indicating that the deportation machinery had been substantially redirected towards criminals.

If one looks at removals the story is similar in some respects. Removals of criminal aliens are up dramatically from 516 in 1981 to 55,869 in 1998 (See Figure 5.12). But the change in the mix of cases is different. Between 1986 and 1991 the mix was changing towards more criminals than others being removed. From 1991 to 1996 there more criminal aliens than none criminal aliens being removed. But after IIRIRA's impact began to be felt the mix changed back to the traditional pattern of most removals being for reasons other than criminality.

**Figure 5.12**  
**Total Removals of**  
**Immigrants FY 1981-1998**



INS 1996 from T61 T62 T67; INS 1996; Britnig & Escobar 1999

Whether this decline in the proportion of removals that are criminals represents a failure of policy depends upon which of the several alternative policy objectives that one chooses. All removals taken together reached a total of 171,816 in 1998. This is three times the number of people who were deported during Operation Wetback. It represents the new kind of mass deportation without roundups or sweeps.

### iii. Overcoming the Logistics of Criminal Deportation

Under the Clinton administration with congressional urging and support the rapid removal of criminal aliens was given high priority. The INS launched two major initiatives addressing criminal aliens: the Institutional Hearing Program (now called the Institutional Removal Program—IRP) and the Law Enforcement Support Center (LESC). The former is a key component of the federal effort to streamline the deportation process. The latter involves the restructuring of the relationship between the INS and the local police. It is discussed in Chapter 6.

IRP is designed to close the gap in the process of transferring immigrants from state and local custody to federal custody where they are given deportation hearings. That transfer involves difficult logistical problems of coordinating federal, state and local agencies.<sup>118</sup>

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<sup>118</sup> There are 3,344 local jails, 1,220 state correctional institutions and 96 federal facilities plus approximately 3,005 offices throughout US currently supervising convicted offenders in the community on probation and parole. Assuming all of them had immigration related cases there would be in 1992 about 7,665 locations to be covered by only 1,100 INS investigators who also

Immigration officials would have to chase around to many prison locations in a state to pick up immigrants being released. If the pick up is not made, the immigrants are released and allowed to go free. Once that happens illegal immigrants disappear, move and often get new identification papers with different names. Finding them again in order to enforce final orders of deportation is maddeningly inefficient. Nationally 83,793 deportation orders were issued to illegal immigrants who were not in prison in 1995. Of those 44.5 percent were issued for immigrants who could not be found.<sup>119</sup> With the IHP Program the deportation hearing process is conducted before the immigrant leaves the custody of the state or local facility thereby ensuring his availability for removal. In addition, with the newly available federal money, after raids of workplaces that net illegal workers INS officials are now keeping suspects in jail at a cost of \$60/day by setting high bail.

In jurisdictions like Texas which has 65 prison and treatment facilities widely dispersed, the INS is constructing a permanent on-site processing facility through which the Texas Department of Criminal Justice has agreed to process all foreign born offenders for a determination of their alien status. All immigration hearings will be held (consolidating into one place what used to be done in several locations).

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had other responsibilities besides determining alien statuses of convicts U.S. Immigration and Naturalization Service, "Immigration Act of 1990: Report on Criminal Aliens," A report prepared in response to IMMACT 90's requirements (Washington, DC, April 1992).

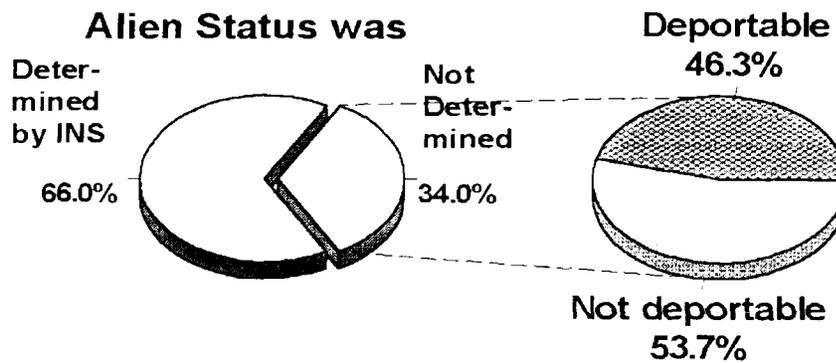
<sup>119</sup> Charles W. Hall, "INS Has a Hard Time Deporting Illegal Immigrants It Can't Find," *The Washington Post*, March 3 1996, B1, B3.

Administratively, streamlining the process of deporting criminal aliens to where over 50,000 cases are deported represents a bureaucratic accomplishment of some merit. Nonetheless a General Accounting Office report found that the INS should be doing even better.

Deporting criminal aliens involves complicated information handling and decision making problems. The INS's record system is being upgraded but still remains a slow, inefficient, fragmented and incomplete system. Identifying criminals who are eligible to be deported is not a simple task. The problem is not just that the record system is inefficient, but the decision as to whether one is deportable requires a professional judgment by someone trained in immigration law. Immigration law is complex and arcane. Simply being foreign born or a citizen of another country or an illegal alien does not automatically make one eligible to be deported. Thus to determine which criminals are eligible to be deported requires both an adequate record system and sufficient trained staff to search records and make judgments. The GAO report shows the limits of INS's capacity for this task (see Figure 5.13 )

Of over 17,000 foreign born inmates released from federal prisons and five state prisons during a 1996 study period the INS had not determined the alien status of 34 percent of them. Of the latter, 46 percent were eligible for deportation. Repeating the study in 1997 GAO found that of about 20,000 foreign-born inmates released from state and federal prisons in the first half of that year, more than 1,900 were "potentially deportable criminal aliens." Yet the INS had no records 36 percent of such aliens. If the INS had performed properly it could have saved about

Figure 5.13  
**INS Failure to Identify  
 Deportable Criminal Aliens**  
 (N = 17,320 Foreign-born Inmates)



GAO 1997 Released from BOP & 5 State Prisons, Apr-Sept. 1996

\$77 million in detention costs in the two periods studied according to the report.<sup>120</sup>

iv Unintended Consequences

The criminal alien removal program might be regarded as a political success. Until the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) greatly

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<sup>120</sup> U.S. General Accounting Office, *Criminal Aliens: INS's Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved*, GA0/T-GGD-97-154 (Washington, DC: Government Printing Office, 1997); U.S. General Accounting Office, *Criminal Aliens: INS' Efforts to Remove Imprisoned Aliens Continue to Need Improvement*, GGD-99-3, Oct. 16 (Washington, DC, 1998); William Branigin, "'Criminal Aliens' Jam INS Detention Centers Law Now Allows No Leeway on Release," *The Washington Post*, Nov. 2 1998.

expanded of the kinds of prior criminal records that made immigrants eligible for removal, there was virtually no political objection to prioritizing criminal aliens for removal. In this age of political correctness where the kinds of social statuses that once demarcated marginality and pariah status are being eliminated in the name of tolerance and equal treatment, aliens who are both illegal and criminal represents one of the few categories that still can be singled out for unyielding treatment with little likelihood of adverse political consequences. Thus it was possible in 1995 for President Clinton to label illegal criminal aliens as the "least wanted" immigrants in the country.<sup>121</sup> His administration has been pleased to report the substantial increase in the numbers of criminal aliens it has removed.

By 1998 IIRIRA's expanded criminal alien net was catching and deporting cases which struck many people as unjust. Even a Republican supporter of the law had second thoughts. The expanded definition of "aggravated felon" that qualified immigrants for deportation included crimes which were neither aggravated nor felons. What is more, the law applied retroactively. Immigrants who had committed minor crimes long in the past, had not served their sentences and gone on to live crime free and productive lives for many years, were being removed. Numerous such cases have been reported in the news.<sup>122</sup>

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<sup>121</sup> John M. Goshko, "President Labels Criminal Illegal Aliens Least Wanted: Officials in California, Florida Disagree on Worth of Program to Increase Deportations," *The Washington Post*, May 31 1995, A14.

<sup>122</sup> Mirta Ojito, "Change in Laws Sets Off Big Wave of Deportations," *The New York Times*, Dec. 15 1998; Pamela Constable, "Years Later, Immigrants Pursued by Their Pasts: Even Minor Offenses Now Mean Deportation," *The Washington Post*, Feb. 24 1997, B1, B5.

For example, Jesus Collado was a 43-year old legal immigrant. He had a family and worked as a restaurant manager. Returning through New York Kennedy Airport from a vacation he was arrested and held for deportation. When he was 19 years old, the mother of his 15 year old girlfriend complained to the police that they were having sex. He was convicted of a sexual misdemeanor and sentenced to one year probation.<sup>123</sup> That conviction of 23 years ago triggered his deportation.

Republican supporters of the legislation began seeking ways to undo what they wrought. Congressman Bill McCollum (R-Fl) sponsored a private bill on behalf of a Canadian who had come to the United States at age two, had accumulated a criminal record in connection with a drug habit and was deported. McCollum asked for an exception only in this one case, who happens to be the son of the Republican Party treasurer in McCollum's home county. McCollum says that believes that the 1996 bill was "too harsh" in certain respects and he planned to submit legislation to correct some of its unfairness.<sup>124</sup> The consensus among immigration experts gathered to assess the criminal alien removal policy was that the prospects for ameliorating its harsh provisions were dim.<sup>125</sup> No politician can afford to champion a policy of going easier on

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<sup>123</sup> Pamela Constable and William Branigin, "Thousands Confront Deportation Dragnet's Longer Reach," *The Washington Post*, Oct. 26 1997, A3.

<sup>124</sup> Fred Hiatt, "Law Without Mercy," *The Washington Post*, Feb. 7 1999, B7; Mary Jacoby and Katherine Pflieger, "McCollum Bill Would Let Deported Convict Return," *St. Petersburg Times*, Jan. 15 1999; Susana Barciela, "Special Bill for a "Criminal Alien?" Work for Fair Immigration Law, Not a Case-By-Case Fix." *The Miami Herald*, Jan. 25 1999.

<sup>125</sup> Criminal Aliens and Immigration: Taking Stock and Looking Ahead, The International Migration Policy Program, Carnegie Endowment for International Peace, Washington, D.C., Feb.

“criminals”? No one wants to be “soft on crime.”

From two other points of view the criminal alien removal program is more problematic. They are: goal achievement, and unintended consequences.

The rationale for the criminal alien removal policy varies depending upon who is giving it. Sometimes it is justified on the grounds that admission into the country is a privilege which can and should be revoked for criminal behavior. Other times it is described as a crime fighting strategy, making the community safe by deporting criminals out of the country.<sup>126</sup> Still other times it appears to be thought of as means to get rid of the stock of illegal immigrants already in the country.<sup>127</sup> The most frequently stated rationale is the general all-encompassing one with which the INS justifies many of its policies, namely, to “restore credibility to the immigration laws.”<sup>128</sup> Its origins suggest it was a policy designed to save correctional costs.

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10, 1999. Washington, D.C.

<sup>126</sup> In announcing the latest removal statistics INS General Counsel, David Martin stated: “We need to remember that these criminal alien statistics represent more than just numbers. Each time INS removes one of those criminal aliens, we take another dangerous person off the streets and out of our communities” U.S. Newswire <msk@cis.org>, “Deportation Statistics,” Article <199705141453.KAA25114@us.net>, in <CISNEWS>, May 14 1997.

<sup>127</sup> Representative Lamar Smith (R-Texas), chairman of the House Immigration Subcommittee and one of the authors of the 1996 immigration laws, stated “The goal [of the deportation policy] is to make sure as many illegal aliens as possible return home” Ojito, “Change in Laws Sets Off Big Wave of Deportations.”.

<sup>128</sup> This is the phrase used by the U.S. Commission on Immigration Reform for the theme of its report. In light of the history of immigration control efforts one has to wonder to which period of that history the Commission or the INS would “restore” current policy. U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*

All of these rationales one have the quality of a post hoc justification of an initiative that evolved without a careful weighing of its relative costs and benefits. Given the enormous costs involved a critical and systematic evaluation of the policy should be undertaken. That, of course, requires a determination as to what the goal(s) of the policy is (are). Until then only limited judgments based on logic and journalistic accounts can be made about certain possible goals and about the unintended costs.

Looking at the numbers alone suggests that the policy cannot achieve the goal of reducing the current stock of illegal immigrants in the country by sheer force of numbers of people removed. With 5 million illegal aliens in the country plus a net addition of about 275,000 a year, the removal of 106,000 is simply not going to reduce the size of the stock. (See Figure 5. 14) Alternatively if deporting criminal aliens is intended to deter illegal immigration, it should deter only those people who can imagine that they would commit crimes and be caught and convicted. Anecdotal evidence suggests that even the harsh new immigration laws that punish illegal entry after deportation by up to 20 years in prison is not deterring aliens who have been deported.

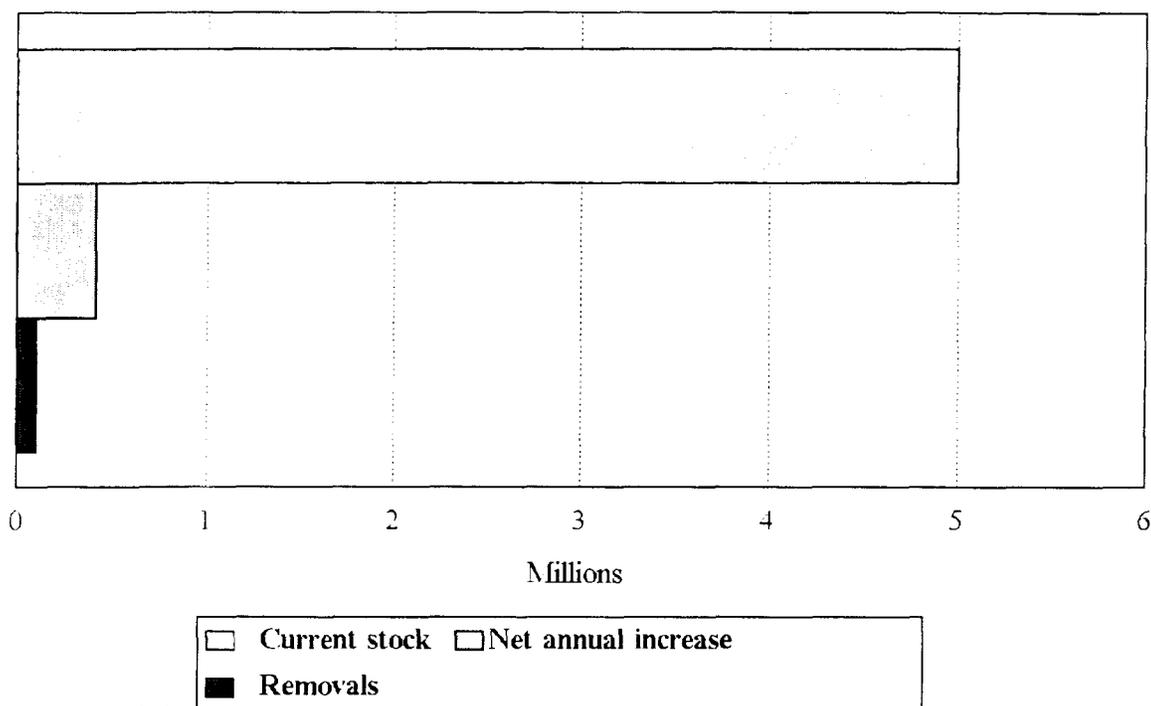
Journalistic evidence and common sense suggest that deported criminals reenter the

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(Washington, D.C.: Author, 1994). For examples of its use see William Branigin, "Citing Progress, Administration Vows to Restore Credibility of Immigration System," *The Washington Post*, Dec. 29 1995, A15; David G. Savage, "More Illegal Immigrants Deported, U.S. Reports," *Los Angeles Times*, Dec. 29 1995, A 19; U.S. Immigration and Naturalization Service, "INS Reports February Alien Removals Exceed Last Year by 53 Percent," *U.S. Newswire*, March 28 1996; Ojito, "Change in Laws Sets Off Big Wave of Deportations."

Figure 5.14

## Illegal Immigrants: Current Stock, Annual Increase, Removals



Source: U.S. INS

United States.<sup>129</sup> At what rate is unknown but it is not unreasonable to expect that it is high.

Deportation was a policy best suited for the days before steam power when deportation to a foreign land meant it was unlikely that the criminal would be able to return any time soon. With today's modern systems of transportation and porousness of international borders everywhere, deporting a criminal is by no means a way of assuring the person will have been removed from

<sup>129</sup> Bill Wallace, "Deported Criminals Stream Back Into the U.S. by the Thousands," *San Francisco Chronicle*, May 11 1998, A11; Deborah Sontag, "Many Deported Felons Return to U.S. Unnoticed," *The New York Times*, Aug. 11 1997; CBS, 48 Hours, *Slamming the Door Shut*, Broadcast, May 12 (Columbia Broadcasting System, 1995).

the community for long.

Most deported criminal aliens are deported to Mexico and many of them are simply driven to the border and released.<sup>130</sup> Some coordination with the Mexican officials to warn them of when bus loads of criminal deportees will arrive is being developed but is yet to be perfected. Even when deportations are coordinated there is nothing Mexican officials can do to the deportees unless they are wanted in Mexico for a crime. Depositing criminals at the border aggravates crime and disorder problems in the Mexican border towns.

The same is true in other countries to which the U.S. is deporting criminal aliens. They now complain that the United States is exporting gangsterism.<sup>131</sup> Central American countries are experiencing new forms of crime such as drive-by shootings and armed bank robberies. There is nothing the home countries authorities can do about the deportees when they arrive because they have not committed any crime in those countries. Moreover, it is often near impossible to integrate the deportees into the home country because they may have grown up in America, have no family or friends in the home country and may not even speak the language.<sup>132</sup> The deportation of criminals to Central America is undercutting American foreign policy in the area

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<sup>130</sup> In the first two quarters of 1997 Mexican nationals constituted 74 percent of all removals of which 58% were criminals.

<sup>131</sup> Michelle Faul <msk@cis.org>, "Deportations Blamed for Caribbean Crime," Article <199704241243.IAA08881@us.net>, in <The Associated Press>, April 24 1997.

<sup>132</sup> Larry Rohter, "Deportees From the U.S. Unwelcome in El Salvador," *The New York Times*, Aug.10 1997.

which is to try to restore peace and the rule of law. Deported criminals are forming gangs, trafficking in guns and returning to the United States as members of international criminal networks.

## **VI. Conclusion**

U.S. immigration policy has come full circle. The American colonies began by resisting the deportation of criminal immigrants from England. The states resisted the dumping of criminals and other undesirables for the first century of our history and demanded that the federal government provide states and localities with relief from unwanted immigrants. When the federal government eventually assumed responsibility for controlling immigration it continued the focus on criminality of immigrants. Today the United States is deporting criminal aliens back to their countries of origins. The situation is not unlike England deporting criminals to its American colonies except that in those days criminals who were once deported were less likely to return home quickly. The countries receiving criminal aliens from America today complain about the policy much as Americans have complained in the past.

The control of the American borders has been problematic throughout the history of the country. During the nineteenth century most immigrants arrive through sea ports of entry on the East coast. Entry was regulated by the states. The attempt to “control” all the borders including the land borders with Mexico and Canada began at the turn of the century when the federal government assumed responsibility for immigration control and established as special agency,

the INS and its Border Patrol. for that purpose. Trying to maintain control of the borders has been problematic ever since. There is no golden age of border control or immigration control in American history to which one can point and say that people around the world believed there was little chance that they could not succeed in getting into the United States if they did not meet what the qualifying conditions were at the time. The closest to such a condition that has occurred was in 1954 when a nation wide round up and mass deportation of Mexican illegal workers went seemed to persuade Mexicans for a few years that they risked a inconvenient trip home for the chance to make good money in the United States.

The mass round up and deportation strategy of control is not longer politically acceptable. It has been renounced by President Clinton and the INS. But massive deportations through the use of a broaden criminal alien law and broaden discretionary powers for the INS to exclude people at the borders has not been renounced. It is one of the primary policies of control today. None of the current policies of control has been shown to be achieving its goals except for the new control at the U.S. - Mexico border. The blatant violation of American immigration laws has been stopped. Groups of people no longer stream into the country illegally and the ports of entry have been made more orderly. But a net of 275,000 illegal immigrants a year are still arriving and an unknown but not insignificant number of them are criminal aliens who have been deported.

## Chapter 6

### The Police and Immigration Control

#### I. Introduction

The connection between immigration and local police<sup>1</sup> in the American experience has been long and convoluted. The role of the local police in transnational law enforcement is also old and varied. It predates the existence of federal police agencies. Over time the roles of the local police in controlling immigration and in dealing with transnational crime have been assumed by the federal government. Yet, state and local law enforcement institutions still play vital parts in dealing with both of these matters. In fact, in these days of the highest rate of immigration to America ever, when illegal immigration throughout the world is a growing problem linked to transnational criminal networks and where international borders are easily crossed by fugitives and others, state and local law enforcement institutions are reemerging as crucial institutions in dealing with these phenomena.

Whereas the federal government has assumed responsibility for controlling who gains entry to the United States, the state and local law enforcement agencies have had to deal with the problems of conflict, disorder and crime associated with immigrants once they arrive. Whereas

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<sup>1</sup> Unless otherwise noted, in this chapter we shall use the phrase “local police” to refer to all state and local law enforcement agencies.

federal law enforcement agencies have taken responsibility for getting fugitives extradited and providing foreign criminal justice systems legal assistance in criminal matters. state and local law enforcement agencies have developed their own institutions of cooperation and enforcement with foreign officials. Acting largely on their own, the state and local agencies have developed a procedure for prosecuting fugitives that is more efficient, reliable and effective than extradition.

The history of the transformation of the respective roles of federal, state and local law enforcement institutions with respect to the control of immigration and transnational crime is a fascinating chapter in the history of American style federalism. Throughout the colonial era and for virtually all of the nineteenth century, local law enforcement institutions provided the only means for controlling immigration and immigrants. From the turn of the century to the late 1970s, local police cooperated fully with the federal immigration enforcement machinery<sup>2</sup> and in many cases performed immigration law enforcement tasks themselves, patrolling borders, participating in mass deportations and neighborhood roundups, detaining suspected illegal aliens, and effectively determining deportation decisions by putting in a damning word with immigration officials about aliens they regarded as unsavory.

The active and direct role in the control of illegal immigration began to unravel in the 1980s as several developments converged. Both legal and illegal immigration were surging to all

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<sup>2</sup> The federal immigration control machinery includes not just the INS but also the Customs Service. For this report we will treat it as synonymous with the INS of which the Border Patrol is a subdivision. All references to the INS in this chapter are inclusive of the Border Patrol. References to the Border Patrol refer only to that subdivision.

time highs. Some police leaders were developing a new philosophy called community policing which stressed the need for positive relations with the local community. An assortment of groups from civil rights activists to Latino activists to people protesting American involvement in the war in Central America, sought to get the local police out of the business of enforcing immigration law.

By the 1990s many police agencies had distanced themselves from their former roles as enforcers of immigration law per se. A 1994 survey of local police in 78 cities found that over a third of them would not inform the INS of illegal immigrants who turned up in the course of routine law-enforcement activities.<sup>3</sup> Some police departments even stopped asking for citizenship or country of origin when completing arrest reports.<sup>4</sup>

During the 1990s immigration became a hotly disputed regional and national issue. Immigration restrictionists wanted to enlist all public institutions in an all out assault against the illegal alien problem. Their plan included the local police. If the courts had upheld it, California's controversial Proposition 187 would have forced all local police into a direct role in controlling illegal immigrants. It required that all public officials including the police, public school teachers and even hospital personnel report suspected illegal aliens to the state Attorney

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<sup>3</sup> U.S. Conference of Mayors, *Immigrant Policy Issues for America's Cities: A 78-City Survey*, June (Washington, D.C.: Author, 1994).

<sup>4</sup> Daniel Wolf, *Undocumented Aliens and Crime: The Case of San Diego County* (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, San Diego, 1988).

General.

The questions of whether local police could legally and should as a matter of policy enforce immigration law had been explored in the 1950's and again in the 1970s, '80s and '90s.<sup>5</sup> State and federal law authorizes local police to enforce the criminal provisions of immigration law. But the politics of immigration have determined what the policy would be. In the controversial immigration reforms of 1996 Congress provided that local police could be authorized to function as immigration officers. They would thereby be permitted to enforce the civil as well as the criminal provisions of immigration law. As of June 1, 1999 only two local governments have expressed interest in using this provision.

While the police were pulling away from enforcing immigration law directly they were being linked back into immigration control indirectly through multiagency task forces established in 1988 and through the INS's immigration records checking facility known as the Law Enforcement Support Center (LESC) established in 1994. Through the task forces, state and local law enforcement agencies joined with INS officers in joint efforts against organized

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<sup>5</sup> Anon, "Note: Wetbacks: Can the States Act to Curb Illegal Entry?" *Stanford Law Review* 6 (1954): 313-16; Robert S. Chapman and Robert F. Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," *University of California, Davis, Law Review* 8, no. 127-161 (1975): 127-61; Edwin Harwood, "Arrests Without Warrant: The Legal and Organizational Environment of Immigration Law Enforcement," *University of California Davis Law Review* 17 (1984): 505; Cecilia Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," *University of Miami Law Review* 41 (1987): 999-1024; George C. Smith, Office of Legal Counsel. Response to Alan Bersin, U.S. Attorney, So. Dist. of California, Draft Immigration Opinion (Washington, D.C., Sept. 11 1995).

crime, drug trafficking and gangs in which immigrants were involved. Through LESC, a small but increasing number of local police agencies were provided with the capacity to quickly search immigration records to identify criminal aliens for expedited deportation at the arrest stage of the justice process rather than at the much later correctional stage of the process.

It is not possible to summarize in any simple way the role that local police have played and are currently willing to play in the formulation and enforcement of immigration policy. A wide variety of police responses can be found. Attitudes, understandings and institutionalized means of cooperation vary with the size and changing nature of the illegal alien problem, the relative priority it is given by the INS and the kinds of interests the local police seek to protect.

In large jurisdictions with heavy illegal alien traffic like New York City, Chicago, Los Angeles and San Diego as well as in border jurisdictions like Brownsville, Laredo and El Paso, the local police and the INS have institutionalized cooperative procedures which operate generally to their mutual satisfaction. In other jurisdictions where illegal alien communities have mushroomed, such as rural places where meat packing plants have sprung up, the local police and the INS are working out new accommodations. INS assets and programs are being located there; and the local police are facing new crime problems associated with the illegal immigration.<sup>6</sup> As immigrant communities get larger and related crime begins to happen, more

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<sup>6</sup> Chuck McCutcheon, "Nabbing Illegals in Iowa," *Congressional Monitor*, March 4 1996; Richard A. Serrano, "Mexican Drug Cartels Target U.S. Heartland," *Los Angeles Times*, Dec. 10 1997; Associated Press, "More Illegal Immigrants Being Caught in Iowa," *St. Louis Post-Dispatch*, Aug. 2 1998; Bruce Finley, "INS to Target Employers," *The Denver Post*, Oct. 29

and more police agencies are concerned about winning the trust of immigrants so that they will report crimes.<sup>7</sup> An increasing number of state and local law enforcement agencies from communities with no illegal alien presence are encountering illegal aliens in transit during

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1998; U.S. General Accounting Office, *Community Development: Changes In Nebraska's and Iowa's Counties With Large Meatpacking Plant Workforces*, GAO/RCED-98-62 (Washington, D.C.: Government Printing Office, 1998); Markes Rodgers <msk@cis.org>, "Authorities Crack Counterfeiting Ring," in CISNEWS <<http://www.cis.org/cis>>, May 20 1998; Jake Thompson, "Central Nebraska Law Officers Say Vanguard a Plus," *Omaha World-Herald*, June 12 1999. A most creative response to the sudden arrival of illegal aliens in a community was that of the Lexington (KY) Police Department. A raid by the INS resulting in the arrest of 80 illegal aliens at a tobacco plant in 1998 precipitated a public discussion of the related problems. The economy was strong; the labor pool for agricultural work was low. The farmers insisted they needed the illegal workers. Some citizens unhappy about the growing Hispanic population. The mayor formed a task force to address the problems.

The Lexington Police Department had begun training more officers in Hispanic issues. When one officer decided to spend time in Mexico as part of his Spanish lessons, the Department agreed to pay his salary while there. Building upon his example the Department initiated a program wherein other officers would live in Mexico for two months, learn Spanish and attend the police academy in Michoacan. Brian Bennett, "Raid Strikes Fear in Illegal Aliens, Employers," *Lexington (Kentucky) Herald-Leader*, May 21 1998; Valarie Honeycutt, "Plan Formulated for Hispanics: Mayor's Task Force Plans to Tackle Manageable Immigrant Issues," *Lexington Herald-Leader*, July 31 1998; Brian Bennett, "Officers to Spend Time in Mexico to Learn More About Immigrants," *Lexington (Kentucky) Herald-Leader*, Aug. 7 1998.

<sup>7</sup> Lyda Longa, "Mexican Victims of Crime Get Help; Police Ask Cooperation," *The Atlanta-Journal Constitution*, May 6 1999. In Lexington, Kentucky crime among Hispanics was up sharply. Between 1990 and '93 there were no Hispanics involved in homicides either as victims or offenders. In '94 there was one Hispanic victim and one suspect; in '95, two victims and one suspect; none in '96; in '97, two victims and three suspects; in '98, three victims and five suspects. (Data provided by Associate Chief Fran Root, 1/7/99). The police were aware that the Mexican immigrants were not reporting some robberies and assaults against them. One of the members of the Mayor's task force on Hispanics recommended that the city declare itself a "safe" city for illegals. Associate Chief Root reported that police officials were already discouraging officers from detaining Hispanics solely to check their immigration status Honeycutt, "Plan Formulated for Hispanics: Mayor's Task Force Plans to Tackle Manageable Immigrant Issues."

routine traffic stops and other locations along major interstate corridors.<sup>8</sup> In Florida, New Jersey and New York where illegal immigrants entering the country by boat have landed in seaside towns the local police rounded them up and detained them.<sup>9</sup> Most jurisdictions have virtually no contact with illegal aliens or the INS.

These variations limit the validity of any generalizations. Yet it might not be inaccurate to say that among those jurisdictions that have some contact with the illegal immigration problem the police have mixed feelings about the INS and about their own role in the formulation and enforcement of immigration policy. Some police have criticized and opposed federal immigration policies and pressured for changes. Some have urged Congress not to deny public education to illegal immigrant children because it would put those children on the streets and into career of crime.<sup>10</sup>

The police have alternately joined forces with the INS and distanced themselves from it. They have readily participated in federally sponsored training courses in immigration law

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<sup>8</sup> MSNBC, "Illegal Aliens Caught in Hastings, Nebraska" <[www.msnbc.com](http://www.msnbc.com)>, May 6 1998.

<sup>9</sup> Phil Long, "Wave of Illegal Immigration Soars: Latest Roundup Nets 49," *The Miami Herald*, Jan. 21 1999; Somini Sengupta, "Traffic in Illegal Immigrants Is Being Slowed, Officials Believe," *The New York Times*, June 1 1998a; Somini Sengupta, "22 Chinese Arrested After Landing on N.J. Beach," *The New York Times*, June 1 1998b; Dam Geller, "Smuggling of Chinese Continues Unabated," *The Record (Bergen, N.J.)*, July 9 1998; Jeffrey Gold, "2 Convicted of Smuggling Immigrants," *Associated Press*, Dec. 3 1998.

<sup>10</sup> Eric Schmitt, "Police Scorn Plan to Deny Schooling to Illegal Aliens Groups Say Bill Will Lead to Rise in Crime," *The New York Times*, April 9 1996.

enforcement and courses on alien crime;<sup>11</sup> yet they typically assert that immigration law enforcement is not their responsibility. They regard the INS and its Border Patrol with their power to deport aliens as a potentially valuable allies in the fight against crime.<sup>12</sup> Yet they often do not bother to call the INS because they believe—often correctly--it will not respond.

In some communities they welcome INS crackdowns on illegal aliens even though local employers and politicians object to the enforcement because of its adverse impact on the tight labor market and, thus the economy; and Mexican American groups object to it as a thinly veiled racism.<sup>13</sup> But the police welcome its impact on the problems associated with illegal immigrants including document forgeries, drunk driving, domestic assaults, fighting, burglaries and larcenies. In other communities the police serve as lookouts for the local farmers warning them of impending raids by the INS. They might cooperate with the INS if an alien is involved in a serious crime. Otherwise they protect the interests of the local farmers in having access to cheap albeit illegal labor.<sup>14</sup>

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<sup>11</sup> International Association of Chiefs of Police, Editor, *Responding to Alien Crimes*, A seminar for Local Law Enforcement (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice, 1996); U.S. Department of Justice. Bureau of Justice Assistance, *Training Local Law Enforcement Officers in Criminal Activities Involving Illegal Alien*, Nov. FS000109 (Washington, D.C.: Author, 1995).

<sup>12</sup> Steve Albrecht, "Criminal Aliens: What Every Officer Should Know.," *Law and Order*, June 1992, 79-81.

<sup>13</sup> Jake Thompson, "INS Commissioner to Miss Nebraska Vanguard Meeting," *Omaha World-Herald*, June 9 1999, INS; politics; enforcement;; Thompson, "Central Nebraska Law Officers Say Vanguard a Plus."

<sup>14</sup> Harwood, "Arrests Without Warrant: The Legal and Organizational Environment of Immigration Law Enforcement," 91.

In still other communities local law enforcement has stepped into the middle of the vortex of conflicting interests that surround immigration enforcement and are playing a balancing role. Their initiative began in response to the concerns of long-term local residents who are losing jobs to the flood of immigrants as well as concerns about crime and cultural differences. They have joined with the INS to help remove criminal aliens. But those that do have little faith in the policy. They know the deportees will be back on the job shortly using a new name. Some try to serve as the local voice of reason and support for the policy of removing criminal aliens. At the same time they are aware of the contradiction immigration policy faces. Rigorous enforcement of the immigration laws would damage local economies. Complete non-enforcement of the immigration laws vexes citizens who are losing jobs, feeling threatened by behavior of groups of foreign males and putting up with annoyances of cultural differences. When serious crimes involving aliens happen, the local police experience strong pressures to do something.

Local residents want to keep their jobs and their normal lifestyles unmolested by foreigners. The police cooperation with the INS tries to balance the interests of the business community while placating citizens who are losing jobs and feeling threatened by foreigners who transgress norms and laws. The policy of removing criminal aliens as opposed to all aliens does not resolve the labor competition problem but does respond to the demand that at least something be done.<sup>15</sup>

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<sup>15</sup> See discussion of Denton (GA) Police Department's Immigration Task Force, *infra*.

They are willing to cooperate with the INS on task forces against gangs, drugs or organized crime.<sup>16</sup> Some of these joint efforts have been regarded as a success by the police. Other times they have found cooperation with the INS to be poor.<sup>17</sup> Sometimes they sympathetically offer excuses for the INS, citing the familiar one of lack of resources. But they are often exasperated when the INS does not respond or releases suspects arrested by local police because of lack of resources.<sup>18</sup> They sometimes doubt whether limited resources do not explain too much. But they usually recognize that their conflict is with the larger national priorities in the deployment of immigration control assets. When it is important to them, they do not hesitate to get political and try to bring about a redeployment of those resources.<sup>19</sup>

The INS is aware of the demoralizing effect of not taking custody of illegal aliens detained by local police. In many ways it tries to minimize that impact by lowering the expectations local police have of the INS. For instance, it has been deliberately slow to extend the availability of its newly developed immigration record checking facility (LESC) to police departments because it will result in greater demands upon INS personnel than can be met.

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<sup>16</sup> See e.g. Pamela Hill, "INS Nabs 35 Living in U.S. Unlawfully," *Arkansas Democrat-Gazette*, Jan. 21 1999.

<sup>17</sup> U.S. Congress. House. Select Committee on Narcotics Abuse and Control. *South Florida Local Law Enforcement Conference*, Hearing. SCNAC-98-2-2, 98th Cong. 2d Sess. (Washington, DC: Government Printing Office, 1984), 71.

<sup>18</sup> Marie Rohde, "Arrests Reveal Differing INS, Police Priorities," *Milwaukee Journal Sentinel*, May 18 1998; Karla Bruner, "Depleted Fresno Border Office Nears the Point of No Return," *Fresno Bee*, March 31 1996, A20.

<sup>19</sup> McCutcheon, "Nabbing Illegals in Iowa."; Bruner, "Depleted Fresno Border Office Nears the Point of No Return.".

Those departments that have gotten it are happy to have it.<sup>20</sup>

Along the U.S. - Mexico border the police routinely call upon the Border Patrol for back up when handling threatening situations. But in jurisdictions to which the flow of illegal aliens has been displaced by the Border Patrol's blockades in San Diego and El Paso, the police are strongly critical of the policy. In their view the federal government has solved its problem at their expense causing a dramatic rise in the problems of crime and disorder in their communities.<sup>21</sup>

Many police leaders are aware of the politics of immigration enforcement and, in particular, are sensitive to Hispanic Americans's irritation at being stopped and required to prove their right to be in the country. Hispanic complaints about such harassment are well-documented

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<sup>20</sup> Interstate Criminal Alien Working Group, *Addressing the Criminal Alien Problem*, Report to U.S. Department of Justice. Bureau of Justice Assistance (Tallahassee, FL: Institute for Intergovernmental Research, 1996).

<sup>21</sup> Steve Dimeglio, "Focus on Immigration: Illegals Deluge Valley: San Diego Border Crackdown Turns Region Into Back Door for Mexico," *The Desert Sun (Coachella, CA)*, April 20 1997, B1; Steve Dimeglio, "Focus on Immigration: Coyotes Prey on Immigrants' Hopes of a Better Life," *The Desert Sun (Coachella, CA)*, April 20 1997, B5; Steve Dimeglio, "Focus on Immigration: Increased Regional Enforcement Drives up Local Border Arrests," *The Desert Sun (Coachella, CA)*, April 20 1997, B5; Steve Dimeglio, "Focus on Immigration: Gateway Opens Door to Crime Wave," *The Desert Sun (Coachella, CA)*, April 20 1997, B5; Cassandra Burrell <CISNEWS@cis.org>, "Hearing on Border Issues," Article <199704241255.IAA09407@us.net>, in <The Associated Press>, April 24 1997; Gregory Gross, "Feeling the Heat: Battle at the Border: 'Gatekeeper' Channels Huge Immigrant Flood to Searing Imperial Valley," *San Diego Union-Tribune*, Aug. 21 1997; Gregory Gross, "Immigrant Flow Shifts Eastward, Slows Here," *San Diego Union-Tribune*, Aug. 24 1997. This view was shared by police chiefs in a discussion of immigration issues for the present study at a monthly meeting of a dozen law enforcement executives in southern California, July 18, 1996

and long standing. Nevertheless costly mistakes continue to be made in the handling of this delicate issue. In some jurisdictions with long experience in these matters the police have developed policies that carefully distinguish what their officers can and can not do with respect to detaining and arresting suspected illegal aliens. In others, such policies are just now being developed in the wake of protests and lawsuits.

Within this variety of responses, however, with one quasi exception there are virtually no police departments that want to enforce immigration law *per se*.<sup>22</sup> Local police, for the most part, have moved away from the immigration enforcement function some of them once performed. This change is interesting for several reasons. It is in striking contrast to past practice. It has happened spontaneously in many agencies all of which are independent of each other over the course of the past two decades. It comes at a time when the public is demanding tougher control of illegal immigration: and it is the opposite of what the European Community seems to be doing with the enforcement immigration law devolving upon local police.<sup>23</sup>

At about the same time state and local law enforcement agencies were closing the chapter

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<sup>22</sup> See discussion of Dalton (GA) Police Department *infra*.

<sup>23</sup> Justice and Home Affairs European Commission <msk@us.net>, "Overseas Immigration News: European Commission Press Release: IP/97/639," Article <199707111544.LAA29641@us.net>, in <CISNEWS@cis.org>, July 11 1997; Franck Duvell, Bill Jordan and Dita Vogel, "Police and Immigration Control: Patterns of Co-Operation in United Kingdom, Germany and the United States." Unpublished draft (Oldenburg University, July 1999).

on immigration law enforcement, they were opening a new chapter in transnational cooperation with foreign criminal justice systems. In 1978 officials of the California Department of Justice began using a hitherto unused alternative to extradition as a means for obtaining justice in cases where offenders fled to Mexico to avoid prosecution. The procedure, referred to as "foreign prosecution," does not rely upon treaties, is not controlled by or dependent upon the American federal law enforcement agencies, and applies not just to Mexico but to most countries in the Civil Law tradition. They often refuse to, or at least prefer not to, extradite their nationals. But they will prosecute them if provided with the evidence and if certain qualifying conditions are met.

With heavy immigration from Mexico and other Civil Law countries these days, the timing could not have been better. The breakthrough with the foreign prosecution procedure represents innovation of enormous significance for the future, an international "channel" for state and local law enforcement. The California state and local agencies have developed the foreign prosecution procedure and together with the Texas Attorney General's office provide training and assistance to other state and local agencies. Even the federal government has resorted to using this procedure in a few cases.

State and local law enforcement agencies have also gone their own way without federal approval or control on other matters. In protest at the refusal of the FBI to share intelligence with them, West Coast police agencies established their own international intelligence network

independent of feds.<sup>24</sup> Occasionally police agencies pursue criminals across international boundaries, tracking people to Europe, Central America and elsewhere with their own personnel and making their own independent contacts with foreign criminal justice officials.

These transformations in the role of state and local law enforcement in immigration control are detailed in this chapter. Those regarding transnational law enforcement are dealt with in Chapter 7.

## II. The Police--Immigration Control Connection: Colonial Times to 1980s

### Before Federal Control

During the colonial era and for most of the nineteenth century state and local law enforcement institutions represented the only form of immigration control that existed. Immigration shaped nineteenth century American police institutions and they shaped the immigrant experience. Many police departments were founded in response to the violence, crime and disorder caused by the large influx of poor immigrants. Ethnic and religious intolerance accounted for some of the conflict. But much of it was due to use of immigrants to drive down wages and to break strikes.

The Boston Police Department was established in 1837 after a series of clashes between

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<sup>24</sup> See also N.J. Loschiavo, "Law Enforcement Intelligence Unit," *Police Chief* 62, no. 2 (Feb. 1975): 46, 82.

citizens and Irish immigrants. During the subsequent decades almost every state experienced anti-immigrant riots and conflicts frequently related to labor strife. Local police institutions were established to handle the problems, often because responses by militias had been slow to respond, ineffective and overzealous.<sup>25</sup>

The American police made life in an ethnically and racially diverse society possible, although not always in ways which would be approved today. In the north and central states police departments tried to manage anti-immigrant violence and deal with immigrant crime. They also provided immigrants with a place to sleep and often with jobs.<sup>26</sup> In the south a special police institution known as the slave patrol or plantation police regulated the movement of slaves, the forced immigrants of an earlier time.<sup>27</sup> In some places police stood by while lynch mobs dragged immigrants accused of crime out of their cells and hung them.<sup>28</sup>

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<sup>25</sup> See generally, Kitty Calavita, *U.S. Immigration Law and the Control of Labor: 1820-1924* (Orlando, FL: Academic Press, 1984); Roger Lane, *Policing the City: Boston, 1822-1885* (New York, NY: Atheneum, 1971); James F. Richardson, *The New York Police: Colonial Times to 1901* (New York, NY: Oxford University Press, 1970).

<sup>26</sup> See generally George E. Pozzetta, Ed., *Law, Crime, and Justice: Naturalization and Citizenship*, ed. George E. Pozzetta, American Immigration and Ethnicity (New York, NY: Garland, 1991).

<sup>27</sup> Hubert Williams and Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, Perspectives on Policing: January, No. 13 (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1990).

<sup>28</sup> In 1896 a mob in Louisiana dragged three Italians from a jail and hanged them. In New Orleans in 1891 a mob lynched eleven Italian suspects after a jury refused to convict them John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick, N.J.: Rutgers University Press, 1955), 90.

## The Early Local-Federal Cooperation

### i. Cooperation at the Border

After the federal government assumed responsibility for controlling immigration and established a federal agency to patrol the land borders and enforce immigration law at the ports of entry and the interior, local law enforcement agencies continued to get involved in immigration control activities. They did so both in jurisdictions located near the borders as well as in interior jurisdictions with large immigrant communities like New York City.

During those early years the southwest border was a turbulent place. Law enforcement could be rough and ready. Always known as the “badlands” the border was demarcated in many places by nothing more than an invisible line in the sand. People came and went as they pleased. Relations between Anglo and Mexican people were often abrasive and violent.<sup>29</sup> The revolution in Mexico sent many Mexicans fleeing from their country and touched off intrusions across the border by the United States military and by Mexican revolutionary groups. A few federal officials strung out along a 2,000 mile border were not going to control the entry of aliens. Local law enforcement, such as it was, often served as the only immigration control available.

In her history of the Border Patrol, Kidder Rak describes how local law enforcement performed that function in Fort Hancock, Texas along the Rio Grande. It was sometime around

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<sup>29</sup> Carey McWilliams. *North from Mexico: The Spanish-Speaking People of the United States* (Philadelphia, PA.: J.B. Lippincott, 1949).

1911. The Mounted Watch was the only federal immigration force in existence and was too small to be everywhere. The town had been "terrorized" by Mexicans who came across the river to booze and carouse. When the situation became unendurable the Sheriff called into action an old man who had become a legend in border control history, Jeff Milton. According to one source, Milton had resigned from the Texas Rangers to become a "U.S. Immigration Border Guard" in 1883. His exploits were so notorious he was known as a "one man Border Patrol."<sup>30</sup>

The Sheriff deputized Milton and a cowboy to assist him. They took a long length of heavy chain and fastened shorter chains to it. When the Mexicans came across to the saloons and had a few drinks, Milton and his assistant rounded them up and padlocked the chains around their necks. He then questioned each man and released certain ones to return to their towns and tell their mayors that the property that had been stolen from the Americans had to be returned or the men would not be released. By nightfall all sorts of things had been returned; horses, cows, hens, tools, and wagons.<sup>31</sup>

On other occasions, when large numbers of Mexicans crossed the border, cowboys were deputized and, according to Rak:

they rounded up the aliens as they would so many cattle, bringing them together on the

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<sup>30</sup> Clifford A. Perkins, *Border Patrol: With the U.S. Immigration Service on the Mexican Boundary, 1910-54* (El Paso, TX: Texas Western Press, 1978), xii; Mary Kidder Rak, *Border Patrol* (Boston, MA.: Houghton Mifflin, 1938), 6. Milton was appointed in 1904 as the first man ever go on patrol as one of the "mounted guards."

<sup>31</sup> Rak, *Border Patrol*, 2.

'round-up grounds' where they could be questioned by the Immigration Officers. By this method they sometimes caught in the 'drive' persons who were legally in this country, and the cowboys had their own method of testing their captives. If a belt was snapped at a Mexican and he ran, he was doubtless guilty of illegal entry. If he stood his ground and cursed his captors, they judged that he belonged here.<sup>32</sup>

Rak says that once the Border Patrol was established those old methods were no longer needed. The history of complaints against Border Patrol officers's handling of immigrants, however, suggests that professionalism has continued to be a challenge for the Patrol long after it was established.<sup>33</sup>

ii. New York Police Department's Criminal Aliens Bureau

It was not just along the border that local police agencies proactively dealt with immigrants long after federal immigration control machinery was established. In the interior they also played an active role. During the anti-radical hysteria following World War I local police joined in the hunts for foreign radicals and alleged subversives. In many places they

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<sup>32</sup> Rak, *Border Patrol*, 5.

<sup>33</sup> U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration, 1980* (Washington, D.C.: Government Printing Office, 1980); American Friends Service Committee, Immigration Law Enforcement Monitoring Project, *Sealing Our Borders: The Human Toll* (Philadelphia, PA.: Author, 1992); Americas Watch, *Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, May (New York, NY: Human Rights Watch, 1992).

assisted in the rounding up and deportation of foreigners.<sup>34</sup>

By the 1930s immigration had been shut down to a trickle and the "red scare" had subsided. But certain immigrant groups were identified with a new threat. Organized crime and gangsterism had become synonymous with foreigners especially Italians. During the bootlegging wars of the Prohibition era Al Capone and others had demonstrated the extent to which foreigners seemed to be responsible for serious crime in America.

In 1930 the Department of Labor (where the INS was then located) and the New York Police Department announced the creation of special new programs to rid the country of alien gangsters. Secretary of Labor, William Doak, announced the Department was undertaking a thorough investigation of the immigrant status of leading underworld figures with a view towards their deportation. "We are going into the gangster problem with all the resources at our command," he said. He planned to ask Congress for additional funds. The problem of gangsters in American cities was being stressed by the entire Department. The goal was to rid the cities of "undesirables" such as certain unnamed gang figures in Chicago. He cautioned that this would not be easy because deportation proceedings were time consuming and complex. Wealthy gangsters had been able to afford high class counsel who had successfully prevented many deportations. He was asking Congress for funds to streamline the deportation process.<sup>35</sup>

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<sup>34</sup> See Chapter 5.

<sup>35</sup> New York Times, "Doak Moves to Deport Alien Gang Leaders: 'All Resources' Put Into War on Underworld," *The New York Times*, Dec. 12 1930, 1.

Two weeks later New York City Police Commissioner Mulrooney announced the creation of a new bureau known as the Criminal Aliens Bureau. Its mission was to round up and investigate all aliens with criminal records with an eye towards deportation. NYPD was arresting about 1,200 aliens a year but until then there had been no special police detail to check for possible immigration law violations. It is interesting to note that the purpose of the new bureau was to perform searches for immigration information which one might have thought would be done by the INS—as it does today. The new bureau would prepare information regarding the name, address, date of arrival and port of entry as well as the criminal record of every alien arrested (including all cases in the previous five years) and present the file to the U.S. Commissioner of Immigration. The new unit was part of the national drive against racketeering. Special funding and support were anticipated from the Federal authorities.<sup>36</sup>

#### Local-Federal Cooperation in the 1970s

After World War II the rate of illegal immigration along the U.S. - Mexico border increased rapidly. When the INS launched its mass deportation campaign in 1954, state and local police, sheriffs, and highway patrol officers were very much apart of it. From then until the parting of the ways in the 1980s local police cooperated with the INS at the border and in the interior. The local police, especially in border areas and communities with substantial illegal immigrant settlements frequently detained and often arrested suspected illegal aliens and held

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<sup>36</sup> New York Times. "Police to Round Up Criminal Aliens Here; New Bureau to Get Evidence for Mulrooney," *The New York Times*, Dec. 20 1930, 1.

them for the INS. The extent of this practice is partially suggested by the fact that in 1973 approximately ten percent of all immigration law violators were apprehended by local officials.<sup>37</sup> Illegal immigration control policy, at the time, relied heavily upon apprehending and expelling individual illegal aliens near the border or from interior communities where aliens were known to live. There were no blockades at the border and it was not illegal to hire illegal immigrants. Local police were relied upon not only to help apprehend illegal immigrants on their own but assist the INS in sweeps through urban neighborhoods and farms.<sup>38</sup>

In some border locations the police made special efforts including local regulatory policies to control illegal immigrants. In 1972 San Diego County Sheriff, John Duffy, issued an order to taxicab drivers to report suspected illegal aliens to the police. Drivers were given a code to notify their dispatcher to notify the police when they picked up people who seemed to be

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<sup>37</sup> Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation." 151.

<sup>38</sup> The INS has difficulty getting the cooperation of local law enforcement agencies in agricultural areas. There the INS officers are generally not welcome. Farmers rely upon illegal aliens for labor and legal officials often tolerate and even protect the practice. Sheriffs sometimes spread the alarm warning farmers when they learn that INS patrols are headed their way. Local law officers will cooperate energetically with the INS when a brutal murder has occurred and the suspect is an alien. But the crime of aiding, abetting, or smuggling illegal aliens is not seen as a serious crime in agricultural communities. Edwin Harwood, *In Liberty's Shadow: Illegal Aliens and Immigration Law Enforcement* (Stanford, CA: Hoover Institution Press, 1986), 90.

The former chief of police of the community where Caesar Chavez often tried to organize farm laborers reported that he never allowed his department to assist the INS during confrontations with farm workers or Chavez. The chief's father had been a union organizer on the east coast.

illegal aliens. The policy was intended to crack down on the smuggling of illegal aliens. The practice had developed where taxi cab drivers as well as people looking to make a fast buck would prowl the roads near the border looking to pick up illegal aliens to drive them to Los Angeles. The order was objected to by Mexican Americans, cab drivers and their union. Duffy defended his policy saying it helped the drivers avoid being charged with the crime of transporting illegal aliens: and it protected aliens from unscrupulous drivers who might overcharge them.<sup>39</sup>

The San Diego Police Department had a policy of questioning and detaining suspected illegal aliens. The policy was stated in a memorandum from the Department's legal advisor, Eugene Gordon (May 8, 1973). Officers could stop and detain aliens upon "reasonable suspicion" that they are violating federal immigration laws.<sup>40</sup> Throughout California and in many other states with illegal immigration problems police departments enforced immigration law. The usual practice in California was for the local law enforcement officials to detain rather than arrest suspected illegal aliens.<sup>41</sup> Some police departments in Southern California were paid

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<sup>39</sup> Anon, "Police Right to Hold Suspected Aliens Affirmed," *Los Angeles Times*, Aug. 29 1973, 1, 4.

<sup>40</sup> Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation." fn. 164.

<sup>41</sup> Based on statements of the California Attorney General, Evelle Younger in response to an inquiry by Assemblyman Peter Chacon, Aug. 8, 1973, regarding local law enforcement's involvement in the enforcement of immigration law. See Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," 151.

Not every agency at the time had the same policy. The San Diego Sheriff's Department's Manual of Policies and Procedures's Section on "Detaining and/or Arrest of Illegal Aliens"

a monthly per capita fee by the INS for detaining suspect aliens.<sup>42</sup>

In the 1970s the discriminatory and harassing nature of the enforcement of immigration law became an issue with greater political significance than it had had in the past. Mexican Americans had protested discriminatory police practices in the 1930s and '40s largely to no avail.<sup>43</sup> Such ethnic protests did not carry the same political and legal weight as they carried in the 1970s. The new protests gained force synergistically from the success of the civil rights movement for African Americans. They also gained stature from the fact that the police right to detain and arrest people for possible criminality had been tested and restricted in the courts in the sixties.

Now Latinos wanted the police practice of stopping and detaining suspected illegal aliens restrained, if not completely halted. Although the majority of Latinos favor "tough laws against illegal immigration,"<sup>44</sup> they deplore being stopped and asked to prove their citizenship. The local police had abused immigration law and had stopped them merely because of their physical appearance. They were being arrested for "driving while Latino."

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stated that San Diego Sheriff's Deputies could not detain or arrest suspected illegal aliens except in conjunction with some violation of the penal code other than immigration.

<sup>42</sup> Reported in interviews with two California chiefs of police.

<sup>43</sup> McWilliams. *North from Mexico: The Spanish-Speaking People of the United States*.

<sup>44</sup> Mark Krikorian <msk@us.net>, "Survey of Latinos," in <CISNEWS@cis.org>, May 22 1996.

In San Diego Chicano groups waged a vociferous campaign against the policy of the Police Department charging that it resulted in harassment of all Latinos in the area. When Police Chief Ray Hoobler defended it, they demanded his resignation. Assemblyman Peter Chacon obtained an opinion from Attorney General, Evelle Younger, on the right of local law enforcement to enforce immigration law. Younger supported the Sheriff's taxicab policy stating that "any law enforcement officer may call upon any citizen or private company to aid in the detection and prevention of crime."<sup>45</sup>

He also supported the Police Department's policy. His opinion distinguished between detentions and arrests. Any law enforcement officer may detain for questioning by federal immigration officials a person he suspected of being an illegal alien. He could arrest only if he saw the alien illegally enter the country and if the entry process had not yet been completed. Illegal entry is a misdemeanor and was not considered to be an offense that continued after entry had been accomplished.<sup>46</sup>

Younger's opinion was also roundly condemned. A spokesman for an organization of 14 Chicano groups charged that Younger "has declared a legal police state against all persons of Mexican ancestry;" that the policy singled out Chicanos on the basis of skin color and culture; and that it violated the 4th Amendment guarantees against illegal search and seizure and the 14th

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<sup>45</sup> Anon, "Police Right to Hold Suspected Aliens Affirmed."

<sup>46</sup> Chapman and Kane. "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," 150.

Amendment's guarantee of due process. The Chicanos threatened to mount a campaign of civil disobedience urging all Latinos in the San Diego area to refuse to cooperate with local police who questioned them.<sup>47</sup>

Concern about discrimination and harassment in the enforcement of immigration law began to pile up. The Los Angeles Trial Association's publication, *The Advocate*, described a major INS sweep within the Mexican-American community in 1973 as follows:

Search operations are being conducted, without reasonable or probable cause to believe that individuals stopped and interrogated are in fact aliens, merely because such persons appear to be 'foreign looking.' Reports come in almost daily of immigration officers stopping and interrogating individuals at bus stops, on public streets, in private businesses and of knocking on doors at private residence and apartments and requiring individual therein to produce proof of their lawful status in the United States.<sup>48</sup>

In this particular operation the INS estimated that 18,500 people had been interrogated. Of that number 11,500 were illegal aliens who were apprehended. The remaining 7,000 were in the country legally. Of them 1,750 were citizens and 5,250 were legal resident aliens. The INS regarded this as a low rate of false positives, people who were suspected of being illegal aliens

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<sup>47</sup> Anon. "Police Right to Hold Suspected Aliens Affirmed."

<sup>48</sup> Quoted in Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," fn. 61.

who were not.<sup>49</sup>

Extensive Congressional hearings on the illegal immigration problem were held in the early 1970s. Congressman Peter Rodino proposed to shift the focus of immigration control policy from apprehending and expelling illegal aliens to shutting down the magnet of jobs which attracted them. He proposed criminal penalties for employers who hired illegal immigrants. One of the attractions of this policy was that it might reduce the harassment of Mexican Americans from stops by INS and local police. The issue of harassment got considerable attention. In 1973 Congressman Jerome Waldie stated that:

I not only received written complaints but I went down in to the area [where the INS searches had occurred] and I tell you, there is no greater bone of contention in Los Angeles and in San Ysidro and in National City and in Chula Vista among Americans who are of Mexican descent...they are being stopped all the time.

Similar complaints were heard from Washington state:

Immigration agents 'corral' labor camps so illegal workers don't run away...agents bust into people's homes late at night and humiliate both legal and illegal workers in their sweeps through migrant camps.<sup>50</sup>

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<sup>49</sup> Chapman and Kane. "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," fn. 61.

<sup>50</sup> Chapman and Kane. "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," fn. 61.

In 1973 a special study group of the Justice Department reported that: "Law enforcement efforts to locate and apprehend illegal aliens within Mexican-American communities create fears of harassment and discrimination."<sup>51</sup>

### Illegal Immigration in Los Angeles on the Eve of the Restructuring

Illegal immigration had begun its rapid increase placing an ever increasing stress on the capacity of the INS and the local police to make the policy of removal work. At the same time, the political opposition had become stronger and police resources stretched thinner. In 1977 a Los Angeles Police Department (LAPD) internal study concluded that the number of illegal aliens in the city had increased over the preceding five years by 242 percent to an estimated 650,000. It was expected to reach 1,110,000 by 1981. The study tried to estimate the impact on crime of the presence of the illegal aliens. Two findings were suggestive of the scope of the problem. A special study of all felony arrests in the Rampart area of Los Angeles for June 1974 found that persons verified by the INS to be illegal aliens constituted 36.3 percent of all the arrestees. Another study found that between May 23 and June 20, 1973 when the INS conducted a massive roundup of deportable aliens in Los Angeles County the repressible crime in the county dropped 14.7 percent below the five year average to the lowest level since 1967.<sup>52</sup>

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<sup>51</sup> Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation," fn. 41.

<sup>52</sup> Los Angeles Police Department. Illegal Alien Committee, "The Illegal Alien Problem and Its Impact on Los Angeles Police Department Resources," Briefing Paper Prepared for staff Officers' Mini-retreat (Los Angeles, CA, Jan. 1977).

The study recommended against a major diversion of police resources solely for the purpose of enforcing the immigration laws absent special circumstances. Instead it recommended that the Department focus its efforts on the illegal aliens who are involved in criminal activities.

Department policy and procedures should be established to provide for the identification of illegal alien criminals, their vigorous prosecution, and their formal deportation after criminal sentences are served. Additionally, in special problem areas where concentrations of illegal aliens are inordinately contributing to crime, vice, or gang activities, intensified enforcement by INS personnel should be requested for the purpose of removing deportable alien criminals.<sup>53</sup>

### III. Restructuring the Local, State and Federal Roles In Immigration Control

#### The Parting of the Ways

##### i. Police Authority To Enforce Immigration Law

From 1970 to the enactment of the Immigration Reform and Control Act of 1986 Congress deliberated over the Rodino proposal to punish employers who hired illegal workers. The proposal was defeated and resubmitted many times. It came back after being killed so often that it was dubbed, the "creature from the blue lagoon." By the time the law was passed, the role

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<sup>53</sup> Los Angeles Police Department. Illegal Alien Committee, "The Illegal Alien Problem and Its Impact on Los Angeles Police Department Resources."

that local police once played in enforcing immigration had been abandoned by leading police departments and would never be reestablished despite efforts by immigration control advocates in the 1990s. The mass immigration of largely Hispanic people presented more and more jurisdictions with the difficult choice between three goods: controlling illegal immigration, controlling crime, and respecting the right of Latinos to go about unmolested by demands that they prove their right to be in the country. With Latinos rapidly becoming the largest minority in the country and already the largest minority in selected communities, local law enforcement agencies and political bodies increasingly chose crime control and respect for the dignity of minorities over illegal immigration control.

An article of faith among supporters who believed it would solve the illegal immigration problem, employer sanctions is a policy with many practical and political problems. Immigration restrictionists and union representatives supported it. On the other hand, agribusiness interests did not want employers exposed to criminal sanctions; did not want to determine job eligibility of applicants; and did not want additional record keeping tasks. Latino and civil rights groups opposed it fearing employers would refuse to hire Mexican-looking people.<sup>54</sup> President Carter appointed a special commission to weigh the competing concerns and

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<sup>54</sup> Arthur F. Corwin, Ed., *Immigrants--and Immigrants: Perspectives on Mexican Labor Migration to the United States* (Westport, CT: Greenwood Press, 1978); Kitty Calavita, "The Contradictions of Immigration Lawmaking," in *Making Law*, ed. William Chambliss and Margaret Zatz (Bloomington, IN: Indiana University Press, 1993), 229-60; Kitty Calavita, "Employer Sanctions Legislation in the United States: Implications for Immigration Policy," in *America's New Immigration Law: Origins, Rationales and Potential Consequences*, ed. Wayne A. Cornelius and Ricardo Anzaldue Montoya (San Diego, CA.: Center for U.S.-Mexican Studies, University of California, 1983), 73-81; Jeffrey S. Passel, "Recent Efforts to Control Illegal

make recommendations.

While Congress deliberated illegal immigrants continued to flow across the U.S. Mexico border straining resources of the INS and the willingness of the local police to support the policy of apprehending and expelling illegal aliens. Other options began to be considered in various quarters. Five arguments emerged in support of terminating the traditional role of local police in immigration enforcement: The role was:(1) legally unsound; (2) useless for immigration control; (3) self-defeating for crime control; (4) contrary to equality and social justice; and (5) politically costly.

When it passed the Immigration and Naturalization Act of 1952 (hereinafter, INA), Congress explicitly provided that section 274(a) could be enforced by local police. That section makes smuggling, harboring or shielding illegal aliens from detection a felony. Subsection (b) states:

No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and *all other officers*

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Immigration in the United States." Paper, OEECD Working Party on Migration (Paris, June 1996); Alan K. Simpson, "The Immigration Reform and Control Act: Immigration Policy and the National Interest." *University of Michigan Journal of Legislative Reference* 17 (Winter 1984): 147-83; Aristide R. Zolberg, "Reforming the Back Door: The Immigration Reform and Control Act of 1986 in Historical Perspective." in *Immigration Reconsidered: History, Sociology, and Politics*, ed. Virginia Yans-McLaughlin (New York, NY: Oxford University Press, 1990).

*whose duty it is to enforce criminal law.* (Emphasis added.)<sup>55</sup>

However, whether local police are authorized to enforce the other provisions of the INA such as the misdemeanor violations and the civil violations is less clear. As the Rodino bill was being debated, two authors of a law review article examined the legal basis for the traditional role the police had been playing in immigration control. They argued that the federal government had preempted the field of immigration and that the legal basis for local officials to enforce immigration law was limited and inconsistent. But they admitted that most states would not agree with their analysis. In the end they rested their case on the argument that illegal immigration had become too big a problem to be controlled by traditional police techniques. Employer sanctions were needed. The contribution of local law enforcement to the overall goal of discouraging illegal immigration was small; and the costs in terms of harassment of minorities were great.<sup>56</sup>

A decade later, after IRCA had been enacted, another law review article addressed the question of whether state and local law enforcement agencies should be involved in the enforcement of immigration law. The author noted that in deliberating upon IRCA immigration reformers had done little in regard to enforcement policy. Congress had merely provided increased resources for the INS; had amended INA's alien smuggling statute; and had provided

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<sup>55</sup> 8 U.S.C. § 1324(b) (1974).

<sup>56</sup> Chapman and Kane, "Illegal Alien and Enforcement: Present Practices and Proposed Legislation."

criminal penalties for employers who had a "pattern or practice" of hiring undocumented aliens. It had left the matter of enforcement of immigration law by local officials untouched albeit not completely unnoticed. In 1982 Republican Senator Charles Grassley had offered an amendment to the INA that would have authorized local officials to enforce immigration law. It was rejected.<sup>57</sup>

The author shows that state statutes and federal law have granted local police the authority to enforce the criminal provisions of immigration law. She shows that the courts have upheld the view that federal immigration statutes do not preempt state enforcement and that state and local police may enforce immigration law unless prohibited by state law, although the courts and the Department of Justice have been inconsistent on this topic.

She argued that state and local law enforcement officials should not have the authority to stop, detain, interrogate, or arrest undocumented aliens because the practice hinders the federal interest in uniform immigration enforcement. She asserts that enforcement practices at the state and local level vary from place to place and that local rules regarding the apprehension or detention of illegal aliens were either nonexistent or ambiguous. In the hands of untrained local law enforcement officials, the enforcement of immigration law has been associated with abuses of Hispanics and illegal aliens.

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<sup>57</sup> Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," fn.6.

Among the examples she cites is a raid in Utah where the local police are alleged to have jailed small children without diapers or food, deported a four-year-old without notifying his parents, kicked in a door at midnight shouting obscenities, and stopped people solely because they looked Hispanic. She also quotes from a letter from the counsel for plaintiffs in another case which reads:

As you are well aware, local police agencies frequently use the threat, and reality, of arrest for alleged violations of the immigration laws in an attempt to intimidate migrant farmworkers and other immigrant workers. All too often the intimidation tactics are used to benefit employers....[C]onditions for the workers are abysmal. These conditions are enforced, in part, with the help of local police agencies.<sup>58</sup>

ii. Los Angeles Police Department's Special Order 40

While Congress deliberated, activists challenged and scholars argued the merits, practitioners took action. In 1979 after intense community pressure and a law suit for cooperating too closely with the INS, the Los Angeles City Council at the behest of Police Chief Daryl Gates issued a directive known as Special Order 40. It generally prevented any officer from questioning anyone about their immigration status or checking on it with the INS or turning suspects accused of minor crimes over to the INS. It did not apply to persons charged

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<sup>58</sup> Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," fn 37.

with serious crimes.<sup>59</sup>

The policy came as immigrants were inundating California and Latino activists were gaining political strength. Between 1971 and 1981 the estimated illegal alien population in the City of Los Angeles increased by 579% (from 190,000 to 1.1 million). Looking back at it years later Chief Daryl Gates said that it was time for the cops to get out of the immigration business. "This was not our responsibility, and all it did was get us into trouble," he recalled.<sup>60</sup>

### iii. Santa Ana Police Department Breaks with Border Patrol

By 1983 Santa Ana, California, located in Orange County just south of Los Angeles, had been undergoing a similar demographic transformation. The city's population in 1982 was 215,050 of which 45 percent were white and an equal percent Hispanic. The Police Department estimated there were between 50,000 and 80,000 illegal aliens occupying residences in Santa Ana. Police Chief Ray Davis arrived in 1973 and introduced innovations in policing that broke with the West Coast tradition of aloof professionalism. For him the police had to be willing to work with the residential and business communities, to win their trust and to respond to their concerns. The police were dependent upon the community not just for material support but for information that solved crimes. The police could not afford to alienate substantial portions of

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<sup>59</sup> Patrick J. McDonnell, "Law Could Alter Role of Police on Immigration," *Los Angeles Times*, Sept. 30 1996.

<sup>60</sup> McDonnell, "Law Could Alter Role of Police on Immigration."

their communities. He called his philosophy "community-oriented policing."<sup>61</sup>

Police Chief Ray Davis's philosophy eventually helped shape the larger community policing movement in the United States. In 1983 it was his redefinition of the relationship of his Department with the INS that drew immediate national attention. He sent immigration officials a letter critical of the tactics used by the INS to catch illegal aliens in Santa Ana. His community relations officer, Jose Vargas, who before his recent naturalization as a U.S. citizen had been deported eleven times as an illegal alien, had produced a report including photographs of federal immigration agents questioning people on bus benches and cruising residential neighborhoods in search of illegal aliens.

Immigration officials were outraged. Harold Ezell, a Reagan appointee who in the 1990s helped author California's Proposition 187, spoke for the INS. He was "appalled that a police officer would take pictures of a Federal officer in the line of duty."<sup>62</sup> Chief Davis saw it differently. Calling the tactics of the immigration agents "disruptive to the community" and "ineffective."

After a (residential) raid our department was swamped with phone calls reporting missing

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<sup>61</sup> Jerome H. Skolnick and David H. Bayley, *The New Blue Line: Police Innovation in Six American Cities* (New York: The Free Press, 1986).

<sup>62</sup> New York Times, "Coast City Spurns Action on Aliens," *The New York Times*, Sept. 11 1983, 1, 29.

relatives, kidnaps, and so forth. These raids are costly to Santa Ana taxpayers, and they don't accomplish a damn thing as far as illegal immigration is concerned...<sup>63</sup> I think a sham is being perpetrated on the public. The public needs to know about the waste of the taxpayer's dollar. The past efforts of the INS have not been productive and have merely disrupted our community. When you have arrested 1,000 illegal aliens, and 995 of them are right back within a couple of days, then it's time to start rethinking your policies.<sup>64</sup>

Chief Davis said his agency would continue to help the immigration service with cases involving federal offenses such as smuggling of aliens. But beyond that, he said, local police have no right. More importantly, "in order for the illegal aliens to trust us and report crimes, we can't be seen as an extension of the I.N.S." Officer Vargas put the situation this way:

We never invited the undocumented alien population to settle in our city but now that they have, we are going to work with them. You can't afford to have 25 percent of the population hostile toward the Police Department.<sup>65</sup>

The Chief said he believed strongly in the enforcement of the immigration laws but that it should be done at the border. There it would be more cost effective and less disruptive than residential raids. Two large Southern California newspapers in politically conservative Orange

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<sup>63</sup> Skolnick and Bayley, *The New Blue Line: Police Innovation in Six American Cities*, 34.

<sup>64</sup> New York Times, "Coast City Spurns Action on Aliens."

<sup>65</sup> New York Times, "Coast City Spurns Action on Aliens."

County agreed. Residential raids were too disruptive. The better strategy would be to control the border.<sup>66</sup>

It should be noted that at the time the border was not under control. In 1979 the government had constructed a 28 mile chain link fence along the border in El Paso at a cost of over \$1 million dollars. Gaping holes were quickly cut through it by illegal aliens. The fence became known derisively as the "Tortilla Curtain." In 1983 a law professor, Edwin Harwood, argued that the INS should give more emphasis to pre-entry deterrence and control at the border. He suggested that a high concrete and barbed wire fence be installed along urbanized portions of the border.<sup>67</sup>

In 1989 the INS floated a proposal to dig a four mile long ditch at the San Diego Tijuana border. Fourteen feet wide and five feet deep, its purpose would be to prevent illegal aliens from driving across the border.<sup>68</sup> An estimated 300 to 400 vehicles were crossing the San Diego border illegally every month. It was not dug. A chain link fence was installed at the San Deigo border but it too was cut through with large holes. It was not until Sylvestre Reyes initiated the

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<sup>66</sup> Skolnick and Bayley, *The New Blue Line: Police Innovation in Six American Cities*.

<sup>67</sup> Thomas W. Foster, "Implications of U.S. Border and Immigration Incidents for Federal and State Law Enforcement Agencies," *American Journal of Police* 8, no. 2 (1989): 109.

<sup>68</sup> Foster, "Implications of U.S. Border and Immigration Incidents for Federal and State Law Enforcement Agencies," 109; L. May, "Ditch to Halt Drugs, Mexican Immigrants," *The Plain Dealer*, Jan. 26 1989, 1; R. Berke, "Battle Over a Ditch Reflects Deep Tensions Along Border," *The New York Times*, Mar. 6 1989, 1.

blockade of the border in El Paso in 1993 that it was plausible to suggest that immigration control might be done effectively at the border.<sup>69</sup> Until then comments like Ray Davis's and the newspapers about shifting the emphasis to the border were mere polemics. They served to justify terminating a failed policy by replacing it with an policy that sounded plausible but was of unknown efficacy.

#### iv. Peoria (AZ) Police Department: Policy Adjustments

In other places the question of the role of the local police in enforcing immigration law was in flux during the 1980s. In the City of Peoria, Arizona, the Police Department changed its policy several times evidently due to confusion over the distinction between civil and criminal violations of the INA. In 1978 the Department first promulgated the policy that stated that "state law enforcement officers have the authority to make arrests for federal violations...[including] the authority to take illegal aliens into custody."<sup>70</sup> The next year the Department reversed itself and issued a memorandum directing that "at no time will any Illegal Alien be arrested because he is an Illegal Alien."<sup>71</sup> Three years later it reversed itself again. A new order permitted officers to detain persons suspected of illegal entry for a period "not to exceed twenty-four hours, with the

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<sup>69</sup> See Chapter 5.

<sup>70</sup> Quoted in Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," 1016.

<sup>71</sup> Quoted in Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," 1016.

exception of weekends."<sup>72</sup>

#### v. The Sanctuary Movement

During the 1980s another political force converged with the growing concern about discrimination against Latinos. Together they were responsible for removing the local police from immigration enforcement in certain jurisdictions. Protestors against America's involvement in the war in Central America and people dissatisfied with the American refugee policy began a sanctuary movement to protect the refugees fleeing the war. In many jurisdictions local governments imposed restrictions upon their police preventing them from certain forms of cooperation with the INS. Among the jurisdictions included were San Francisco, Oakland, Chicago, the state of Massachusetts and New York City. By 1994 twenty six cities reported their police did not inform INS of illegal immigrants who turn up in the course of routine law-enforcement activities.<sup>73</sup>

#### vi. Changes in Federal Preferences Regarding Police Enforcement

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<sup>72</sup> Quoted in Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," 1017.

<sup>73</sup> Peter Skerry, "Many Borders to Cross: Is Immigration the Exclusive Responsibility of the Federal Government?" *Publius: The Journal of Federalism*, no. 3, Summer 1995. In 1989 New York Mayor Edward Koch issued an executive order generally barring city employees from giving information about immigrant to the INS. McDonnell, "Law Could Alter Role of Police on Immigration."

The federal government vacillated during the 1970s and '80s regarding the involvement of state and local law enforcement in the enforcement of immigration law. According to Harold Ezell under the Carter administration there was a more "hands off" attitude among local police departments regarding illegal aliens. Under the Reagan administration the Department of Justice reversed that policy. In 1983 Attorney General William French Smith announced a new policy that called for "top priority to be given to apprehending illegal aliens through cooperation with state and local authorities."<sup>74</sup>

One scholar speculates that the Reagan administration's effort to get the local police more involved in immigration enforcement as tactic calculated to improve its standing with Hispanic voters. In 1983 there had been an overwhelmingly negative uproar over the INS's activities in California's Silicon Valley. The INS had had to back off its enforcement effort. Expanding the local police role in immigration enforcement would deflect some of the political criticism off of the federal government.<sup>75</sup>

## Restructuring in the 1990s

### i. The Border Czar's Efforts

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<sup>74</sup> Quoted in Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine," fn.6; New York Times, "Coast City Spurns Action on Aliens," 14.

<sup>75</sup> Renn, "State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine."

By the 1990s the local police in southern California had limited their policies regarding assisting with the enforcement of immigration law to such an extent that suspected illegal aliens were being turned loose by the police before the Border Patrol could respond. The San Diego Police Department's policy regarding the detention of alien suspects stopped on "reasonable suspicion" limited the detention to a maximum of 20 minutes. This troubled Alan Bersin, U.S. Attorney for the Southern District of California, whom the Attorney General had appointed as "border czar" to coordinate all efforts directed at controlling illegal immigration.<sup>76</sup> Up until Operation Gatekeeper began in 1994 the San Diego area was the main corridor through which illegal aliens coming from Mexico entered the United States. Nearly 25 percent of all apprehensions along the U.S. - Mexico border had been occurring in a five mile stretch along the San Diego - Tijuana border.<sup>77</sup> The Clinton administration was cracking down on illegal immigration. The number of Border Patrol officers in the San Diego sector had been increased but they still were unable to reach the scene of an apprehension by local police within 20 minutes most of the time. Illegal aliens were being released.

Bersin asked City and County authorities to consider expanding the permitted period of detention from 20 minutes to one hour. At the same time, he asked the Justice Department to

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<sup>76</sup> The idea for a border czar similar to the federal drug czar had been recommended as early as 1989. See Foster, "Implications of U.S. Border and Immigration Incidents for Federal and State Law Enforcement Agencies."

<sup>77</sup> U.S. Immigration and Naturalization Service, "Progress Reports: Operation Gatekeeper- Landmark Progress at the Border," in Welcome to Public Affairs <[http://www.ins.usdoj.gov/public\\_affairs/progress\\_reports/index.html](http://www.ins.usdoj.gov/public_affairs/progress_reports/index.html)>, 1710 1997.

prepare a legal opinion concerning the authority of state and local police in California to assist the INS in enforcing federal immigration law. The opinion stated that state and local police may constitutionally detain and arrest aliens who have violated the criminal provisions of the INA. But they lack legal authority to arrest or detain aliens solely for purposes of civil deportation proceedings as opposed to criminal prosecutions.

It advised that the circumstances under which police may stop, detain, or arrest suspected illegal aliens in vehicles could not be easily reduced to a clear set of rules. At a minimum reasonable suspicion based upon articulable facts suggesting the commission of a crime was required. More was required by one court. To establish the validity of arrests by local police of aliens suspected of two of the misdemeanor provisions of the INA (lack of alien registration documents and illegal entry) the police also had to have reason to believe that federal officials actually prosecute people for such violations. It further advised that local police could constitutionally detain alien suspects for up to 60 minutes in situations where such detention was necessary for Border Patrol officers to arrive and make the informed decision as to whether immigration law had been violated.

If local police transported a validly detained alien suspect to Border Patrol agents, it would normally require probable cause rather than mere reasonable suspicion. But, if the circumstances required the Border Patrol's assistance and it could be obtained more promptly by transporting the detainees to the Border Patrol than awaiting their arrival, the transportation would probably be sustained as valid under existing judicial interpretations. The opinion pointed

out that there already was statutory authority for the deputation of local police as Deputy United States Marshals. The procedure is commonly used when local police join federal-state law enforcement task forces. The mechanism had been used in August 1994 in Florida to authorize local police to enforce immigration law for a period of one year in order to deal with the potential mass immigration crisis there.<sup>78</sup>

Alan Bersin also proposed a plan to have local police ride as backups with the Border Patrol in the San Diego area to rapidly increase the size of the force in connection with Operation Gatekeeper. The plan was not implemented when Congress refused to authorize the use of discretionary funds for that purpose. Local police were ready and willing to hire on. When the plan was killed they continued to call into the INS asking about it.

## ii. San Diego Sheriff's Immigration Enforcement Policy

As of October 1, 1992 the San Diego Sheriff's Office had the following policy with respect to the enforcement of immigration related matters:

SHERIFF'S DEPUTIES have the legal right to arrest individuals for violation of federal criminal statutes involving illegal entry into the United States of America. Whenever an arrest and/or detention of illegal entrants into this country is made, it shall be made in accordance with Department policy as established herein.

Federal law governs legal and illegal immigration into the United States.

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<sup>78</sup> Office of Legal Counsel U.S. Department of Justice, *Assistance by California Police in Apprehending Illegal Aliens*, Memorandum for Alan D. Bersin from Teresa Wynn Roseborough (Washington, DC: Department of Justice, Feb. 5 1996).

State law dictates when a DEPUTY SHERIFF may or may not take action when encountering a suspected violation of federal immigration law.

The primary responsibility for the enforcement of immigration laws rests with federal authorities. Nonetheless, the Sheriff's Department has a responsibility to guarantee the safety and well-being of all people living within this county. The scope of this responsibility includes the enforcement of applicable federal and state statutes concerned with illegal immigration into the United States and the County of San Diego to ensure the safety and well-being of illegal immigrants, as well as the security of the residents of this county.

Stopping and/or detaining persons to check their documentation based upon the appearance of foreign ancestry alone is unlawful. The DEPUTY must be able to point to factors beyond the detainee's ancestry which would cause the DEPUTY to reasonably believe that the person IS in the country, or HAS entered the country, illegally.

When a person is contacted and is found to be in this country without proper documentation, he/SHE may be briefly detained for federal authorities. Transporting such a person to federal authorities without a free and voluntary consent, or detention for longer than a brief period, would likely be considered an arrest and not a simple detention; and therefore, would be unlawful.

If there is no reason to detain the person other than his/HER status as an undocumented alien, the duration of the brief detention will depend upon the circumstances; e.g., the distance from which the Border Patrol must respond, the strength of the evidence that the person is in fact in this country illegally, and the conditions and location of the detention. To date, there is no case or statutory authority to assist in this determination. However, detaining an undocumented alien for one hour OR LESS would not appear to be inappropriate.

"Unlawful entry" into the United States is a federal misdemeanor. DEPUTIES may not arrest for this offense unless it occurs in their presence. This offense continues to occur only between actual physical entry into the United States up until the time when the person has reached a place of "temporary safety."

A second unlawful entry after a previous arrest and deportation is a federal felony. Although this offense need not occur in the presence of the DEPUTY, the DEPUTY must still have probable cause to believe that the person has not only entered the country illegally, but was previously subjected to an arrest and deportation.

Mere presence in the United States without proper documentation is not in itself probable cause to believe the person has entered the country illegally and is a civil

offense only. Without probable cause, federal statutes are not enforceable by state authorities. There must be other evidence tending to indicate that an unlawful entry was made. However, DEPUTIES may make a reasonable detention of such individuals for federal authorities.

Most contacts between THE SHERIFF'S DEPARTMENT and undocumented aliens will involve either the DEPUTY having no probable cause to believe the person has entered the country illegally, or probable cause to believe that the person has violated the misdemeanor unlawful entry only, but not in the DEPUTY'S presence. In either case, the DEPUTY may only make a reasonable detention of the undocumented alien for responding federal authorities. A detainee who is transported by A SHERIFF'S DEPUTY without giving a free and voluntary consent to such transportation will likely be considered by the courts to have been unlawfully arrested.

Deputies may also discover persons, whether undocumented or not, in the process of smuggling, transporting or concealing undocumented aliens. THESE offenses are all felonies and the suspect may be arrested upon establishing probable cause, whether or not the offense occurs in the deputy's presence.

When an undocumented alien is arrested for a federal immigration violation and there are no outstanding state charges pending, the subject shall be delivered to the custody of the Border Patrol with the appropriate reports.

Section 11369 of the Health and Safety Code provides that the INS (or other appropriate agency) "shall" be notified of the arrest of anyone who "may" not be a citizen (whether in the country legally or not) and who is arrested for any one of eleven different narcotics related violations<sup>79</sup> (See addendum).<sup>80</sup>

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<sup>79</sup> San Diego Sheriff's Department, "6.47-Immigration Laws: Enforcement," in *Department Policies and Procedures* (San Diego County, CA: Author, 1992 (10/1)).

<sup>80</sup> ADDENDUM Enforceable Federal Immigration Statutes: Title 8, USC 1324(a)(1): Bringing Undocumented Aliens into the United States (Felony); Title 8, USC 1324(a)(2): Transporting of Undocumented Aliens (Felony); Title 8, USC 1324(a)(3): Concealing of Undocumented Aliens (Felony); Title 8, USC 1324(a)(4): Encouraging or Inducing Unlawful Entry into the United States (Felony); Title 8, USC 1325: Unlawful Entry of Undocumented Aliens (Misdemeanor); Title 8, USC 1326: Unlawful Entry of Undocumented Aliens (Felony); Title 8, USC 1327: Aiding or Assisting Subversive Alien to Enter the United States (Felony); Title 8, USC 1328: Importation of Alien for Immoral Purposes (Felony); Health and Safety Code Section 11369: When there is a reason to believe that any person arrested for violation of Section 11350, 11352, 11353, 11355, 11357, 11360, 11361, 111363, 11366, 11368 or 11550,

### iii. Santa Ana Police Department Policy Re Suspected Aliens

As of 1994 Santa Ana Police Department's policy with regard to dealing with undocumented aliens focused only on suspected aliens who had violated some criminal law or ordinance. The Policy Manual gives the following background:

This policy has been established to promote an environment of mutual cooperation between the Santa Ana Police Department and the United States Immigration and Naturalization Service in apprehension of undocumented immigrants involved in criminal activities. The procedural guidelines contained within this policy apply to misdemeanors and infraction offenders only, whenever circumstances dictate that the violator will not be booked in either the Santa Ana Detention Facility or Orange County Jail.<sup>81</sup>

Alien suspects apprehended for felonies or misdemeanors which represent a tangible threat to the safety and security of the community were to be processed as other suspects would be. Aliens apprehended for misdemeanors that did not represent a tangible threat could be processed in the conventional way, or, with the permission of the Watch Commander, could be referred to the INS. Aliens apprehended for infractions were to be processed "in the conventional way."<sup>82</sup>

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may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

<sup>81</sup> Paul M. (Chief) Walters, "Departmental Order No. 340: Disposition Procedures for Undocumented Immigrants," in *Department Policies and Procedures* (Santa Ana, CA: California. Santa Ana Police Department, 1994).

<sup>82</sup> Walters, "Departmental Order No. 340: Disposition Procedures for Undocumented Immigrants."

## The Restructuring That Has Not Happened

In border communities and other places with substantial Latino communities the local police had been stepping away from their role in illegal immigration enforcement for a decade. In the 1990s traditional destinations for Latino immigrants changed. Interior communities with less experience with illegal immigrants were beginning to face the associated problems of crime and disorder.<sup>83</sup> The problems themselves had become more serious in some places as Mexicans were increasingly involved in drug trafficking.<sup>84</sup> These communities needed to find ways to deal with illegal aliens and the criminality of immigrants. There were two possibilities. Local police could be authorized to enforce immigration law; and, the INS could provide better coverage. Both policies have been enacted. Senator Charles Grassley (R-Iowa), who in 1982 had introduced legislation that would have authorized local police to fully enforce immigration law, spearheaded both policies.

The new pattern of immigration was due in part to new employment opportunities for illegal aliens provided by the opening of large meat packing plants in several rural communities. These plants attracted many Latino workers. A 1998 General Accounting Office study which examined changes in the index crime rates between 1986 and 1995 in 19 counties with large meat packing plants in Nebraska (10 counties) and Iowa (9 counties) conveys some contours of

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<sup>83</sup> Associated Press, "More Illegal Immigrants Being Caught in Iowa."

<sup>84</sup> Richard A. Serrano, "Mexican Drug Cartels Target U.S. Heartland Crime," *Los Angeles Times*, Dec. 10 1997.

the problem. The level of serious crime rose above the state average in 9 of the 10 Nebraska counties and 5 of the 9 Iowa counties for the comparison periods. In Iowa the state average actually declined for the study period. Additionally, simple assaults and drug violations increased by several hundred percent.<sup>85</sup>

Local police chiefs reported that they had been trying to cope with the problem by increasing the size of forces, initiating language training for police officers, hiring translators, and recruiting bilingual officers. It was difficult to retain such officers because they were so much in demand. As for working with the INS, the report states:

...[S]everal officers we spoke with expressed frustration about their attempts to work with INS in order to deal with suspected illegal aliens. In particular, they said that they had difficulties in even contacting INS for assistance. For example, some police chiefs said the INS phone lines are so busy that they are often unable to contact the agency. In addition, some police chiefs noted that INS has not assisted in removing suspected illegal aliens from local jails unless there are more than a few in custody or unless they have committed a crime. The INS District Director responsible for Nebraska and Iowa said that INS had worked on upgrading its phone system and agreed that, at times, it does not have the resources to assist local law enforcement unless more than a few suspected

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<sup>85</sup> U.S. General Accounting Office, *Community Development: Changes In Nebraska's and Iowa's Counties With Large Meatpacking Plant Workforces*. The study does not have data on offenders and does attribute these increases to illegal aliens, immigrants or employees of the meat packing plants.

illegal aliens are in custody for questioning.<sup>86</sup>

Perry, Iowa, has a population of 7,000 and 11 police officers. Formerly crime involved minor disturbances, domestic assaults, drunk driving and some burglaries. In about 1993 the Iowa Beef Packing company opened a plant which employs about 1,000 people plus people hired by contractors to do the cleaning. Some of the workers are illegal aliens. The police have daily contact with them in traffic stops and other routine situations. Between 1994 and 1996 there were three criminal cases involving illegal aliens. The first was a drive-by shooting. The intended victim (who was not hit) was another Iowa Beef Packing alien who fled the jurisdiction and so there was no witness to testify. The second case was a domestic dispute where the defendant ended up burning down the house. The third case was a shoplifting. At first it was difficult for the Perry Police Department to get any support from the INS. The nearest office was located in Omaha, Nebraska. Then Perry got access to INS's new immigration record searching center (LESC) and things improved. According to Chief Brinkner, the key problem in dealing with illegal aliens is the lack of documentation and thus not being able to get positive identification as to who they really are.<sup>87</sup>

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<sup>86</sup> U.S. General Accounting Office, *Community Development: Changes In Nebraska's and Iowa's Counties With Large Meatpacking Plant Workforces*. See also U.S. General Accounting Office, *Criminal Aliens: INS's Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved*, GA0/T-GGD-97-154 (Washington, DC: Government Printing Office, 1997).

<sup>87</sup> Interview with Chief Dan Brinkner, June 30, 1996.

Haywarden, Iowa, has a population of 2,400, four police officers and two meat packing plants. It used to have an immigrant Latino community until 1994 when the INS raided the plants and deported 35 illegal workers. Then the Latinos moved to Sioux City. The plant buses them in daily. Haywarden Police have about six encounters per week with possibly illegal alien Latinos. The Police Chief thinks the illegal alien workers are probably no more criminally active than natives of similar age, class and gender. He also believes that the lack of documentation and not being able to establish the identity of illegal aliens is a critical problem; and that problem is made worse by the fact that the police do not have the authority to demand to see an the Alien Registration form which aliens are required to carry.

We would gladly take illegal aliens to Omaha (150 miles where the nearest INS office is located) if we could verify their status. But we are not authorized to do anything.

I've asked them, 'Are you a legal resident?'

They answer: 'I have a child.'

I ask them: 'Do you have proper identification?'

They say: 'I am working on it.'

I say: 'Why don't you do something about it. Get the proper papers.'

Sometimes they show up after being deported and claim they are not who they are, claim they are a cousin. There's nothing you can do. The police can not ask to see the Alien Registration card. We can ask for identification and if they show the Alien Registration card then we can look at it. But they don't have papers and documents.

They are not educated and can barely write their names. They print like in kindergarten.<sup>88</sup>

He recalls a couple of cases in which illegal aliens were suspects and fled. There was a hit and run killing of a girl by a Latino worker from the plant on his way home. He quickly disappeared and could not be found. The girl was the daughter of a state legislator which may have been related to why the INS raided the plant. But no one at the plant or caught in the raid gave any information about him. There was also an alleged rape involving an alien at the plant who absconded. No information could be gotten about him. The plant did not know who he was.

In 1996 two illegal aliens (a Mexican and a Guatemalan) killed a man at a party in town. There had been some drinking but nothing unusual. Fifteen people were present. A fight broke out between the man who rented the house and a friend of the murder victim who was killed while trying to keep others from joining the fight. The two Latinos were living in the house. They got knives from the kitchen and killed him. The victim was a long time resident who had gone to school with the Police Chief. The victim's parents and others asked the Chief why the police did arrest illegal aliens. He tried to explain but it did not sound very satisfactory.

After the murder people asked why I don't do anything about illegal aliens. They don't understand. 'A law is a law. Why don't you enforce it?' They say. It's difficult to tell

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<sup>88</sup> Interview March 21, 1996.

them that all you can do is call the INS and ask them to enforce it. You don't want to just sit around. I say, 'I've called the INS repeatedly. The INS cares but only wants the big ones. Can't swat one fly; have to wait until there's a whole bunch.'<sup>89</sup>

He told people that local police were not authorized to enforce immigration law. If they wanted to do anything about it, they should contact their elected representatives.

Senator Grassley (R-Iowa) planned to amend the immigration bill to have the Department of Justice train local police officers to be able to enforce immigration law in seven demonstration states: Iowa, South Carolina, South Dakota, Mississippi, New Hampshire West Virginia and Delaware. In addition he had been pressing the INS to open a field office in Iowa where where the illegal alien population rose from 2,100 to 3,000 between 1990 and 1992 according to agency estimates.<sup>90</sup> After the Haywarden murder he expanded his proposal to all states. The police in any state could be authorized to enforce immigration law and all states would get a minimum INS presence and special additional support when needed.<sup>91</sup>

In 1996 Congress enacted a broad gaged backlash against illegal immigration. The

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<sup>89</sup> Interview March 21, 1996.

<sup>90</sup> McCutcheon, "Nabbing Illegals in Iowa." The INS and Federation for American Immigration Reform, an immigration restrictionist organization, favored the proposal.

<sup>91</sup> Interview with Kolan Davis, Legislative Assistant, to Senator Charles Grassley, March 3, 1996.

reforms of the welfare and immigration laws contained provisions that permit local police to enforce immigration law. They have not succeeded in reversing the trend. Buried in the reform of the federal welfare law was a provision that was almost the equivalent of Proposition 187. It took a major step towards possibly negating the accomplishment of those who had succeed in restricting the cooperation of local police with the INS, an achievement which infuriated immigration restrictionists. State and local laws and policies barring public officials from communicating with the INS about aliens were expressly voided, as follows:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.<sup>92</sup>

Hence forth public employees including the police as well as teachers, physicians and social workers could report suspected illegal immigrants to the INS. The provision split Republicans. California Governor Pete Wilson approved it and ordered state agencies to comply as soon as possible. New York Mayor Rudolph Giuliani condemned it and threatened to sue. Los Angeles Mayor Richard Riordan, was leery. He asked the City Attorney to review its possible impact. "I have a big problem making schools and local police departments the ones who are responsible for policing illegal immigration," he said.<sup>93</sup> He was urged by pro-immigrant

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<sup>92</sup> The Personal Responsibility and Work Opportunity Act (Welfare Reform Act of 1996) P.L. 104-193, Title IV, Sec. 434. Aug. 22, 1996. 8 U.S.C.A. § 1644).

<sup>93</sup> McDonnell, "Law Could Alter Role of Police on Immigration."

activists to join in the lawsuit that Giuliani was planning. A spokesman for the Los Angeles Police Department stated that LAPD had no plans to alter their policy, which was Special Order 40 promulgated in 1979 by Chief Daryl Gates.<sup>94</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also contained a provision directed at reversing the distancing of local police from immigration enforcement. It authorized the Attorney General to enter into agreements with state and local governments whereby their officers could perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens including transporting them across state lines to detention centers.<sup>95</sup>

The revised welfare law was less of a victory for restrictionists than it seemed. It does not require public officials to communicate with the INS; nor does it require that the police arrest or detain suspected illegal aliens or to notify the INS when they are encountered. Moreover, it contains no enforcement mechanism. So it is not likely to result in reversals of policy although it has had some consequences.

In December 1996 the Public Safety Committee of the Los Angeles City Council ordered the Police Department to reexamine Special Order 40, its 17-year-old policy prohibiting police

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<sup>94</sup> McDonnell, "Law Could Alter Role of Police on Immigration."

<sup>95</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996. P.L. 104-208. Sept. 30, 1996. 8 U.S.C. 1357 § 287(g).

officers from asking suspects about their immigrant status, turning over minor offenders to the INS or communicating suspicions to the INS. The Los Angeles Times had run a series on the 18<sup>th</sup> Street gang, the region's largest and geographically most dispersed. The gang was spread across the state and even international borders. Law enforcement agencies had not always cooperated well to combat the gang, failing to share information or work together according to the series.

The Public Safety Committee held a session to find ways to improve the law enforcement response. Immigration policy was quickly seen as a possibility. A California Department of Justice report had estimated that of the estimated 20,000 members of the gang in Southern California 60% were illegal aliens. LAPD Deputy Chief, John White, said that reopening the discussion of Special Order 40 was "going to open a significant, heated debate." He reported that some immigrants join gangs for their own protection and that Special Order 40 hinders LAPD's ability to cooperate with the INS on investigations and enforcement. "That becomes a major problem," he said.<sup>96</sup> LAPD officials were told to seek a thoughtful review of the policy and to report to the Council. As of June 25, 1999, Special Order 40 has not been changed.

In March 1997 a federal court ruled that the Congressional reforms of the welfare and immigration laws did not give the state of California the authority to implement Proposition 187. Governor Wilson had attempted to implement the provisions of Proposition 187 that would have

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<sup>96</sup> Robert J. Lopez and Rich Connell, "Police Told to Review Rule on Immigrants," *Los Angeles Times*, Dec. 17 1996.

meant much close cooperation between local police and the INS including reporting to the INS all suspected illegal aliens. But the court held that Proposition 187 was an illegal state scheme to regulate immigration effectively preventing the Congressional reforms from having their intended results.<sup>97</sup>

The reforms did achieve one small victory. In August, 1998 a county employee who had been fired for reporting an illegal immigrant to the INS won her job back. An independent arbitrator ordered officials of a central California county to reinstate with full pay back pay a clerical worker in the family support division who was fired for violating privacy rules. She had alerted the Border Patrol when an illegal alien came to her office for an appointment about being behind in his child support payments. He also was a convicted heroin smuggler.<sup>98</sup>

In rendering his decision the veteran arbitrator wrote: "It is difficult for the average person to comprehend that the chief law enforcement office in the county instructs its employees to ignore criminal behavior they observe."<sup>99</sup> Immigration control advocates were buoyed by the decision, hoping that it might serve to increase cooperation between particularly the police and the INS. "For too long, state agencies have served to obstruct and neglect their proper roles in

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<sup>97</sup> Patrick J. McDonnell, "Judge Upholds Curbs on Police-INS Cooperation," *Los Angeles Times*, March 4 1997.

<sup>98</sup> Partrick J. McDonnell, "Calif. Worker Fired for Turning in Illegal Immigrant Is Reinstated," *The Washington Post*, Aug. 16 1998, A6.

<sup>99</sup> McDonnell, "Calif. Worker Fired for Turning in Illegal Immigrant Is Reinstated."

assisting federal agencies that carry out immigration law enforcement," said Dan Stein, executive director of the Federation for American Immigration Reform, an immigration control advocacy group that paid the legal fees for the reinstated worker.<sup>100</sup>

The provision in the immigration law allowing local communities to have their police authorized to enforce immigration law has achieved virtually no successes. Three jurisdictions have expressed interest in having their police so authorized but as of June 25, 1999 none have had it done. In March 1997 the City Council of Orange City, California voted to explore the possibility of having its police authorized to enforce immigration law.

The idea was advanced as an additional tool for the police to use in dealing with the resurgence of gang activity by illegal aliens. It was opposed by an official of the League of United Latin American Citizens who warned: "This is going to destroy whatever trust was built between law enforcement and immigrant communities over the last 20 years....The need to work together right now to fight crime is essential." The Chief of Police worried about the training costs involved in learning immigration law. The mayor stated that the city was having a hard time getting the details as to how to get the authorization.<sup>101</sup> Orange City was one of several cities in Orange County that considered requesting that their police be authorized to enforce immigration law.

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<sup>100</sup> McDonnell, "Calif. Worker Fired for Turning in Illegal Immigrant Is Reinstated."

<sup>101</sup> Lesley Wright, "Police Urged to Explore Immigration Duties," *Los Angeles Times*, March 5 1997.

By June 1998 Salt Lake City, Utah, Police Department expressed interest in being authorized to enforcement the law. The growing rates of crime among a rapidly increasing illegal immigrant community had prompted the initiative. But after public hearings in which minorities reported their anger at the experiences of being stopped and questioned about their citizenship and expressed deep fears about the likelihood of increased harassment, the city leaders voted against pursuing the authorization.<sup>102</sup>

In April 1999 the Mayor of Douglas Arizona requested the U.S. Justice Department to authorize his local police to enforce immigration law.<sup>103</sup> With the border blockades in San Diego and El Paso, Douglas had become route to which the flow of illegal immigrants was diverted. A flood of them were moving through the area. Farmers complained that the federal government had failed to control the situations. They began arming themselves and, in the name of protecting private property, patrolled their lands looking for illegal immigrants and holding them at gun point until the Border Patrol responded. Some of them wore military-style fatigues with a "Ranch Patrol" insignia. Dozens of groups of illegals were being detained.. The mayor worried that an international incident was going to happen.<sup>104</sup>

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<sup>102</sup> Amy Donaldson, "Salt Lake Crime Declined Again In 1997," *Deseret News (Salt Lake City)*, May 18 1998; Claudia Kolker, "Complexity, Speed of '96 Immigration Reform Leave Turmoil in Wake," *Houston Chronicle (Archives)*, March 22 1998, A 33.

<sup>103</sup> Arthur H. Rotstein, "Douglas Mayor Finally Gets Response Promising INS Help," *Associated Press*, May 17 1999.

<sup>104</sup> Vincent J. Schodolski, "Ranchers Round Up Immigrants: What Border Patrol Doesn't Do, Locals Do," *Chicago Tribune*, May 12 1999.

The Chief of Police in Haywarden, Iowa frankly admits that he is not sure about what the policy should be. On the one hand he thinks Senator Grassley's proposal to give local jurisdictions the option of enforcing the immigration law is good.

If a town has a problem and wants to address it, then it should be able to. If [it] has a problem it needs to act. After the murder [in Haywarden] people almost formed a vigilante movement. Anyone looking Hispanic was yelled at. Even an Indian kid got yelled at from a carload, 'get out of town spic.' I don't want any witch hunt. [But] there are dangers to authorizing police to enforce immigration laws. There are some people who should not be in police work.<sup>105</sup>

Similarly Chief Brinkner expressed reservations about getting involved in enforcing immigration law:

I'm not sure I'd want to get involved in policing illegal immigrants. I don't know about the deportation process and immigration law; and I can't say what the practical consequences of police getting involved in that kind of enforcement would be. Also there are the political problems. I guess it would be a problem with our Hispanic community. I am not sure what to do.<sup>106</sup>

#### The Quasi Exception: Dalton (GA) Police's Immigration Task Force

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<sup>105</sup> Interview March 21, 1996.

<sup>106</sup> Interview June 30, 1996.

Dalton, Georgia is a prosperous town of 23,000 people in Whitfield County, total population 85,000. The Dalton area is known as the "carpet capital of the world." The local carpet manufacturing plants employ 65,000 people. Between 30 and 40 percent of their workforce come from outside the county. The carpet manufacturers pay high wages (\$10 to \$12/hour). Other employers like McDonalds and Home Depot are forced to pay high wages (\$8 to \$9/hour) and still have a hard time getting workers. About 10 years ago a poultry processing plant moved into the area and found labor too expensive. It began hiring Hispanic migrant workers from Texas and Mexico. Since then there has been a growing influx of Latinos and their families, many of them illegal aliens. In the classic immigrant pattern, they have become the object of animosity because they are taking over many jobs once held by life long local residents. Many employers hire them. In one case the INS has evidence of an owner/manager of a plant ordering the delivery of illegal aliens by an alien smuggling group.<sup>107</sup>

So far there have been no known anti-immigrant attacks, but there has been a "public outcry" about the situation. Police Chief James Chadwick classifies the nature of the public concern into three categories: crime, jobs and culture. All three were the source of pressures on city and county officials to do something about the situation. Their response was to create a partnership with the INS which they like to boast is the only one of its kind and which INS officials hope might become a model for other jurisdictions.

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<sup>107</sup> Interviews with Chief Chadwick July 9, 1999; Officer Howard, July 8, 1999; INS Field Operations Supervisor, Riley, July 7, 1999; Associate Press Reporter, Lori Johnston, July 7, 1999.

With the arrival of the Latinos there was a steady build up of tensions with the local people and violations of laws. Most of the complaints and violations were about relatively minor matters. According to Chief Chadwick by 1995 the police blotter was filled with daily entries of Latinos involved in driving without a license; drunk driving; driving without insurance; leaving the scene of accidents; fights at the clubs that cater to them and shopliftings. There had also been lots of calls to the police about cultural differences: goats in the backyard; or 30 people at a loud part into the late night. The culture shock was particularly upsetting to elderly people who were retired and lived in an modest old section of town where investors were buying houses and renting them to the immigrants.

“I had many elderly people in my office crying that they had worked hard all their lives to own their home and now this Hispanic family moves in next door and it looks like there are forty of them living in there. And they are peeing off the front porches and drinking and making all kinds of noise,” says Chief James Chadwick. Another concern is one that has happened in other localities where young male foreigners begin showing up in substantial numbers. “I don’t know how many women have come in and said that they saw some young Hispanic males pointing at them and laughing and talking to each other in Spanish. The women feel insulted and unsafe. An elderly lady came in and said they yelled at her.”<sup>108</sup> In addition there were many calls about aliens taking jobs away from the locals. People would call in and say “they are hiring illegals down here.” Not uncommonly the caller said that he had been laid off and an alien hired at a

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<sup>108</sup> Interview Chadwick, July 9, 1999.

lower wage.

The Dalton area had gone for many years without any murders. Then in 1993-94 there were two. In both the suspects and victims were all Latinos.<sup>109</sup> People had been asking the police why they or the federal government did not do something about the immigrants. "There were some people who wanted us to go out there with buses and take them all back to Mexico," says Chief Chadwick. The pressure was intense. After the murders the Chief began wondering about what might be done. By chance he met an INS official at a regional law enforcement conference and the two of them began putting together a plan. In July 1995 the Chief, the Mayor and the County Commissioners agreed that they had to do something.

When the INS declined their request to open a local field office on the grounds that it did not have the funds, the City and County officials proposed to pay for it themselves. They pledged \$200,000 and requested only that the INS staff it part time. It began operations in September 1995 with two Dalton police agents, a bilingual secretary and two INS investigative agents who worked there two or three days a week. The office is located in Criminal Investigations Division of the Dalton Police.<sup>110</sup> It is going to be designated as one of the cites for an INS Quick Response Team and is expected to get five INS agents assigned to it full time.

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<sup>109</sup> There have been two more since, again, all involved were Latinos.

<sup>110</sup> The Sheriff's Office agreed that the problem was mostly in the City of Dalton and therefore it was more sensible to locate the office there even though the County was paying half the expense.

Meanwhile local officials take pride in the fact that they did not point fingers at the federal government and wait for it to solve their problem. In their press releases they mention that they are the only locally funded law enforcement immigrant task force in the country.<sup>111</sup>

The Task Force has two official purposes: to target illegal criminal aliens for deportation and to educate employers so they can identify fraudulent documents. As of March 1999 the force had placed about 975 illegal immigrants in deportation proceedings, resulting from six plant raids, several roundups and criminal activity. The force reviewed probation files and found about 80 people eligible for deportation as criminal aliens. Many of them were legal permanent residents. They rounded them up in course of three days.

It has taken down alien smugglers and a man pretending to be an attorney who was selling false documents to aliens at \$5,000 per document. In that case the Dalton Police received \$115,000 in forfeited cash seized from the defendant's hotel room and safe. The force has conducted many classes with employers on identifying fraudulent documents. The majority of employers have been cooperative, but some have been difficult.

The two Dalton Police agents on task force have been deputized by the U.S. Marshal Service. They limited jurisdiction to enforce federal law. They have accompanied the INS to serve federal warrants and have even accompanied them on one out of state operation. They

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<sup>111</sup> See e.g. Johnston, "Balancing Law, Job Market an Immigration Dilemma."

have not been authorized to enforce immigration law under the provisions of the 1996 immigration law.

Chief Chadwick says they are "very, very careful to check with the INS" before using their federal enforcement powers. He is reluctant to be authorized to enforce immigration law because it is so complicated. As far as he is concerned it is not necessary because illegal aliens provide plenty of opportunity for law enforcement to deal with them under state criminal law and his task force is only interested in criminal aliens. He says his unit has been "extremely aware" of the limits of their authority to deal with aliens and have resisted pressures for all out sweeps of the Hispanic workers.

The Dalton Police seem to be restrained in their approach to the immigrants by their clear understanding of their role as buffer between the employers' demands for labor and the local resident's demand for job and personal security as well as preservation of their way of life. They have adopted the INS's strategy for dealing with the inherently contradictory demands in the situation. They want to respond to the cries from citizens but they do not want to do anything that would seriously disturb the local economy.

There are no local pro-immigrant or Mexican American defense groups challenging them. Indeed the Dalton police have received favorable comment in the local Hispanic newspaper. What keeps them from more aggressive enforcement (aside from possible worries about legality) is a strong economy with low unemployment rates and an acceptance of the employers need for

cheap labor. By focusing on criminal aliens rather than all illegal aliens they and the INS are able to take some enforcement actions which have heavy symbolic value without seriously disrupting the labor market.

The task force receives about 5 to 6 calls a day. The typical complaint is: "The Hispanics are taking over this plant;" or "They are only hiring Hispanics here." Usually the calls come in waves. If one person calls in about losing his job to an alien, he will get his friends to call in as well. By arresting criminal aliens the task force reduces some of the job competition and is being at least partially to that demand from local residents. But force members are aware that there are limits to how many aliens can be removed. "A lot more production is made because of the increased manpower," says force member, Detective Mike Wilson. "They are hard workers, and they fill a lot of voids that are in the industry up here."<sup>112</sup>

When the labor market is tight the enforcement of immigration law in the interior of the country becomes politically untenable. Many examples could be cited. At the height of the 1998 picking season in Vidalia, Georgia, home of the famous Vidalia onion a \$90 million crop, the INS was forced to call off an enforcement operation when local politicians objected to its impact on the economy. About half of the 10,000 migrants who harvest the crop are illegal aliens. Within hours after the operation began local politicians began criticizing it and had a strongly critical letter from their representatives, politicians who had voted for tougher immigration

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<sup>112</sup> Johnston, "Balancing Law, Job Market an Immigration Dilemma."

controls, sent to the secretaries of the federal departments of Labor, Agriculture and Justice.<sup>113</sup>

The INS agreed to let the farmers police themselves and has moved away from its practice of large-scale raids at workplaces.<sup>114</sup>

The Dalton police recognize the dilemma of immigration enforcement policy. On the one hand, they see that if the government cracked down in a major way on the illegal workers it would cripple the local economy. On the other hand, they have little confidence in the effectiveness of deporting criminal aliens. "We know they'll come back. Some of them say, 'Let's hurry up and get this over so I can get back to my job,'" says task force officer, Jeff Howard. He says that they tell the deportees that if they come back they can be sentenced to long terms in federal prison. But both he and Chief Chadwick have little confidence in the deterrent value of this enhanced penalty. The Chief asks:

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<sup>113</sup> The letter read:

"The apparent lack of regard for farmers in this situation and the intimidation tactics being employed by federal officials are completely unacceptable."

"Your decision to ignore every available warning sign has led to the current situation, which threatens one of Georgia's most famous and economically valuable crops, Vidalia onions."

It was signed by five Georgia representatives: U.S. Rep. Saxby Chambliss, R-8th; U.S. Rep. Sanford Bishop, D-2nd; U.S. Rep. Jack Kingston, R-1st; Sens. Paul Coverdell and Max Cleland; plus, U.S. Reps. Richard Pombo of California, and Gerald Solomon and James Walsh of New York. Lori Henson, "Debate Begins to Fix Migrant Problems: Agreement Is Short-Term Solution to Longtime Headache," *Savannah Morning News*, May 20 1998.

<sup>114</sup> Douglas Holt, "INS Is Scaling Back Its Workplace Raids," *Chicago Tribune*, Jan. 17 1999; Lori Henson, "Onion Farmers, INS to Negotiate Migrant Agreement" (1998); Associated Press, "Vidalia Growers Dropped Emergency Appeal," *The Associated Press*, June 2 1998.

How you going to deter these people? The ones around here are illiterate. They speak different dialects from different countries. Our interpreters can't even understand them. They have never lived in a house with a floor. They had dirt floors all their lives and never had indoor plumbing. How do you expect to deter them from coming back to jobs that pay them more than they have ever earned?<sup>115</sup>

So what does the Chief think he is accomplishing with his Immigration Task Force?

We're looking for displacement. We are looking out for Dalton. All I can say is that the problem is too big for us in Dalton to solve. It's unfortunate that that means its every city against every other city. But remember. Police chiefs are chosen by their communities to solve their problems. They are not paying to solve someone else's problems.

We took some hefty people off the street, the Atlanta attorney, the false document vendors and alien smugglers.

Is it perfect? No. Far from it. But nobody's got a better idea.<sup>116</sup>

#### Keeping the Border Patrol Out of Criminal Law Enforcement

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<sup>115</sup> Interview Chadwick July 9,1999.

<sup>116</sup> Interview Chadwick July 9, 1999.

The attempt by immigration restrictionists to close the gap between local police and the INS and Border Patrol has focused solely upon one side of the coin, getting local police to enforce immigration law. The other side would be to authorize federal immigration officials to enforce of state criminal law. This issue arose in Texas after the 1998 killing of two Border Patrol officers who had responded to a request for back up from Cameron County Sheriff's deputies who were pursuing a suspect in a double murder.

The suspect was the son of a Harlingen police officer. The father refused to let the two Border Patrol officers enter the house to make an arrest knowing that they did not have the authority to arrest in state homicide cases. The son who was high on drugs and hiding in a nearby cornfield ambushed the Border Patrol officers.

Legislation was introduced in the Texas Senate that would add the Border Patrol to the dozen federal agencies authorized to enforce Texas felony laws. Supporters speculated that the slaying might not have happened if the Patrol officers had had the authority to make felony arrests. More broadly they noted that local police and the Border Patrol routinely provide back up and assistance to each other when needed. In some remote areas the Border Patrol are the only law enforcement presence for miles and are sometimes called upon to intervene in urgent criminal matters. Some Patrol officers argued that if they did not arrest powers they should not be called upon for assistance. Farmers living near the border wanted the additional protection

from bandits who were stealing cattle and property.<sup>117</sup>

On the other hand, the perennial complaint about harassment was voiced by groups like the Mexican American Legal Defense and Education Fund and the League of United Latin American Citizens. They asserted that Border Patrol agents already abuse their powers and harass people about their immigration status. These experiences were even more common than ever because of the recent blockade and increased size of the Border Patrol along the Brownsville- McAllen-Laredo border areas. They described the situation as a "police state" where Mexican looking people were being stopped constantly and forced to prove their right to be in the country. The initiative died in committee when the chair could not get the support of the four senators from the districts along the border.<sup>118</sup>

#### IV. The New Local, State and Federal Partnership

##### Joint Task Forces

##### i. Overcoming Jurisdictional Borders

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<sup>117</sup> Melissa Prentice, "Border Patrol Measure Hits Snag," *San Antonio Express-News Austin Bureau*, April 8 1999.

<sup>118</sup> Pinker James Ton, "Controversy Brews Over New Bills Expanding Power of Border Patrol," *Houston Chronicle (Rio Grande Valley Bureau)*, April 2 1999. Ton 19990402; Prentice 19990408; Dailey 19990331; Prentice 19990318}.

Butch Cassidy and the Sundance Kid realized long before American legal reformers and law enforcers that the fragmentation of American law enforcement into thousands of agencies restricted to fighting crime to their local jurisdictions created a world of impunity for criminals willing to cross borders. This gap was partially covered when federal law enforcement agencies particularly the FBI were established and states agreed to apprehend and return criminals wanted in other states.<sup>119</sup> Even with these developments, however, the social organization of American law enforcement was less than efficient.

Organized criminals configured their operations to take advantage of the fragmentation of law enforcement, locating parts of their enterprises in different city, county and state locations. They operated in a borderless world. But law enforcement agencies were hemmed in by geographic and substantive borders. The local police would know that the crime in their neighborhood was run by gangsters outside the neighborhood but lacked the jurisdiction, resources or incentives to pursue it. The federal law enforcement agencies had certain jurisdictional authority and greater resources but could benefit from the resources of the local police.

It was not until the late 1960s as the drug problem spread that the idea of pooling federal, state and local law enforcement agents together onto joint task forces started to become a widely promoted law enforcement innovation. Since then the joint task force has become the modern

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<sup>119</sup> Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: The Pennsylvania State University Press, 1993).

means for trying to overcome the obstacles to effective law enforcement created by the 19<sup>th</sup> century concepts of crime and police that shaped the organization and authority of American law enforcement agencies. These task forces combine federal jurisdictional authority, expertise and resources with state and local law enforcement manpower, skills, knowledge of the local community and jurisdiction over criminal matters. Hundreds of them have been established integrating law enforcement units in various combinations.<sup>120</sup>

ii. Organized Crime Drug Enforcement Task Force

In 1982 the Organized Crime Drug Enforcement Task Force (OCDETF) was created to conduct a comprehensive, multiagency attack on drug-related and money laundering activities. A working group composed of high-level representatives of the participating federal agencies and officials was established to clarify policy and resolve issues.<sup>121</sup> There are 13 task forces

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<sup>120</sup> N. E. Jones and G. A. Holden, "States Expand Crime Prevention and Law Enforcement Efforts," *Intergovernmental Perspective* 19, no. 2 (Spring 1993): 32-35; U.S. Congress. House. Subcommittee on Crime, *Department of Justice Regional Task Forces*, Hearings. Dec. 9 (Washington, DC: Government Printing Office, 1982); P. A. Reidinger and M. D. Cashio, "Multi-Agency Cooperation Leads to Drug Interdiction Along the Southwest Border," *Police Chief* 59, no. 10 (Oct. 1992): 68, 70, 72, 77-78; D Shur, "Safe Streets: Combining Resources To Address Violent Crime," *FBI Law Enforcement Bulletin* 64, no. 4 (April 1995): 1-8; U.S. General Accounting Office, *War on Drugs: Federal Assistance to State and Local Drug Enforcement*, GAO/GGD-93-86 (Washington, DC: Author, 1993); Thomas A. Constantine, "Organized Crime: The New York State Police Response," *Police Chief* 55, no. 1 (Jan. 1988): 36-37, 43.

<sup>121</sup> As of 1988 the nine participating agencies and officials were: the DEA; the FBI; the INS; the U.S. Attorneys; the U.S. Marshals Service; the U.S. Coast Guard; the Bureau of Alcohol, Tobacco, and Firearms; the IRS; and the U.S. Customs Service.

located throughout the country. Each has unique geographic boundaries and a major city.

In 1988 due to a reported dramatic rise in serious crimes committed by foreign-born individuals.<sup>122</sup> Congress directed the INS to participate in OCDETF and to establish a pilot project that was to be used exclusively to assist federal, state, and local law enforcement agencies in combating illegal alien involvement in drug trafficking and crimes of violence.<sup>123</sup> The INS selected four pilot cities -- Miami, New York, Houston, and Los Angeles -- on the basis of the seriousness of the local drug and criminal alien problems. The INS's level of effort was highest in the four pilot cities but it carried out OCDETF activities in all of its 33 district offices.

As part of a larger inquiry into reported problems in the quality of cooperation between state, local and federal law enforcement agencies in 1984, the Select Committee On Narcotics Abuse and Control sent questionnaires to 100 local agencies. They were asked to evaluate the cooperation and assistance received from the various Federal Task Forces on Crime. They evaluated each agency with respect to six functions from which an index was derived based on the number of favorable and unfavorable responses. A score of 100 represented all favorable responses and a score of 0 would represent all unfavorable responses. Only 29 responses were useable. Of eleven comparisons the INS ranked last with a score of 30. The Coast Guard and the

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<sup>122</sup> U.S. General Accounting Office, *Immigration and Naturalization Service (INS) Drug Task Force Activities: Federal Agencies Supportive of INS Efforts*, GAO/GGD-94-143 (Washington, DC: Author, 1994), 4.

<sup>123</sup> Anti-Drug Abuse Act of 1988, Section 6151 (b).

DEA were ranked as the most cooperative, followed closely by the Customs Service, the DEA/State/Local Task Forces and the Bureau of Alcohol, Tobacco and Firearms with scores of 93; 87; 83; 82; 81, respectively.<sup>124</sup>

As of January 1994, INS was involved in 257 OCDETF investigations: 27 as lead agency, 68 as co-lead agency, and 162 as an assisting agency.<sup>125</sup> The INS also participates in the Violent Gang Task Force and the Organized Crime Strike Force and the Joint Terrorism Task Force. The Violent Gang Task Force was formed in 1992 and worked with police in 16 cities to combat the growth of "alien gangs," such as the predominantly Latino 18<sup>th</sup> Streeters in Los Angeles and Southern California believed to have more than 20,000 members 60 per cent estimated to be illegal aliens. The Task Force was designed to make available to local police the deportation powers of the INS for fighting urban crime. Instead of waiting to deport alien criminals until after they have been arrested, convicted and served their sentences, the Task Force targeted criminal aliens who are members of violent gangs and could be deported based on their prior records. The 1996 immigration law changes broadening the definition of "aggravated felon" and making the law applicable retroactively to crimes committed before the law was passed as well as limiting judicial review of the deportation of criminal aliens greatly enhanced

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<sup>124</sup> U.S. Congress. House. Select Committee on Narcotics Abuse and Control, *South Florida Local Law Enforcement Conference*, 71..

<sup>125</sup> U.S. General Accounting Office, *Immigration and Naturalization Service (INS) Drug Task Force Activities: Federal Agencies Supportive of INS Efforts*, 7. An evaluation of the pilot's effectiveness including an assessment by federal, state, and local prosecutors and enforcement was drafted in 1992 but was not available in final form at the time of the GAO report in March 1994.

the power of this strategy. Criminal aliens could be deported using administrative warrants issued by the INS rather than upon new criminal charges.<sup>126</sup>

iii Some Local Task Forces: Lynn (MA) and Baltimore (MD)

In 1983 the Essex County (Massachusetts) District Attorney established the Lynn Drug Task Force to deal with drug trafficking and related crimes and disorder. The task force consisted of a few city and state police. It coordinated efforts with federal agencies including the INS. The task force concentrated enforcement pressure on first-line drug dealers and buyers using street surveillance, informants, search warrants, and information provided by citizen hot lines.

An outside evaluation concluded that the task force had been "spectacularly" successful. There had been an immediate and dramatic decrease in street-leveling drug dealing; and residents and business people reported a significant improvement in conditions in the neighborhoods. Burglaries were down 41% and robberies down 35%. The evaluators said it was the most successful crime-control project of the many they had been associated with. The report singled out the INS as particularly valuable to the success.

The most important source of external help was the Immigration and Naturalization Service, which was aggressive in arranging for the deportation of non-citizen drug traffickers. Det. Sgt. John LeBrasseur of the Lynn Police Department

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<sup>126</sup> William Branigin, "INS Pursuing Aliens in Urban Gangs: New Immigration Law Aids Agents in Drive to Put Criminals Out of the Country," *The Washington Post*, May 2 1997.

estimates that there were thirteen significant heroin dealers in Lynn when the Task Force was created. Of those, four had been deported by late spring.<sup>127</sup>

Some joint efforts are limited to one night efforts to track down and arrest criminal aliens and harken back to the tactics of the New York Police Department's Alien Bureau. In the Baltimore, Maryland area 17 INS agents and 4 county police; targeted 20 men by checking court and immigration records against names and faces known to county police.<sup>128</sup>

#### Expedited Removal of Criminal Aliens (LESC)

The INS has launched two major initiatives addressing criminal aliens: the Institutional Hearing Program (IHP) and the Law Enforcement Support Center (LESC). The former is a key component of the federal effort to streamline the deportation process. It closes the gap through which immigrants in state and local custody were released before their immigration status could be determined and deportation initiated. Once released illegal immigrants disappear, move and often get new identification papers with different names. Finding them again in order to enforce final orders of deportation is maddeningly inefficient. Nationally 83,793 deportation orders were issued to illegal immigrants who were not in prison in 1995. Of those 44.5 percent -- or 37,246 -

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<sup>127</sup> Mark A. R. Kleiman, et al., "Report to the District Attorney for Essex County: Evaluation of the Lynn Drug Task Force," Cited in CJ Abstracts. Unpublished report. Program in Criminal Justice Policy and Management, Kennedy School of Government, Harvard University (Cambridge, MA, Oct. 24 1984), 7.

<sup>128</sup> {Constable 1995219}.

- were issued for immigrants who could not be found.<sup>129</sup> With the IHP Program the deportation hearing process is conducted before the immigrant leaves the custody of the state or local facility thereby ensuring his availability for removal. In addition, with the newly available federal money, after raids of workplaces that net illegal workers INS officials were keeping suspects in jail at a cost of \$60/day by setting high bail.

In the past one of the obstacles to more efficient deportation of immigrant prisoners was the fact that they were housed in various locations, spreading immigration agency resources pretty thin. Now in jurisdictions like Texas which has 65 prison and treatment facilities widely dispersed, the INS is constructing a permanent on-site processing facility through which the Texas Department of Criminal Justice has agreed to process all foreign born offenders for a determination of their alien status and at which all immigration hearings will be held (consolidating into one place what used to be done in several locations).

In addition the INS has given its deportation policy an almost exclusive emphasis on crime. That is, it has made criminality its highest priority grounds for deportation. The impact of these changes is evident in the numbers. Between January 1993 through July 1996 the INS removed 113,000 criminal aliens, roughly twice the number in the previous four years. In 1997

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<sup>129</sup> Charles W. Hall, "INS Has a Hard Time Deporting Illegal Immigrants It Can't Find," *The Washington Post*, March 3 1996, B1, B3.

it removed 63,000 illegal aliens and expect to remove 93,000 more in 1998.<sup>130</sup>

INS's LESC program is also intended to improve the efficiency of the expulsion process. Its target is the front end of the system where law enforcement first comes in contact with criminal aliens in the course of routine policework. The objective is to provide local law enforcement with the capacity to quickly determine the immigration status of suspects so that criminal aliens can be readily identified and removed. One aspect of this is the comparatively straightforward matter of developing a "flagging" system whereby the criminal records of individuals who have been deported would be marked. But other aspects are more complex and can not be reduced to a simple entry on a computer record. Rather the determination of immigration status and possible deportability requires the judgment of officials knowledgeable in the arcane distinctions of immigration law and experienced at interpreting immigration files, which are not yet accessible by electronic processing of biometric measures. The program was pilot tested in Phoenix (AZ), Iowa and south Florida.<sup>131</sup>

In conjunction with this initiative five states (CA, TX NY, FL, IL) conducted statewide assessments of federal, state and local agency practices related to the identification and processing of criminal aliens. They found wide variations within and between the states regarding the nature of the cooperation. Working with federal officials the representatives of the

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<sup>130</sup> William Branigin, "Illegal Immigrant Population Grows to 5 Million," *The Washington Post*, Feb. 8 1997, A3. See also Chapter 5.

<sup>131</sup> Interstate Criminal Alien Working Group, *Addressing the Criminal Alien Problem*.

states issued a report with 32 recommendations for improving the federal, state and local partnership including expansion of the LESC program and the enhancement of flagging systems.<sup>132</sup>

The New York assessment found that a flagging system for updating criminal records with notifications that an individual had been deported was already in place; but not working well. A check of 180 cases from an INS Criminal Alien Summary Sheet for 1992 where deportation orders had been issued for state inmates whose released date was 1995 or earlier revealed that only one criminal history record had been updated to indicate that the subject of the record had been deported.

On the other hand, California's assessment included the development of a flagging system under which the INS and the California Department of Justice (CDOJ) share fingerprint and deportation status information. Upon completion of their state-imposed prison terms, alien felons are fingerprinted and released to INS custody for deportation. When the alien is deported, the INS forwards a fingerprint card to the CDOJ for positive identification, which then applies a new "flag" to the state Criminal History System (CHS). In the event of a subsequent contact

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<sup>132</sup> The group recommended: adopting uniform data elements to capture citizenship and immigration status information on local, state and FBI records; adopting uniform procedures regarding when and under what circumstances immigration status checks would be conducted on suspected foreign-born arrestees, defendants and offenders; entering into NCIC file all warrants on criminal aliens with final orders of deportation who abscond prior to removal; having the INS establish positive identification capabilities; exploring the possible use of the Interstate Identification Index as a national deported criminal alien flagging system; and other innovations. Interstate Criminal Alien Working Group, *Addressing the Criminal Alien Problem*.

with local law enforcement, the alien's deportation status will be in CHS message along with an INS telephone number to call for removal.

Between 1994 and June 30, 1996 California flagged the criminal history records of 10,147 deported criminal aliens. A total of 53,454 inquiries were made by law enforcement agencies and a total of 1,725 previously deported criminal aliens who reentered and were identified by the system were referred to the INS. However, at the time of the report, no information was available from the INS as the disposition of those 1,725 criminal aliens (how many were prosecuted, deported allowed to depart voluntarily, etc.).<sup>133</sup>

The federal state working group had hoped that by the year 2000 there would exist a nationwide information system enabling local law enforcement officials to quickly and accurately identify and verify criminal aliens as well as deported aliens who have reentered the country illegally. As of March 1999 LESC was expanding its 24-hour-a-day access to its immigration records database for law enforcement agencies to x in addition to selected locations in California, New York, and New Jersey. It was responding to nearly 8,000 queries a month.<sup>134</sup>

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<sup>133</sup> Interstate Criminal Alien Working Group, *Addressing the Criminal Alien Problem*.

<sup>134</sup> The seven are: Hawaii, Idaho, North Dakota, Illinois, Oklahoma, North Carolina, Connecticut Immigration and Naturalization Service U.S. Department of Justice <<http://www.ins.usdoj.gov>>, "INS Enhances Interior Enforcement Strategy: Plans Deployment of New FY 1999 Resources: 45 Quick Response Teams Assigned to 11 States," *INS News Releases & Fact Sheets* March 30 1999 <[http://www.ins.usdoj.gov/public\\_affairs/news\\_releases/QRT.htm](http://www.ins.usdoj.gov/public_affairs/news_releases/QRT.htm)>. The followings states already had full coverage: Florida, Vermont, Massachusetts, Maine, Kentucky, Iowa, Kansas, Nebraska, South Dakota, Wyoming, Colorado, Utah, Arizona, Missouri. In addition California,

A General Accounting Office analysis of LESC emphasized that the fact that INS's existing databases are name-based. Unlike fingerprint based records they do not produce a uniquely identified individual. Electronic searches only identify a list of possible subjects requiring an INS investigator to search additional databases to determine conclusively if an arrested individual is an alien. Because of these limitations during the pilot study the INS had failed to identify 920 aliens before bond was posted and they were released by local law enforcement agencies. It found that the criminal alien information in INS's Deportable Alien Control System (DACS) database and corresponding Central Index System is incomplete and inaccurate. In 80% of the sample of DACS files not all the aliases used by the aliens had been entered; and 22% contained names that were misspelled or in the incorrect order or the nationality was wrong.<sup>135</sup>

Despite these limitations the police are grateful for the cases that LESC has identified for them and for capacity to check immigration records. The Perry, Iowa police routinely query LESC when they encounter aliens from the meat packing plant. Usually LESC has responded within 30 minutes. "The majority are illegal but 90% of them are the kind the INS would not be interested in deporting."<sup>136</sup> Even with its limitations INS's database can be helpful.

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Texas and Georgia already had partial coverage.

<sup>135</sup> U.S. General Accounting Office, *Law Enforcement Support Center: Name-Based Systems Limit Ability to Identify Arrested Alien*, GAO/AIMD-95-147 (August) (Washington, D.C.: Government Printing Office, 1995).

<sup>136</sup> Chief of Police Brickner March 30, 1996.

LESC helps a lot even though it is name based. On our drive-by shooter he used several names. First time we arrested him he called himself, Jose Luis Bonia. Second time, Jose Jesus Astorga. One of the officers remembered him and thought it was a different name second time. Problem with illegal aliens is they have no documentation, driver's license, or anything. The problem is, if you cite them, they don't come to court or someone else comes and claims to be them. So we started holding them until we got some kind of identification. We run NCIC with fingerprints sent .... California identified him as Jose Santana Astorga. He was deported on California charges because we had not convicted him here. LESC is very helpful and quick. They tell us whether the suspect is deportable.<sup>137</sup>

#### Police and Mass Migration Emergencies: The Florida Agreement

In the spring and summer of 1994 thousands of boat people fled a military regime in Haiti and headed to Florida. They were diverted by U.S. Coast Guard to a detention camp in Guantanamo Bay, Cuba. By September 21,638 Haitians were in the camp. During the summer Cuban refugees also began arriving in large numbers. Immigration crisis management was suddenly thrust upon the Clinton administration. In August the administration announced a stunning change in American policy towards Cuban refugees. During the Cold War they had been automatically granted political asylum as refugees from Communism. Now they were to be

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<sup>137</sup> {Brickner 1996}.

treated as economic refugees and interned in detention camps.<sup>138</sup>

To cope with the immigration crisis the administration used all the resources at its disposal including the military to help process the flow of incoming refugees.<sup>139</sup> It also deputized Florida local law enforcement agents for one year to enforce immigration law.<sup>140</sup> In the wake of that crisis, the federal government began updating its "Operation Distant Shore" policy to be prepared for future mass crises that might cross the southern land border as well as enter Florida via the sea routes of the Caribbean.

In January 1996 the Federal government and the State of Florida held a symposium devoted to developing better coordination of resources in dealing with the challenges of immigration. Among the policies for dealing with illegal immigration supported by Florida's Lt. Governor was the "Coordinated Immigration Emergency Plan." This cooperative plan would insure that all government entities, federal, state and local, would be prepared to respond to a

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<sup>138</sup> Pierre Thomas and Bradley Graham, "U.S. Drafts Plan for Influx of Illegal Immigrants: Pentagon, Justice Department Discuss Holding Camps for Larger Flow from Mexico," *The Washington Post*, April 8 1995, A6; Anne Day, "Haitian Minors Seek Order to Enter U.S.," *The Washington Post*, April 18 1995, A11; John Rice, "U.S. Reconsiders Cuban Refugee Policy," *Associated Press News Service*, Dec. 5 1996; Ann Devroy and Daniel Williams, "'Serious Alarms Bells' Led to Talks with Cuba: Congressmen Warned of Exodus, Riots at Camp," *The Washington Post*, May 5 1995.

<sup>139</sup> Doris Meissner, "Prepared Remarks," Reports and Synopsis of the Symposium, 1996 Federal and State Law Enforcement Symposium: Immigration Challenges Facing Florida (Miami, FL, Jan. 25-26 1996).

<sup>140</sup> U.S. Department of Justice, *Assistance by California Police in Apprehending Illegal Aliens*.

future immigration emergency in Florida.<sup>141</sup>

In October 1998 the INS and the state of Florida announced the signing of an historic agreement regarding the cooperation between the federal government and state and local law enforcement agencies in times of actual or imminent mass migrations into the state such as happened in the past. Under the Memorandum of Understanding (MOU), Florida agreed to provide logistical and law enforcement support to the federal government at the request of the INS which would be the lead agency and coordinate all responding law enforcement operations. The state would be reimbursed for authorized expenses and local law enforcement officers would periodically receive training in immigration law. Governor Chiles called the agreement a landmark in cooperation. "Four years ago, I declared a state of emergency in South Florida. Today, I'm declaring victory because the federal government will assume full responsibility for future mass migration response operations."<sup>142</sup> Commissioner Meissner emphasized that the authority of the Attorney General being used to authorize local police to enforce immigration law in the circumstances of a mass migration emergency was distinct from the Attorney General's

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<sup>141</sup> Marica G. Cooke, "Report on Immigration Challenges Facing Florida: A Summary," Reports and Synopsis of the Symposium, 1996 Federal and State Law Enforcement Symposium: Immigration Challenges Facing Florida (Miami, FL, Jan. 25-26 1996), 5. The need for federal, state and local coordination in the interest of efficiency was also emphasized by the representative of the Florida Department of Law Enforcement. See Doyle Jourdan, "Prepared Remarks," Reports and Synopsis of the Symposium, 1996 Federal and State Law Enforcement Symposium: Immigration Challenges Facing Florida (Miami, FL, Jan. 25-26 1996).

<sup>142</sup> Immigration and Naturalization Service U.S. Department of Justice <<http://www.ins.usdoj.gov>>, "INS and Florida Sign Historic Agreement On Response to a Mass Migration," *INS News Releases & Fact Sheets* Oct. 19 1998 <[http://www.ins.usdoj.gov/public\\_affairs/news\\_releases/mou.htm](http://www.ins.usdoj.gov/public_affairs/news_releases/mou.htm)>.

authority to do so in situations where no such emergency exists. In other words, this was not a victory for those who would have local police generally enforce immigration law. It was a partnership to be used in special circumstances only.

No similar plan has been announced for the states bordering the Mexican border. The only special plan there calls for the use the military to operate holding camps and backup the Border Patrol and other agencies in the event of a mass influx across the border.<sup>143</sup>

#### Redeployment of INS Assets

Another way in which reformers have tried to close the gap between the local police and the INS has been to bring make the INS resources more readily accessible to law enforcement agencies in locations where formerly they were not to be found. In the past the INS and the Border Patrol personnel were deployed geographically in a pattern that roughly corresponded to relative distribution of the immigrant population. This policy has been modified for two reasons.

First, the Clinton administration redeployed many Border Patrol officers from interior

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<sup>143</sup> Thomas and Graham, "U.S. Drafts Plan for Influx of Illegal Immigrants: Pentagon, Justice Department Discuss Holding Camps for Larger Flow from Mexico."

locations to the border as part of the policy of blockading the border.<sup>144</sup> This provoked complaints by police agencies and politicians in the interior that they were losing "their" Border Patrol officers and that serious criminal aliens were being turned loose as a consequence.<sup>145</sup> In places like Iowa and Nebraska immigrants began arriving in areas where they had not lived before and where INS field offices were sparse, not easily reached and not very responsive to local police when immigration matters arose.

Three policies are now in effect. The 1996 immigration reform act provided for a minimum INS presence in each of the 50 states.<sup>146</sup> Regardless of the size of the immigrant population ten INS agents must be allocated to each state. Local police do not have to travel as far to deal with the INS. Secondly, an increased number of local police jurisdictions have been given access to LESC which responds to the fundamental need of the police to be able to identify who the suspect is that they have in custody and what warrants exist. Thirdly, the INS has

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<sup>144</sup> Associated Press. "President Reassigns 62 Agents to Patrol Mexico-Arizona Border," *The Washington Post*, Feb. 6 1995.

<sup>145</sup> When the Border Patrol agents from the Fresno, California were reassigned to San Diego for Operation Gatekeeper, the office was left so understaffed that the remaining officer told the Clovis Police Department to release 16 illegal aliens. They had been arrested for driving while intoxicated, getting into an accident and attempting to flee the scene. The Clovis Police were accustomed to getting 24-hour-a-day responses from the Border Patrol officer in their area. A senior officer said they would not have called for the Border Patrol if it had been a petty theft but this was a serious offense. When word of the incident was released, Republican representative, George Radanovich, wrote the United States Attorney General, to say that the matter was "deeply troubling". Bruner, "Depleted Fresno Border Office Nears the Point of No Return."

<sup>146</sup> P.L. 104-208. Sept. 30, 1996. § 134.

deployed 45 quick response teams assigned to 11 states chosen due to growing illegal immigration problems where none had existed in the past (Arkansas, Colorado, Georgia, Iowa, Kentucky, Missouri, North Carolina, Nebraska, Tennessee, South Carolina and Utah). The quick response teams are intended to apprehend and remove illegal aliens encountered by state and local enforcement officials in the course of their normal duties.<sup>147</sup>

#### INS Modifies Relationship with Local Police: Simi Valley, California

The minut between the INS and the local police has been interrupted by both sides. Usually protests at the discriminatory or harassing nature of joint operations have resulted in a pirouetting off by the local police. Sometimes the INS has released the embrace but only to find a more defensible grasp, as happened in Simi Valley, California.

In April 1997 a Latino group threatened to sue the City of Simi Valley (California) if the City Council did not change its policy of having the police invite the Border Patrol along on raids conducted against gangs. A year earlier at the recommendation of the Community Gang Task Force the City Council had adopted the practice as part of its zero tolerance policy. The

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<sup>147</sup> U.S. Department of Justice, "INS Enhances Interior Enforcement Strategy: Plans Deployment of New FY 1999 Resources: 45 Quick Response Teams Assigned to 11 States."; Dane Schiller, "New INS Teams to Assist Police," *San Antonio Express-News*, Oct. 27 1998. Congress appropriated \$22 million for 200 team members and directed that as many as 50 teams should be created and available 24 hours a day.

strategy was to use all resources of the government to deal with the problem.<sup>148</sup> Chief of Police, Randy Adams, had had the gang problem assessed and the gangs profiled. There were two feuding gangs. Both were Hispanic: one mostly illegal aliens. In the Chief's view it only made sense to involve the INS in the raids. The Task Force agreed. It was composed of representatives of the District Attorney's office, the Probation Office, local churches, and four people representing the community. According to Chief Adams, they were all in favor of the zero tolerance policy including the use of the INS on the raids.<sup>149</sup> However, a local Mexican American advisory group had objected from the outset to INS involvement.<sup>150</sup>

On January 24, 1997 the Oxnard Star and the Ventura County Section of the Los Angeles Times carried headlines on a joint early morning raid by the Simi Valley Police and the Border Patrol. It was a gang sweep that snared 20 men and women who were identified as illegal aliens. Also arrested were one adult and two juveniles for various offenses. Such joint raids were not unusual. According to the assistant chief of the Border Patrol for Northern California, many police agencies in the state routinely invited Border Patrol agents on such raids.<sup>151</sup> In Simi Valley there had been ten previous raids in the past year. Since October 1995 the sweeps had

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<sup>148</sup> As recommended by the logic of problem-oriented policing Herman Goldstein, *Problem-Oriented Policing* (New York, NY: McGraw-Hill, 1990).

<sup>149</sup> Interview March 12, 1997.

<sup>150</sup> Interview, Francisco Dominguez, Executive Director, El Concilio del Condado de Ventura, Ventura, CA., March 12, 1997.

<sup>151</sup> Catherine Saillant, "Activists Object to INS Role in Raids: Gang Sweeps: Latino Groups Claim Simi Police Practice of Inviting Border Patrol Agents Constitutes Illegal Intrusion," *Oxnard Star*, March 11 1997, A1, A5.

resulted in about 100 arrests. About half the arrestees were deported.<sup>152</sup>

This raid was different. It was accompanied by Congressman Elton Gallegly, (R-Simi Valley), a staunch advocate for tougher immigration laws. Both papers featured pictures of Congressman Gallegly standing next to illegal aliens, in one next to a woman with her two children, in the other next to a woman who was crying that she could find no home anywhere she went.<sup>153</sup> The Congressman stated that he would like to see other police agencies take along the INS on gang sweeps in their cities because it would help catch many illegal aliens.

On March 10, 1997 a unified group of Latino activists staged a protest outside Simi Valley City Hall strongly denouncing the policy of inviting the Border Patrol on gang raids. Attorney Daniel Gonzalez claimed that the raids violate state and federal constitutional guarantees against unreasonable searches. The Latino activists emphasized that they were not opposed to cracking down on gangs. Their argument was with the use of gang sweeps as a pretext for getting at illegal immigrants. The early morning searches were without warrants. Enforcing probation violations was just a legal ruse that did not authorize the kind of searches

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<sup>152</sup> Gregg Mansfield, "Rude Awakening: Raid Rousts Illegal Immigrants," *Oxnard Star*, Jan. 24 1997, A1, A6.

<sup>153</sup> Mansfield, "Rude Awakening: Raid Rousts Illegal Immigrants."; David R. Baker, "Gallegly Joins Police, Border Patrol Raid: Law Enforcement: Early Morning Strike Snates 20 Who May Be Deported," *Los Angeles Times: Ventura County*, Jan. 24 1997, B1, B6. In the pictures Congressman Gallegly is standing about 1 and 3 feet away from the women with his hands in his pockets and a serious look on his face. A Latino representative described his appearance in the pictures as "menacing." Interview.

being conducted. They warned other cities not to adopt this policy.<sup>154</sup>

Chief Adams responded that the sweeps had been effective in significantly reducing the feuding between the gangs. The police had conducted 11 raids at 140 locations. The Border Patrol had accompanied them on seven of them. A total of 102 arrests were made: 19 for felony violations and 83 on suspicion of being an illegal alien. He said they had selected homes that were associated with gang activity or because some in the home was on probation. But they also expected to find illegal aliens based upon complaints by neighbors of large numbers of people living there. He noted that the houses were fire and health hazards. Residents stretched electrical systems by connecting extension cords and lived in unsanitary conditions.<sup>155</sup>

The police invited all the relevant agencies to accompany them on the sweeps including the building and safety code enforcement, the health inspectors, probation officers, and the Border Patrol. Chief Adams says that his agency's emphasis is not on illegal aliens. He says that years ago the police would detain for the INS persons suspected of being illegal aliens. They do not do that any more because the INS does not have the resources to respond. His is only

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<sup>154</sup> Saillant, "Activitists Object to INS Role in Raids: Gang Sweeps: Latino Groups Claim Simi Police Practice of Inviting Border Patrol Agents Constitutes Illegal Intrusion."; Fred Alvarez, "Latinos Denounce Border Patrol Role in Simi Gang Raids," *Los Angeles Times*, March 10 1997; Mansfield, "Rude Awakening: Raid Rousts Illegal Immigrants.". Interview, Randy Adams, Chief, Simi Valley Police Department, CA., March 12, 1997.

<sup>155</sup> Saillant, "Activitists Object to INS Role in Raids: Gang Sweeps: Latino Groups Claim Simi Police Practice of Inviting Border Patrol Agents Constitutes Illegal Intrusion."; Mansfield, "Rude Awakening: Raid Rousts Illegal Immigrants.".

interested in gang members, not illegal immigration in general. His agency does not hold suspected illegal aliens for the INS if they have not commit crime or are not part of a gang.<sup>156</sup>

A spokesman for a Latino rights group insists that the joint raids were primarily aimed at addressing illegal immigration rather than gang problems. He says the numbers support the point.

The result over the past year has been that the sweeps have produced about 19 people who were picked up for felony or misdemeanor violation and about 83 who were picked up for illegal immigration status. Those numbers support our concern that by bringing the INS along these sweeps have become an immigration enforcement tool primarily. If the numbers were reversed, say, if there had been 83 arrests for felonies and misdemeanors and only 19 illegal immigrants picked up for immigration violations, then we might think differently about the matter. Now that there is a whole years' worth of cases and they can see that the main effect is to arrest undocumented. They should realize the legitimacy of our criticism.<sup>157</sup>

The political nature of the decision to invite the INS along on raids is suggested by the differences among neighboring jurisdictions regarding the policy. Accidents of history as well as the size of the resident Latino population rather than the absolute size the illegal immigrant or the

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<sup>156</sup> Interview, Randy Adams, Chief, Simi Valley Police Department, CA., March 12, 1997.

<sup>157</sup> Interview F. Dominguez, El Concilio del Condado de Ventura, March 12, 1997.

gang problems seem to influence the policy choice.

Oxnard, California, is a microcosm of Los Angeles. According to Joe Munos, an Oxnard Police Investigator, the gang problem is four to five times worse than in Simi Valley. There are between 15 and 20 gangs, predominantly Hispanic but of second or third generation families plus black and Philippine gangs. Oxnard Police Department has a policy of not inviting the INS on gang sweeps. Indeed there are no areas where Oxnard routinely cooperates with the INS including alien smuggling. Oxnard police routinely ask arrestees for place of birth. If the answer is Jalisco or Guadalajara, Mexico, they record it but do nothing about it.<sup>158</sup>

Oxnard Police Department's policy with respect to cooperation with the INS was set in the 1970s by then Chief Bob Owens, another visionary who was developing community policing. According to Investigator Munos,

Chief Owens made it very clear that we did not enforce the immigration laws. Even when we were on patrol and saw a suspicious person, possible illegal aliens, we were not to detain or call INS. Only if we had a suspect in a serious case and we needed to keep a hold on him did we resort to INS. For example, if we couldn't make the 48 hour window for getting the case filed. Then as tactic we would keep him for INS. Occasionally with drunk drivers with priors we would use this tactic<sup>159</sup>

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<sup>158</sup> Interview, March 13,1997.

<sup>159</sup> Interview, March 13,1997.

Chief Owens adopted a policy of non-cooperation with the INS from the time he began back in the 1970s. He regarded it as "very constructive" for improving relations with the community although he believed "extremists" would be very critical of it.

In enforcing immigration laws many people of Mexican descent are made to feel demeaned. They are placed under suspicion just because they look Mexican. I opted for no cooperation with INS from the time I began.

He heard that before his time the police earned \$25 a head for turning illegals over to the INS. He never actually saw it and does not know how it worked whether the money was paid to the individual officers or to the Department. No "bounties" were ever paid in his agency.<sup>160</sup>

Oxnard is the home of Caesar Chavez, the farm labor organizer. He got started as the head of a community service organization. Chief Owens and the Oxnard Police had many encounters with Chavez but never called the INS even though the people he was fighting for were farm workers who were probably illegals. Chief Owens thinks he inherited his non-interference policy from his family's history.

Of course most of [Chavez's] confrontations were with sheriffs departments because the farms were in the rural areas. But in Ventura we didn't worry about boundaries. I was considered an arch liberal in those days even though I think of myself as conservative. I took my position because I guess it came from my background. My ancestors were Scotch immigrants. My father was a union organizer. My grandfather was in the New

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<sup>160</sup> Interview, March 13, 1997.

York Nabisco strike.<sup>161</sup>

He also believes that other conditions account for the difference between Oxnard and Simi Valley regarding cooperation with the INS. Simi Valley has conditions that make joint police-INS raids politically more feasible and in demand although possibly less necessary. He says:

Simi Valley is a small and homogeneous community. It has a comparative low crime rate. There are no minorities to speak of, except Los Angeles Police Department officers. They have a big safety net regarding immigration because they do not have to deal with a local ethnic Mexican American community compared to Oxnard where it was 57% Hispanic population.<sup>162</sup>

When the Mexican American group did stage the protest against the joint police-INS raids, at least two members of the City Council who watched the news conference said they were not about to change. "We have just been named the safest city for our size." Councilman (and former police chief) Paul Miller stated. "We found something that works, and we hope other cities will follow our example."<sup>163</sup>

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<sup>161</sup> Interview, March 13, 1997.

<sup>162</sup> Interview, March 13, 1997.

<sup>163</sup> Saillant, "Activists Object to INS Role in Raids: Gang Sweeps: Latino Groups Claim Simi Police Practice of Inviting Border Patrol Agents Constitutes Illegal Intrusion."

For awhile it looked as if other cities would not be able to follow their lead because in late March the Border Patrol announced that it was no longer going to join the Simi Valley police on probation raids of gang members' homes. The announcement was denounced by Congressman Gallegly, who lambasted the INS for bowing to political pressures. He said:

It's consistent with the INS' policy of coddling criminal aliens... It's the federal government's responsibility to enforce our immigration laws, and it's the Simi Valley Police Department's responsibility . . . to keep the peace in their jurisdiction...Now, the federal government is saying, 'We're not even going to help the Police Department to do the job, to help with the problems [that] they're responsible for having created.'<sup>164</sup>

The INS denied it was playing politics. It was just stepping back and evaluating the practice because of a recently rediscovered 1980 policy created under the Carter administration that prohibited INS agents from joining police raids. The policy had been discovered in an separate matter. An INS lawyer found it in preparing to defend the agency against a lawsuit arising from a joint police-INS raid in Farmersville several years before. Meanwhile, the Simi Valley City Council wanted the INS to continue to participate in the raids to help rid the city of the gang violence believed to have been associated with illegal aliens. They notified Representative Gallegly of their wish. On the other hand, the Latino activists applauded the INS saying that the policy change "indicates that the INS is an agency that can be at times responsive to the desires of all segments of a community, and that they can—with reflection— avoid being

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<sup>164</sup> Mack Reed, "Border Patrol to Forgo Role in Police Raids," *Los Angeles Times*, March 27 1997.

used for political gain by local politicians."<sup>165</sup>

A week later the INS reversed its position and said it would rejoin Simi Valley police on gang raids but on a more limited basis. The rediscovered policy prohibited INS agents from entering houses solely to enforce "status offenses" such as being an illegal alien. During the Simi Valley raids the INS had allowed the police to select which houses would be searched based on probation violations of residents. In the future the INS would only join raids where its agents selected the houses based upon probable cause under the 4<sup>th</sup> Amendment that a criminal illegal alien was there. INS would pick the houses based on its own investigations.<sup>166</sup> Latino activists quickly condemned the revised policy. In a letter to INS Commissioner Doris Meissner they said:

During the course of these so-called 'probation searches,' INS agents were detaining, arresting and questioning all persons in the dwelling...These raids often occurred very early in the morning, wrongfully disturbing entire families.

Gang violence is a cancer of society, but this problem requires real solutions, not political expediency.<sup>167</sup>

#### Order Maintenance, Community Policing and Illegal Aliens

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<sup>165</sup> Reed, "Border Patrol to Forgo Role in Police Raids."

<sup>166</sup> Mack Reed, "INS Arrests in Simi Gang Sweeps Assailed," *Los Angeles Times*, April 3 1997.

<sup>167</sup> Reed, "INS Arrests in Simi Gang Sweeps Assailed."

## i. Removing the Signs of Crime

Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community.

We might agree that certain behavior makes one person more undesirable than another, but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?

We can offer no wholly satisfactory answer to this important question. We are not confident that there *is* a satisfactory answer, except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority. That limit, roughly, is this – the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.<sup>168</sup>

In their renowned essay that has been so influential in shaping the community policing movement, James Q. Wilson and George Kelling examine the crucial police function of helping

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<sup>168</sup> James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly*, Feb. 1982, 29-38. Emphasis in original.

communities maintain order. They stress the difficult ethical, legal and social issues involved in trying to do so. Their sensitive analysis is particularly relevant to the police handling of a problem that has long been associated with immigrants. In some places immigrants are responsible for revitalizing blighted inner city communities. They have replaced many a broken window, raised property values and helped restore order in neighborhoods long abandoned by upwardly mobile people.<sup>169</sup>

In other locations immigrants themselves have been regarded as the blight to be removed. Local residents or business people have pressured the police to do something, putting police in the kind of dilemma for which Wilson and Kelling have no easy answers. The problem goes back to the last century but is more complicated today by the fact that the immigrants are usually illegal aliens. On the surface, at least, demanding that the police remove them is not a matter of bigotry but of legality. Yet, the way in which the police respond may become a matter of ethnic insensitivity and political error. The record of police responses to this type of situation suggests the range of choices as well as the conclusion that police judgments have not necessarily improved with time.

## ii. The Hebrew Immigrant Problem, New York City, 1880s

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<sup>169</sup> Ashley Dunn, "Starting Over Without Fear: A Newark Neighborhood Has Been Transformed by Illegal Immigrants," *The New York Times*, Jan. 16 1995, B1, B4; Patrick J. McDonnell, "Immigrants a Net Economic Plus, Study Says," *Los Angeles Times*, May 18 1997; National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, DC: Author, 1997).

In 1882 the *New York Tribune* reported:

Numerous complaints have been made in regard to the Hebrew immigrants who lounge about Battery Park, obstructing the walks and sitting on the chains. Their filthy condition has caused many of the people who are accustomed to go to the park to seek a little recreation and fresh air to give up this practice. The immigrants also greatly annoy the persons who cross the park to take the boats to Coney Island, Staten Island and Brooklyn. The police have had many battles with these newcomers, who seem determined to have their own way.<sup>170</sup>

iii. The San Diego County Panic, 1980s

In 1986 the *San Diego Union* carried the headline, “Aliens Said Preying on School Kids.” After years of mostly oblivious coexistence with migrant encampments and immigrant laborers residents living in the northern part of San Diego County were suddenly alarmed at the presence of illegal aliens and demanding that something be done. In less than two years the migrant worker population had become visible. Rapid urban development had reduced the amount of unused land suitable for camps and brought many residents into daily contact with immigrant workers the number of whom had ballooned with the Mexican economic crisis.<sup>171</sup>

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<sup>170</sup> Quoted in Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 67.

<sup>171</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*.

When the school year began the Border Patrol received a half dozen or more calls about aliens extorting lunch money from schoolchildren. In the city of Carlsbad there was an outpouring of public concern bordering on hysteria. In a token gesture of concern the Border Patrol began rounding up illegal aliens along the highway where they line up daily to be hired by local employers. In mid-October the Border Patrol and North County police and sheriff's officers launched a major sweep of illegal aliens using mounted horses, a helicopter and all-terrain vehicles with which they combed the hills, arroyos and scrub lands around Carlsbad. "Operation Clean Sweep" netted about 3,000 illegal aliens who were deported and drove others into hiding. Four days later the Border Patrol put on public display 400 of the migrant workers in a parking lot along with its equipment. INS Western Regional Director, Harold Ezell made a speech. Referring to the reports of the school lunch money extortion he declared, "that's one thing you don't tolerate."<sup>172</sup>

The crisis had been building for some time but ignited at a meeting of the Kelly School Parents Association when the fears and concerns of many parents were aired. The parents were worried about the safety of their children. When the police representative objected to the proposal to post a officer at the school, one parent replied, "You are going to be looking at the rape, murder, or abduction of a child."<sup>173</sup>

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<sup>172</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 19.

<sup>173</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 18.

Beneath the fears of the parents was the belief that the immigrants had changed. Unlike the workers of the past whom people thought were polite and concerned only with getting jobs, the new aliens were a nuisance and seemed dangerous; also there were more of them. A woman who had lived there for seven years said she had seen little of them in the past but that every year they had increased. She reported:

This summer, a large group walked in front of my house. I called the police, because there were three in the front yard drinking; one was drunk. Now they are up on higher ground, once they urinated towards us during a party....The police tell us it's fruitless; the INS says it's fruitless. Urinating doesn't bother me so much, but I don't like my kids seeing it. And their sanitation is so bad. After the malaria scare, my daughter got bitten by a mosquito and cried, 'Will I get sick of malaria?'<sup>174</sup>

Another woman said she had friends who lived there for sixteen years

who never locked doors until this year, but now they feel threatened. My housekeeper, who is fifty and Mexican, is now anxious. She spotted the change in the illegals; she didn't used to be nervous at all. I used to jog on the sidewalks but now run in the middle of the street to avoid being harassed.<sup>175</sup>

In his analysis Daniel Wolf concludes that one incident seemed to be a particularly

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<sup>174</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 16.

<sup>175</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 16.

important. It involved a girl who was frightened by several migrant workers while she was walking past Kelly School at noontime. Three migrants were walking in front of her and three behind her. Someone across the street noticed that the men were getting closer and called to her to cross the street. She did, thereby avoiding what one of the parents regarded as a "bad situation."<sup>176</sup>

After the local election the controversy cooled off and the tenor of the discussion became more balanced. In retrospect some of the residents regretted the episode, and the lesson their children had learned, that migrants could be rounded up like cattle. There were still complaints about burglaries but according to the new police chief the biggest problem was "loitering, looking for day labor."<sup>177</sup>

#### iv. The Carlsbad (CA) International Incident, 1990

Immigrant laborers living in camps or gathered in groups waiting to be picked up for day labor have been a problem for the police in other communities. The fact that they are young males with no permanent connection to the community easily raises fears of sexual attacks. The fact that they are poor and needy makes them suspects of burglary and theft. The fact that they are foreign, illegal, unwashed and possibly contagious stirs prejudice and hate. They maybe as

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<sup>176</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 17.

<sup>177</sup> Wolf, *Undocumented Aliens and Crime: The Case of San Diego County*, 20.

likely to be the victims of crime as the victimizers. Such situations call for sensitive police judgments.

One of the most notorious incidents of an attack against a migrant laborer waiting for pickup work happened in Carlsbad, California, four years after the Kelly School incident and four years before the federal government finally took action to stanch the flow of illegal immigrants across the San Diego border. In January 1990 a 26-year-old Mexican day laborer, Cándido Galloso, was kidnapped and beaten while waiting outside a market at a location where migrants normally gathered for pickups. The store owner and his brother bound Galloso's arms and legs with duct tape and put a bag over his head with a sign that read: "No Más Aquí" (no more here). The incident prompted the personal intervention of Mexican President Carlos Salinas de Gortari who called the consul general in San Diego and urged him to do more to protect Mexican nationals in the United States.<sup>178</sup>

v. The Alpine (CA) Rape Incident, 1992

In October 1992 in the eastern part of San Diego County, California, three Latino workers with permission to work in the United States were attacked by a group of white men wielding baseball bats. They accused the Latinos of having raped a white woman. The Latinos were day

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<sup>178</sup> Todd A Eisenstadt and Cathryn L. Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County* (San Diego, CA: The Center for U.S.-Mexican Studies, University of California, 1994), 50.

laborers living in a creek-bed encampment in Alpine, a small affluent community. Migrant laborers had lived in the camp for years. There had been a long history of racist violence, bottle throwing and slurs directed at them. After the incident things got worse. They were insulted, accosted and threatened in the camp and while waiting at the curbside to be picked up for day labor. Three weeks later in a separate incident the Sheriff's office received a report from someone at Alpine's Ye Olde Tavern that a woman had been raped. Based on information from customers at the tavern Sheriff's deputies searched the camp for "three Mexicans" suspected of raping the woman – although when interviewed the woman said it had been an Anglo who attacked her. At one point customers at the tavern talked about "going out there and playing vigilante," according to the bartender.<sup>179</sup>

Even before the first incident there were tensions. A grocery store across from the camp had been keeping a "Mexican Incident Book" logging any suspicious activities by the migrants in the store. A controversial Grand Jury report (written in part by an Alpine resident) concluded that the migrant trespassers living in the camp were responsible for "assaults, petty larceny, drug dealing, prostitution, extortion, auto thefts, and murder."<sup>180</sup>

Under pressure from pro-immigrant activists the Sheriff's Department made quick arrests

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<sup>179</sup> Interviews. R. Martinez, American Friends Service Committee, San Diego, July, 1998}; Eisenstadt and Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County*.

<sup>180</sup> Quoted in Eisenstadt and Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County*, 48.

in the beating case and tried to defuse the tensions in the community.<sup>181</sup> The location where the immigrants used to gather for pickup work was fenced off but the immigrants continued to “loiter” in a nearby location. In retrospect Lt. Sylvester Washington, head of the Sheriff’s Alpine station said of the matter:

People are very quick to jump to conclusions. Any incident where there are Hispanic males involved, the first thing that comes to mind is the encampment.

There were people trying to make something out of nothing and say the crime rate was escalating, which we really did not see. They were considering the beating as a buildup of tensions over trespassing in the community, when really it was a more sensitive issue.<sup>182</sup>

Lt. Washington added that the police did not have the personnel to stop the trespassing and could not do much about the loitering.

#### vi. The Chandler (AZ) Police Alien Roundup Debacle, 1997

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<sup>181</sup> Five individuals including the alleged victim’s husband were charged with conspiracy, battery; and assault with a deadly weapon. The wife had lied and was eliminated as a witness. They were convicted. A human rights advocate who helped bring about the conviction rated the outcome as a mixed performance. While the incident proved that human rights groups and the police could work together well, he was disappointed that the police had failed to tie the men to a white supremacist group and had failed to get them convicted of a hate crime. One of the men had a history of violence. He had killed two Mexican Americans by shooting them in the back and had been cleared. Interviews, R.Martinez, July, 1998.

<sup>182</sup> Eisenstadt and Thorup, *Caring Capacity Versus Carrying Capacity: Community Responses to Mexican Immigration in San Diego's North County*, 48ff.

The cultural and political sensitivity lessons learned by the police in California have not diffused throughout American police culture. Even in communities with long established Hispanic cultures, some police leaders have been slow to appreciate the depth of Latino resentment at being stopped and having to prove citizenship. These days the financial and political consequences of such insensitivity can be enormous. The experience of the Chandler (AZ) Police Department is an object lesson for all police agencies as the population of this country becomes increasingly diverse and Hispanic.

Chandler, Arizona, (160,000 population. 18 % Hispanic.) is an old Hispanic agricultural town which has rapidly become a high-tech boom town. It is the second-fastest growing city of its size in the United States. The city center was originally laid out by Dr. Alexander Chandler in 1912 in the style of a Spanish plaza. Near this area most of the Hispanics live. It is old and impoverished. In contrast the surrounding farmlands have been turned into affluent bedroom communities where Anglos who work in nearby Phoenix live.<sup>183</sup>

The city fathers planned to restore the downtown area with a new civic center that would make the city worthy of the name "capital of the silicon desert." The center included a new police headquarters, municipal court and library was planned to be built on the edge of the old plaza. Operation Restoration began on July 27, 1997 with the police taking the lead. Over the

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<sup>183</sup> Hector Tobar, "An Ugly Stain on a City's Bright and Shining Plan," *The Los Angeles Times*, Dec. 28 1998; Kathy Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?" *The Christian Science Monitor*, Feb. 2 1999.

next five days two dozen police officers and five Border Patrol officers from Tucson conducted what became known infamously as "The Roundup." They fanned out over the city flushing suspected illegal aliens out of work sites, stopping people as they came out of markets patronized by Latinos, pulling over drivers who looked Latino, entering homes of suspected illegal immigrants (without warrants) and filling up buses with arrested people. In the end, 432 illegal immigrants were deported, virtually all Mexicans.<sup>184</sup>

The police had obtained a grant from the federal Bureau of Justice Assistance to conduct a community policing program. Following the logic of community policing they surveyed residents and hauled off tons of trash from the inner city in an effort to remove the signs of crime.. They also held neighborhood meetings and asked people about their concerns. The meetings were not heavily attended. In addition there the normal complaints come in from residents.<sup>185</sup>

Chandler is major stopping off point in the trek north by immigrants. As happened in San Diego County in the 1980s there had been complaints arising from the spread of illegal immigrant camps on the edge of town and the belief that illegal immigrants were responsible for a rise in crime. Residents complained of "naked aliens" wandering around and about others who tried to lure schoolgirls into sexual liaisons. According to one police official, criminal activities

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<sup>184</sup> Tobar, "An Ugly Stain on a City's Bright and Shining Plan."; Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?".

<sup>185</sup> Interview with police official who wishes to remain anonymous.

by illegal aliens were part of the reason for the operation. "Since July [1994], citizens in the central and eastern portions of downtown have continuously complained about the criminal activity relating to illegal immigrants. The criminal activity ranges from simple disorders and liquor violations to murder," he wrote.<sup>186</sup>

Acting on those findings the Chandler Police invited the Border Patrol from Tucson to join them in a sweep of the illegal aliens. Key city officials knew about the operation in advance but none had formally approved it. Chief of Police, Bobby Harris, was not on duty during the roundup because, he later told investigators, "it wasn't an issue to me." Lower level officers ran the operation but later said they were unprepared for it after receiving only a five-day notice that the Border Patrol was coming to town.<sup>187</sup> During the last week of July 1997 the two agencies rounded up and deported 432 illegal aliens. The Roundup turned into a costly scandal because the Chandler Police also stopped dozens of Mexican Americans and questioned them about their citizenship.

Catalina Reyes was stopped and asked for her immigration papers while driving through Chandler, her hometown. She said she did not have any because she is a native born citizen and does not have to carry them. According to her, the police then made her get out of the car,

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<sup>186</sup> He offered no statistics of his own. FBI statistics show the city's crime rate is about average for Arizona. Tobar, "An Ugly Stain on a City's Bright and Shining Plan."

<sup>187</sup> Janie Magruder, "Chief Reprimanded in 1997 Roundup," *The Arizona Republic*, Dec. 18 1998.

handcuffed and detained her until she swore at them in English after which they let her go.<sup>188</sup> Catalina Veloz was also stopped while driving and asked to show her immigration papers. "I said, 'I don't have any immigration papers. I was born in Phoenix,'" Veloz said. "I felt like something scraped off the bottom of a shoe. That's how bad I felt."<sup>189</sup> Venecia Robles Zavla was stopped while leaving a Food 4 Less market with her son whom she was disciplining in Spanish. The officer asked for her "papers"? "What papers?" she responded in English. "Newspapers?" "No," said the officer. "Immigration papers." A half an hour later she was released after finding a copy of her birth certificate in her car.<sup>190</sup>

Mexican Americans were outraged and let rip a counterattack intended to make sure that it would never happen again. It included two lawsuits against the city totally over \$43 million; a lawsuit against the INS for \$9.7 million; and a call for an apology and the removal of the chief of police, the mayor and two council members. The repercussions were extensive. Two local civil rights groups spawned. Arizona Attorney General, Grant Wood, conducted an inquiry that produced a scathing critique of the operation. It found that police had violated the constitutional rights of American citizens and had spread fear and insecurity in the community. The police had stopped Hispanics without probable cause, had bullied women and children and had made late-

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<sup>188</sup> Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?"

<sup>189</sup> Matt Kelley, "U.S. Immigration News," Article <199708191843.OAA12487@us.net>, in <CISNEWS@cis.org>, Aug. 19 1997.

<sup>190</sup> Tobar, "An Ugly Stain on a City's Bright and Shining Plan."; Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?"

night entries into homes of suspected illegal aliens "for no other reason than their skin color or Mexican appearance or the use of the Spanish language."<sup>191</sup> It noted that the police had not obtained the authorization from the U.S. Attorney General to enforce immigration law as provided by the 1996 immigration law.<sup>192</sup>

The city hired a three independent investigators to conduct its own inquiry. That report concluded that excesses probably did occur due to inadequate training and supervision, but there had been no intentional malice. Chief Harris said he refused to be made a scapegoat. He had repeatedly denied that his officers had done anything wrong. "Is it a violation to ask a person if they're a U.S. citizen? I don't think so," he said.<sup>193</sup> Spokesman for the Border Patrol, Rob Daniels, had challenged the accusations saying, "What I have found in my dealings with Hispanic activists is that they're no different than any other extremist group. They are going to exaggerate to make their point."<sup>194</sup>

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<sup>191</sup> Tobar, "An Ugly Stain on a City's Bright and Shining Plan."

<sup>192</sup> Associated Press, "City, Citizens Battle Over '97 Roundup: Chandler Incident to Be Settled in Court," July 21 1998; Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?"; Janie Magruder, "\$400K Settles Roundup Suit in Chandler: Roundup Deal Includes New Police Policy," *The Arizona Republic*, Feb. 11 1999.

<sup>193</sup> Associated Press, "Arizona to Investigate Roundup of Immigrants," *San Diego Union-Tribune*, Aug. 10 1997.

<sup>194</sup> Associated Press, "Arizona to Investigate Roundup of Immigrants."; Janie Magruder, "Chandler's Tidal Wave of Illegals: Year After Roundup They're Still Coming," *The Arizona Republic*, July 26 1998.

The city has resurrected an old 1960's Human Relations Commission; appointed a Hispanic Community Liaison officer in the police department; and conducted hundreds of hours of classes on cultural awareness and hate/bias crimes for police and civilian personnel. The police department considered a proposal to teach basic Spanish to officers.<sup>195</sup> The city settled one of the lawsuits in exchange for \$400,000 plus a new policy regarding the involvement of the police handling of immigration matters but included no apology or admission of wrong doing. The settlement brought the tab for the roundup to \$705,000 including the investigators' and lawyers' fees as of February 1999. One year after the roundup the wave of illegal immigrants flowed through Chandler like nothing had happened.<sup>196</sup>

The city reprimanded Chief Harris for his role supervising the operation and instructed him to write a policy detailing how future operations would be handled. Before any future special operations, the Chief must give formal written approval and certify that the police will receive proper training and supervision. If the operation has never been done before, it must be approved by the city manager, the city attorney and in some cases the City Council.<sup>197</sup>

The new policy for the Chandler police involvement in immigration matters is modeled

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<sup>195</sup> Magruder, "Chandler's Tidal Wave of Illegals: Year After Roundup They're Still Coming."

<sup>196</sup> Magruder, "Chandler's Tidal Wave of Illegals: Year After Roundup They're Still Coming"; Magruder. "\$400K Settles Roundup Suit in Chandler: Roundup Deal Includes New Police Policy"; Khoury, "Arizona's Suburban Divide: Who Gets Swept in Immigration Sweep?"

<sup>197</sup> Janie Magruder, "Chief Reprimanded in 1997 Roundup."

after one in Phoenix. It prohibits police from notifying the INS if a suspected illegal alien is arrested for a minor traffic violation. It forbids notifying the INS upon release from police custody suspected illegal aliens unless the offense is a theft, assault or felony. It also prohibits stopping people solely for the purpose of determining immigration status and arresting people solely for violations of immigration law.<sup>198</sup>

One year after The Roundup waves of illegal immigrants were flowing through Chandler as if nothing at all had happened.<sup>199</sup> Six months later a group of Democrats introduced a bill in the Arizona legislature to clarify the role of the police in the enforcement of immigration related matters and to avoid future roundups. The bill requires cities and counties to provide training and to develop standards and procedures for law enforcement officers to following when cooperating with federal immigration officials. "Law enforcement agencies right now don't train their officers as to what they can and cannot do when working with immigration officials. That is what went wrong in Chandler. They didn't distinguish between a supporting role and a primary role" said House Minority Whip John Loredó (D-Phoenix), one of the sponsors of the bill.<sup>200</sup>

A similar bill had been introduced the previous year but failed to get a hearing. This

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<sup>198</sup> Magruder, "\$400K Settles Roundup Suit in Chandler: Roundup Deal Includes New Police Policy."

<sup>199</sup> Magruder, "Chandler's Tidal Wave of Illegals: Year After Roundup They're Still Coming."

<sup>200</sup> Hal Mattern, "House Bill Responds to Chandler Roundup," *The Arizona Republic*, Feb. 5 1999.

year's version is modeled after the recommendations in Attorney General Wood's report on the Chandler Roundup. It includes a controversial provision requiring that city councils and county supervisors approve joint operations with federal officials. The President of the Arizona Civil Rights Movement, Inc., and leader of the effort to recall city officials for their apparent indifference to the civil rights violations involved in the Roundup, Ramon Gomez, is skeptical about legislative solutions to the underlying problem, namely, law enforcement bias against Hispanics. He was critical of the settlement of the one lawsuit and is a plaintiff in the second lawsuit. He was unhappy because the settlement, "sends a very clear message that law enforcement will take the heat for a couple of years, and then we will settle. But the suffering (of Hispanics) really didn't impact anybody."<sup>201</sup>

Stephen Montoya, the lawyer for the lawsuit that was settled, agrees that "[i]t's a big deal to be in fear of being stopped habitually, which is what happened [during the Roundup]."<sup>202</sup> But he regarded the settlement as "a fair resolution." He said, "What we wanted all along was to make sure this would never happen again, and we have accomplished that. If folks think we have not punished the city enough, that's not our problem."<sup>203</sup> A year and a half after The Roundup City spokesman, Dave Bigos felt the controversy was waning. "Sure, we [angered] a large segment

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<sup>201</sup> Magruder, "\$400K Settles Roundup Suit in Chandler: Roundup Deal Includes New Police Policy."

<sup>202</sup> Magruder, "Chandler's Tidal Wave of Illegals: Year After Roundup They're Still Coming."

<sup>203</sup> Magruder, "\$400K Settles Roundup Suit in Chandler: Roundup Deal Includes New Police Policy."

of the Hispanics in the downtown area. Our biggest mistake was not establishing a dialogue with the community before. But the majority of people are going about their jobs, and it really hasn't touched their lives."<sup>204</sup>

vii. Marietta (GA) Police's 'Soft' Enforcement Policy

When illegal immigrant day laborers congregating at particular locations for pickup work became a problem in Marietta (GA), the City Council passed an ordinance banning such gatherings. Most of the complaints had come from gas station owners and other local business people who said the crowds of mostly Hispanic workers blocked parking lots and intimidated customers. The City Council described the ban as a safety measure. The construction and landscaping companies stopping to pick up workers were creating a hazard.

Police Chief, Bobby Moody, announced that Marietta police did not plan any mass arrests when the new ordinance took effect. He said the police were getting good results with bicycle patrols. There had been a raid by the INS weeks earlier in which 62 illegal aliens were detained. Since then the numbers of workers at the pickup sites had shrunk and the mere presence of the police kept others away. Chief Moody said, "It's not a day labor issue as much as it is an illegal immigration issue." The INS would monitor the situation, he said. Meanwhile, two businessmen offered to let day laborers gather on their property. They put up a tent and portable

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<sup>204</sup> Tobar, "An Ugly Stain on a City's Bright and Shining Plan."

toilets for them. They expected that workers would come there once the ordinance took effect.<sup>205</sup>

## V. Conclusion

Since Colonial times the matter of immigration and related crime has vexed Americans. It has turned local against central governments, border against interior communities and citizens against foreigners. While it may be true as the National Research Council study concluded that in the long run immigration yields a net gain for the nation as whole, the fact is that its costs and benefits are not distributed evenly.<sup>206</sup> Some places and some groups bear more of the costs in more palpable ways than others. The benefits are indirect, unequally shared, and slow to be realized. Immigration shatters the national interest into shards of particular interests organized along local, state and regional lines as well as ethnic, religious and financial divisions. Local law enforcement agencies have not been above the fray. They not only have been pushed and pulled by the intense politics of immigration, they have been apart of it. The positions they have taken and the roles they have played reflect the complexity and conflict that surrounds immigration.

Since the political, legal and cultural changes of the 1960s American local law enforcement agencies have moved away from the informal role of immigration law enforcement

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<sup>205</sup> Henry Farber, "Marietta Won't Push Ban on Day Laborer Groupings: Police Bike Patrols Planned as Deterrent." *The Atlanta Journal-Constitution*, July 1 1999.

<sup>206</sup> National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration..*

that some of them once willingly performed. The movement has been driven in part by structural as well as cultural factors. Large increases in the size of the Hispanic and the illegal alien populations have put local police in the position of having to choose between immigration control and crime control. As federal immigration policy failed to stop illegal immigration and allowed millions of legal immigrants to settle, local police have been mostly choosing to minimize or avoid altogether their role in the enforcement of immigration law *per se*.

Local police are opting to use the criminal alien provisions of immigration law and INS's new record checking capacity for identifying aliens. They do not have great faith in deportation or the deterrent value of the enhanced penalties for reentry after deportation. That is, they do not see these as practical solutions to the illegal immigration problem. But targeting criminal aliens does allow them to placate citizen demands for action, to put a few serious criminals away and to achieve at least a momentary stay against disorder, a goal with which they are often forced to be satisfied.

Some local police have recognized the political dimensions of the immigration issue clearly and have chosen sides or straddled the fence carefully. Others have blundered or been forced to take the fall for decisions that resulted in protests or lawsuits. Some with long experience regarding illegal immigration issues developed and refined their alien-related enforcement policies so as to attempt to balance the complex set of interests at stake. Employers want laborers at minimum costs. Citizens want to keep their jobs and their local economies

thriving. They do not want to be endangered, offended or annoyed by foreigners. Hispanics like the general public want illegal immigration controlled. But Hispanics do not want to be detained and forced to prove citizenship; and the general public does not want to be inconvenienced by raids or labor shortages. The federal government wants help with the immigration control. The local police have enough to do without helping with immigration control. Immigration control advocates want illegal aliens removed. Police leaders who understand how deeply embedded illegal aliens are in the local legal community and who are concerned about crime control and community relations, are resisting the pressure to remove them except under the cover of normal processing of people apprehended for violations of criminal law. The local police will never be out of the business of controlling aliens who are criminal. But for the most part they have gotten out of the business of controlling aliens who are just illegal. With the increasing growth of Hispanic communities around the country, there is a need within the police community to diffuse the experience of those agencies who have pioneered the development of immigration enforcement policies to those that are inexperienced with this matter.

## Chapter 7

### The Police and Transnational Law Enforcement Cooperation

#### I. Introduction

Criminal activities that transcend international borders have posed problems for states since ancient times. Smuggling is the world's second oldest profession. Pirates on the seas, fugitives, border bandits, revolutionaries, counterfeiters, slave traders, illegal immigrants and others has challenged the capacity of states to enforce law. Government concern about the problem of criminals who cross borders either to commit crimes or avoid prosecution can be traced back to ancient history.<sup>1</sup> Yet, it has only been since the mid-nineteenth century that Western governments started to build effective, modern means for coping with the growing reality of transnational criminality. Those initiatives came earlier in Europe than in America. Changes came slowly at first but since World War II and particularly since the international drug trafficking crisis of the late 1960s, the building of transnational law enforcement institutions has

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<sup>1</sup> In about 1280 B.C. Rameses II of Egypt and the Hittite prince, Hattusili, concluded a peace treaty believed to be the oldest document in diplomatic history. The treaty included an extradition provision authorizing the return of criminals who fled to the other regime's territory Ethan A. Nadelmann, "Criminalization and Crime Control in International Society," Unpublished manuscript (1992), I.5. citing I.A. Shearer, *Extradition in International Law* (Dobbs Ferry, NY: Oceana Publications, 1971), 5. citing S. Langdon and A. H. Gardner, *Journal of Egyptian Archeology* 6 (1920): 179.

proceeded at an accelerating pace.<sup>2</sup>

Since the late 1960s the U.S. federal government has emerged as a world leader in transnational law enforcement efforts and has assumed the leading role in transnational law enforcement efforts among law enforcement agencies at home. However, it has not preempted the field. State and local law enforcement agencies have developed their own transnational law enforcement institutions and practices some of which parallel, duplicate or compliment federal efforts. Some of these arrangements in border jurisdictions have been in existence for many decades. Others are of more recent origin.

One procedure, known as "foreign prosecution," is of special significance. Although available since the 1930s it was only used sporadically in a few border locations in the 1960s and '70s. In the late 1970s it was "discovered" by certain California law enforcement officials who with the cooperation of Mexican officials have institutionalized its use. A similar institutionalization has subsequently all along the U.S. Mexico border as the result of still another new institution of transnational cooperation between the U.S. and Mexico, namely the U.S. - Mexico Border States Attorneys General Conference. It takes advantage of a procedure

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<sup>2</sup> Nadelmann. "Criminalization and Crime Control in International Society."; John Benyon. "The Developing System of Police Cooperation in the European Union," in *Crime and Law Enforcement in the Global Community*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997); Cyrille Fijnaut, "Police Co-Operation Within Western Europe," in *Crime In Europe*, ed. Frances Heidenshon and Martin Farrell (London: Routledge, 1993), 108-20; Monica den Boer, "The Quest for European Policing: Rhetoric and Justification in a Disorderly Debate," in *Policing Across National Boundaries*, ed. Malcolm Anderson and Monica den Boer (London: Pinter, 1994).

in Mexican law, common to the legal systems of many Civil Law countries, which allows for the prosecution in the home country of criminals who committed their crimes in the United States.

This fills an important niche in transnational law enforcement that the federal government has not pursued. It is an alternative to extradition and does not have to be conducted through the comparatively more cumbersome and politically risky extradition process. State and local law enforcement agencies can transact the procedure directly with the host country. This is already grown into an important institution of transnational cooperation independent of the federal U.S. federal government. It is likely to become even more important as more immigrants from Mexico and other neighboring states arrive. They may not be any more or less criminally inclined than other people, but the ease with which they can return to their countries increases the likelihood that some of them who do commit serious crime in the U.S. will seek impunity by returning to their homelands.

Throughout most of American history concern about criminal activities that crossed international borders has been minimal. To the extent that anything was done about it, it was done either by local or state law enforcement agencies or by private investigators or bounty hunters. Before the establishment of the forerunner of the Federal Bureau of Investigation (FBI) in 1908 the federal role in law enforcement was narrowly limited. Until then the U.S. Marshals Service, established in 1789 to serve the federal courts, represented the closest thing to a general law enforcement agency available. Fearful of the abuses associated with the national police organizations of Europe, Congress repeatedly refused to create a federal police agency. Once

that step was taken. however, there has been a steady expansion of the federal law enforcement role. Often that expansion has created overlapping, concurrent jurisdictions with local and state police resulting in competition as well as cooperation among law enforcement agencies within and between the levels of government.<sup>3</sup>

The expansion of federal law enforcement effort into the international arena over the past three decades, however, has been a move into a mostly unclaimed “domain,” using that concept in the sense developed in the literature on formal organizations.<sup>4</sup> Each organization an “industry” like the criminal justice process, establishes some niche, some boundaries around some set of activities for which that organization claims responsibility. Historically local law enforcement leaders showed greater interest in international law enforcement cooperation than shown by federal officials. They named their national professional association the “International Association of Chiefs of Police” in 1893.<sup>5</sup> They attended international meetings where police officials from other countries considered proposals for various means of transnational cooperation among them. They sometimes pursued criminals abroad.

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<sup>3</sup> Bruce Smith, *Police Systems in the United States*, 2d ed., trans. Bruce Smith Jr. (New York: Harper Row, 1960); William A. Geller and Norval Morris, "Relations Between Federal and Local Police," in *Modern Policing*, ed. Michael Tonry and Norval Morris (Chicago, IL: University of Chicago Press, 1992), 237.

<sup>4</sup> James D. Thompson, *Organizations in Action* (New York: McGraw-Hill, 1967).

<sup>5</sup> The original organization was established in 1871 in St. Louis as the National Police Association. It was reorganized and rename in 1893. The membership was overwhelmingly drawn from the United States and Canada. Smith, *Police Systems in the United States*, 261.

However, except in border jurisdictions, state and local law enforcement agencies never regarded transnational law enforcement as a substantial part of their domain. In border jurisdictions, local and state law enforcement agencies have long had to deal with cross border matters. The way in which that has been done and the kinds of institutions of transnational cooperation that have emerged vary considerably. The major difference is between those along the U.S. Canadian border and those along the U.S. Mexican border. Canadian and American law enforcement agencies are almost as well integrated with each other as any two American law enforcement agencies might be. Mexican and American law enforcement agencies, on the other hand, manage to cooperate only in limited ways. Since the early 1980s there have been important advances in that cooperation.

Transnational law enforcement cooperation between the U.S. and Mexico has a long way to go before it begins to approximate the kind of full and unconditional cooperation one finds between law enforcement agencies along the Canadian border. But real progress is being made. Transnational cooperative mechanisms have been established. Political leaders on both sides are prompting cooperativeness; and international trade is having an impact. As trade continues to grow it is likely to produce even greater improvements in the quality of cooperative law enforcement relations. The North American Free Trade Agreement has already helped produce notable gains. During negotiations for the agreement Mexico established an elite new law enforcement unit called Grupo Beta. It was designed to protect illegal immigrants from bandits. But it has accomplished much more. It has achieved a new level of professionalism for Mexican law enforcement; and it has cooperated effectively with U.S. law enforcement agencies..

It may seem premature to talk about creating a joint law enforcement agency combining agents from Canada, the U.S. and Mexico into a regional police agency perhaps called NAFTAPOL as the European Union has done with EUROPOL. As long as there is asymmetry in professionalism and infrastructures such joint efforts will be problematic. But smaller scale regional joint efforts in the administration of criminal justice between the U.S. and Mexico have already been initiated and larger ones are a logical next step. Twenty-five years before NAFTA was signed few people would have predicted such an agreement. The idea of a NAFTAPOL twenty-five years from now should not be dismissed as a real possibility.

This chapter examines the role of American state and local law enforcement agencies in addressing criminal activities that cross international borders. It is not limited to the crime of illegal entry by immigrants. It places the discussion in the larger historical and world contexts that help understand changes that are occurring. It underscores the dynamic nature of American federalism. The domains of federal, state and local law enforcement agencies have been shifting, overlapping, complementing and competing. The current configuration with respect to transnational law enforcement cooperation is best understood as a transitional form. The institutions of transnational law enforcement cooperation are emergent. State and local law enforcement agencies are shaping them. They are doing as other state and local governmental agencies are doing increasingly in these days of globalization. They have become international actors developing their own relationships with foreign governments and agencies independently

of the federal government.<sup>6</sup> The federal government supports it and benefits from it.

## II. Historical Background

### Culture Lag: Bounded Law Enforcement

In his theory of cultural change William Ogburn asserts that material culture (technology) usually changes first and non-material (norms, laws, social institutions) tend to lag behind.<sup>7</sup> The gap between the time when technology changes and when host societies develop new norms and institutions that respond to the consequences of the new technology he calls a "culture lag." The history of the development of criminal laws and law enforcement institutions to deal with the changing nature of crime in America and in the world can usefully be thought of in these terms.

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<sup>6</sup> Jan Gilbreath, "The Mexico-Texas Relationship: Redefining Regionalism," Mexico City, La Nueva Agenda de la Relacion Bilateral (Lyndon B. Johnson School of Public Affairs, University of Texas, Austin, Tx.: U.S.-Mexican Policy Studies Program, May 19-20 1995); Daniel J. Elazar, "The Ends of Federalism: Notes Toward A Theory of Federal Political Arrangements," Working Paper #12, Center for the Study of Federalism, Temple University (Philadelphia, PA., 1976); John Kincaid, "Implications of Constituent Diplomacy for the Future of Federalism and the Nation-State," in *North American and Comparative Federalism: Essays for the 1990s*, ed. Harry N. Scheiber (Berkeley, CA.: University of California. Institute of Governmental Studies Press, 1992), 27-46; San Diego Dialogue, *The San Diego / Tijuana Binational Region: 1996: A Briefing Book for Media Covering the Republican National Convention*, Division of Extended Studies and Public Service (San Diego, CA: University of California, 1996). See also [sddialogue@unexpost.ucsd.edu](mailto:sddialogue@unexpost.ucsd.edu).

<sup>7</sup> William F. Ogburn, *Social Change with Respect to Culture and Original Nature* (New York, NY: The Viking Press, 1922).

In 1825 in the *Antelope* case Chief Justice Marshall invoked a rule of international law which was at the time universally accepted as a basic principle. "The courts of no country execute the penal laws of another [country]."<sup>8</sup> Today that principle can only be regarded as a quaint reflection of a bygone era when international travel was time-consuming and limited; and nations guarded their sovereignty with uncompromising jealousy. International commerce and with it the process of globalization had been underway for centuries. With the invention of steam power and the revolutions in the means of transportation and communication the globe began shrinking at an exponential rate. It was only a matter of time before this legal principle and the law enforcement institutions of that epoch would have to be adapted to new realities.

Changes in technology together with political and economic changes have brought about a new world. In today's jet propelled, post-Cold War, computer-networked world, movement across international boundaries by people, vehicles and electronic messages number in the millions per day.<sup>9</sup> An estimated 100 million people live outside the borders of the homelands; 4 million people a year are "trafficked" across international boundaries. Smuggling is the world's second oldest profession. It has become one of the world's largest businesses. International sex tourism is another rapidly growing transnational criminal activity. The ease of travel has increased the number of otherwise respectable men from developed countries who engage in sex

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<sup>8</sup> 23 U.S. (10 Wheat.)66, 123 (1825).

<sup>9</sup> Seven million people a day cross international borders Eric Schmitt, "Police Scorn Plan to Deny Schooling to Illegal Aliens Groups Say Bill Will Lead to Rise in Crime," *The New York Times*, April 9 1996, 13.

acts with children of less developed countries which would get them arrested at home.<sup>10</sup>

Criminals have always operated in a borderless world while law enforcement agencies have operated within borders.<sup>11</sup> Law enforcement agencies are limited by geographic and substantive jurisdiction. Criminals are limited only by their imaginations and willingness to travel. Defining the limits of government authority is a precondition for the rule of law and the possibility of a free society. Those same limits, however, are also conditions which serve to stimulate and protect criminality. They restrict the capacity of the police to lawfully pursue criminals who flee foreign jurisdictions or who operate from them. When no effective legal remedy exists for reaching transnational criminals, the police from law-abiding states are forced to resort to lawlessness and chicanery to get custody or to terminate an operation. Gaps in legal coverage result in the degrading of the commitment to legality.

### Technology's Double Edged Sword

Modern technology has greatly facilitated the capacity for criminals to exploit differentials in laws and legal competences to commit crimes with impunity. They can easily

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<sup>10</sup> Douglas Hodgson, "Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies," *The Melbourne University Law Review* 19, no. 3 (1995).

<sup>11</sup> Phil Williams, "Organizing Transnational Crime: Networks, Markets and Hierarchies," Paper presented., Workshop of Transnational Organized Crime (National Research Council, Washington, D.C., June 1998).

flee to jurisdictions which lack the will or the capacity to have their local law enforcement machinery pursue them. They can conduct activities from one country that are legal there but are criminal in the country of destination.<sup>12</sup> Police agencies in the victimized state are then faced with the choice between allowing the offender to escape punishment or to engage in practices that violate the laws of other states or their own in order to get at the offender.

On the other hand, modern technology has also rendered obsolete the three main technological obstacles to apprehending and prosecuting criminals who cross borders. International travel is a matter of a few hours by jet. Communication with law enforcement officials and other sources of information around the globe is instantaneous via electronic networks. Identification of suspects, witnesses and criminals has been simplified and made highly reliable by modern photography, massive records systems, and DNA analysis.

As Michel Foucault would put it, these technologies make it possible, at least in theory, for law enforcement agencies to extend the all-seeing eye of the guard in the central tower of Bentham's Panopticon far beyond its horizon in the nineteenth century prison.<sup>13</sup> Searching for criminals has become national entertainment. Television shows such as "America's Most Wanted" and "Unsolved Mysteries" have extended the panoptic vision of law enforcement by

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<sup>12</sup> Linnea P. Raine and Frank J. Cilluffo, Eds., *Global Organized Crime: The New Evil Empire* (Washington, DC: Center for Strategic and International Studies, 1994).

<sup>13</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, NY: Vintage Books, 1979).

millions. The Internet is taking that even further. One has only to check a few Internet sites where mug shots and descriptions of "most wanted" criminals are displayed to see how far technology has come since the day of the handbill and the wanted poster. Given its recent origin the extent to which law enforcement agencies are already using the Internet technology to pursue fugitives is astonishing.<sup>14</sup>

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<sup>14</sup> Since 1995 The World's Most Wanted, Inc., "a not-for-profit corporation organized to help law enforcement agencies utilize the Internet and WWW more effectively" has operated a website which posts lists of domestic and international fugitives and links to many other websites with lists of fugitives wanted by local, state, federal and international law enforcement agencies. Inc. The World's Most Wanted <info@MostWanted.com>, "MostWanted: Fugitives & Unsolved Crimes: No Where to Run, No Where to Hide" <<http://www.MostWanted.org/>>. 1999.

The website contains all of the same information the old wanted posts of yesteryear contained plus much more: color pictures; details about the crime; the capability of translating the information into several foreign languages; information about rewards; toll free telephone numbers; and assurances of anonymity.

There are links to other domestic and international websites with similar listings of fugitives. For the U.S. websites are organized by state. California lists:

- 1.Palo Alto Police Dept
- 2.Sacramento Police Dept
- 3.City of Davis Police Dept
- 4.Irvine Police Dept
- 5.LAPD's Most Wanted
- 6.U.S. Marshals Service Central District of California. Los Angeles
- 7.California State University (Sacramento) Police Department
- 8.Santa Rosa Police Department
- 9.Corona Police Department
- 10.San Luis Obispo County Sheriff's Office
- 11.Oakland Police Department
- 12.Los Angeles County Sheriff's Department New Mugs 02-25-98! Updated 04-08-98!  
Another Fugitive Apprehended!
- 13.USMS fugitives by the DEA Los Angeles Field Division.
- 14.Long Beach Police Department.
- 15.Orange County Marshals 10 Most Wanted.
- 16.Ventura County Sheriff's Department Most Wanted.
- 17.USMS fugitives by the DEA San Diego Field Division.

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- 18.USMS fugitives by the DEA San Francisco Field Division.
  - 19.Merced County Sheriff's Department.
  - 20.LAPD - Hollywood Detective Division. New Mugs 02-18-98! Updated 02-19-98!  
Fugitive Apprehended!
  - 21.Santa Barbara County District Attorney.
  - 22.San Diego County Sheriff's Department
  - 23.San Diego County Crime Stoppers
  - 24.LAPD - North Hollywood Homicide Division. New Mugs 03-19-99!

The World's Most Wanted's compilation of international web sites posting lists of fugitives reads:

Canada

- 1.Victoria, British Columbia
- 2.Winnipeg, Manitoba
- 3.Waterloo,Ontario
- 4.New Brunswick
- 5.Vancouver, British Columbia
- 6.Calgary, Alberta
- 7.Wanted by the RCMP
- 8.Wanted by the Halton Regional Police Service. Long term releases.
- 9.Halton Regional Police Service - Unsolved Homicides
- 10.Windsor Police Service - Most Wanted New site 02-04-98!
- 11.Windsor Police Service - Unsolved Homicides New site 02-04-98!

Italy

- 1.Direzione Centrale Polizia Criminale. Istituto Bancario di Ravenna

Brazil

- 1.Sao Paulo's 10 Most Wanted.

Australia

- 1.Australia's Most Wanted. Crime Stoppers.
- 2.Australia's Unsolved Crimes. Crime Stoppers.

Germany

- 1.Bundeskriminalamt - The German Federal Criminal Police Office's Most Wanted.  
(English)
- 2.Bundeskriminalamt - The German Federal Criminal Police Office's Most Wanted.  
(Deutsch)

Singapore

- 1.Singapore Police Force - Crime Watch.

United Kingdom - England

- 1.Scotland Yard. Metropolitan Police.

Sweden

- 1.Sweden's Most Wanted and Missing Persons. New site added 10-03-97!

## The Process of Harmonization

Although the technological problems of locating, identifying and reaching criminals who operate across borders have been largely solved, many economic, political, cultural and legal obstacles to effective transnational law enforcement remain. Even the technological problems have not been fully conquered because of the asymmetries in the distribution of the technologies. Law enforcement agencies in developing countries do not have the technology to match and

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### Spain

1.Spain's Most Wanted brought to you by Guardia Civil. New site added 10-23-97!

### Denmark

1.Denmark's Most Wanted and Missing Persons. New site added 02-04-98!

### Switzerland

1.Switzerland's Most Wanted New site added 11-10-98!

Other Countries Welcome!

The World's Most Wanted's website also links to other similar websites:

- 1.CBS-TV, Unsolved Mysteries. 1-800-876-5353.
- 2.FOX-TV, America's Most Wanted. 1-800-CRIME-TV.
- 3.National Center for Missing& Exploited Children
- 4.US Postal Inspection Service Wanted Posters
- 5.FBI's 10 Most Wanted
- 6.FBI's "Other" Most Wanted
- 7.\$4 Million Reward to Stop Terrorism
- 8.United States Customs Service Most Wanted. 1-800-USC-WANT OR  
1-800-BE-ALERT.
- 9.United States Marshals Service 15 Most Wanted. Now On-line!
- 10.United States Drug Enforcement Agency Most Wanted.
- 11.Bureau of Alcohol, Tobacco and Firearms Most Wanted.
- 12.U.S. Information Agency. International Crime Alert.
13. Air Force Office of Special Investigations.

interact with that of the developed countries.<sup>15</sup>

Additionally, the cultural, political and legal obstacles to transnational cooperation are formidable. Differences in languages, legal traditions as well as definitions crimes, concerns about sovereignty and diplomacy, and the high politics of international relations all pose their own problems. The modern era of efforts to overcome these obstacles began in the first half of the 19<sup>th</sup> century in Central Europe with the building of institutions of transnational police cooperation in response to revolutionary agitation in Prussia and the German states. It has come a long way. The pace has accelerated exponentially since the end of World War II.

New institutions of police cooperation are being built and new legal structures have been enacted to facilitate the process of international cooperation. Extradition treaties have been updated and established among many more states. Penal codes have been revised so as to harmonize the definitions of crimes. The cumbersome procedure through which states used to seek assistance from other states in criminal matters is being replaced by a more streamlined procedure. All such requests used to be sent through diplomatic channels via "letters rogatory." Since the 1950s European states in the process of creating the European Union began signing mutual legal assistance treaties (MLATs) in criminal matters which permitted their respective law enforcement institutions to cooperate directly with each other. The United States began

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<sup>15</sup> For instance, while the Mexican federal Attorney General's Office operates a website which includes a photo gallery of the 10 Most Wanted criminals, Mexican police do not use fingerprints See, <http://www.pgr.gob.mx/frames/framel.htm>.

negotiating its first MLAT with Switzerland in 1967. It entered into force in January 1977.<sup>16</sup> Various new forms of bilateral and multilateral cooperation among states have emerged including joint task forces; joint coordinating committees; exchange of information and materiel; joint training programs; and international conventions against particular types of criminal activities. In 1988 the United Nations opened for signing its Convention on Psychotropic Drugs. In 1990 it published its Model Treaty on Mutual Legal Assistance on Criminal Matters. In 1993 it opened its Tribunal for the Prosecution of war crimes.<sup>17</sup> In 1994 it convened for the first time in history a meeting of the heads of State and Ministers responsible for criminal justice to discuss a "global action plan against organized transnational crime."<sup>18</sup> At the June 1996 G-7/P8 Summit meeting in Lyons participating nations agreed to a forty-point plan to combat international crime.<sup>19</sup> As of June 1999 an ad hoc committee of the United Nations was working on a draft a convention addressing cooperative action against transnational organized crime.<sup>20</sup>

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<sup>16</sup> Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA: The Pennsylvania State University Press, 1993), 326ff.

<sup>17</sup> William F. McDonald, "Globalizing Criminology: The New Frontier Is the Frontier," *Transnational Organized Crime* 1, no. 1 (Spring 1995): 1-22.

<sup>18</sup> United Nations, "Documentation: Naples Political Declaration and Global Action Plan Against Organized Transnational Crime," *Transnational Organized Crime* 1, no. Spring (Nov. 21-23 1995), World Ministerial Conference on Organized Transnational Crime.

<sup>19</sup> Daniel McGillis, *Overview of Federal International Justice Assistance Efforts*, Research Applications Review, July (Washington, DC: National Institute of Justice, U.S. Department of Justice, 1996).

<sup>20</sup> By resolution 53/111, of 9 December 1998, the General Assembly established an Ad Hoc Committee open to all States, for the purpose of:

- (a) to elaborate a new comprehensive international convention against transnational organized crime; and
- (b) to elaborate three additional international legal instruments (or

The overall evolutionary process underlying the developments in this new field of international criminal law enforcement cooperation has been summarized by Nadelmann as one of “harmonization.” It incorporates three tendencies: the “regularization” of relations among law enforcement officials of different nations; the “accommodation” of among the different legal systems which maintain their essential features while finding ways to work with the concepts and practices of foreign systems; and the “homogenization” of all legal systems towards certain common standards.<sup>21</sup>

#### Early Transnational Police Cooperation Initiatives: Europe

The movement towards the establishment of an international mechanism for police cooperation began in the first half of the nineteenth century and came to fruition in 1923 with the establishment of the International Criminal Police Commission (ICPC) which after World War II was revived and in 1956 renamed, International Criminal Police Organization (INTERPOL). Initially the momentum came from the conservative governments of Central and Eastern Europe

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protocols) on:

- (i) illegal transport and trafficking in migrants;
- (ii) illicit manufacturing of and trafficking in firearms, their parts and components and ammunitions and;
- (iii) trafficking in women and children.

States have agreed to ensure that the Ad Hoc Committee complete its work by the year 2000. The first session of the Ad Hoc Committee took place in Vienna, Austria, from 19-29 January 1999.

<sup>21</sup> Nadelmann. *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 10.

who were responding to the activities of revolutionaries and anarchists. By the beginning of the twentieth century, the concern of those seeking to promote international police cooperation was transformed to a general concern about criminals of all kinds who crossed borders including smugglers, counterfeiters, fraudsters and other common criminals.<sup>22</sup>

The first supranational gathering of police officials was the Central Investigation Committee held in 1819 at the initiative of Metternich.<sup>23</sup> In 1851 the Police Union of German States was formed. It united the police forces of Austria, Baden, and the German principalities of Prussia, Sachsen, Hannover, Bavaria, and Wurttemberg in an attempt to suppress revolutionary political activities in the wake of the uprisings of 1848.<sup>24</sup> Throughout the 1870s,

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<sup>22</sup> One of the concerns of the international community at the time was an issue which has reappeared at the top of the agenda of policy concerns, namely the trafficking in women and children for sexual exploitation. In 1899 activists convened the First International Congress for the Suppression of the White Slave Traffic. It was attended by representatives from eleven nations. Three years later there a police conference on the subject attended by representatives from sixteen countries. That conference resulted in the establishment in many European police departments of "white slavery offices" whose mission was to assist in the international fight against the trade. Nadelmann, "Criminalization and Crime Control in International Society," IV 49.

Today suppression of the trafficking in women and children is one of the highest priorities of the United Nations.

<sup>23</sup> Seven federal states were chosen to appoint members to the committee whose purpose was to investigate revolutionary agitation in Germany. They were to study hundreds of political cases but leave all judicial actions against individual persons to the appropriate authorities of the Confederation of German states Hsi-Huey Liang, *The Rise of Modern Police and the European State System from Metternich to the Second World War* (Cambridge: Cambridge University Press, 1992), 19.

<sup>24</sup> DeFlem describes this as "the first formal initiative in industrialized society to establish an organized police system across national borders" (DeFlem 1996: 36).

'80s and '90s agitations by socialists, anarchists and other opponents of conservative political regimes appeared to be increasingly transnational in character prompting calls for coordinated police efforts against political violence.

In 1898 after the assassination of Empress Elizabeth of Austria by an Italian anarchist the Italian government convened in Rome a pan-European conference on the suppression of anarchism. It was attended by fifty-four delegates from twenty-one countries.<sup>25</sup> Its accomplishments were modest. Attendees agreed to more direct communications among central police agencies bypassing diplomatic channels using telephone and telegraph. Further calls for even greater cooperation arose after the assassination of U.S. President, William McKinley, in 1901 by a Hungarian born anarchist.<sup>26</sup> Over the next decade conferences were held in Europe and Latin America at which proposals for establishing a system of international police cooperation. By the eve of World War I, however, Raymond Fosdick, the American police scholar who had surveyed European police systems, concluded that no such system has yet been established. "There has been no consistent action [against crime] worthy of the name," he wrote.<sup>27</sup>

#### Origins of INTERPOL

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<sup>25</sup> Nadelmann, "Criminalization and Crime Control in International Society," IV.47.

<sup>26</sup> Nadelmann, "Criminalization and Crime Control in International Society," IV.48.

<sup>27</sup> (Fosdick 1915: 333-334) cited in Nadelmann, "Criminalization and Crime Control in International Society," IV 50.

After the war the search began again. In 1919 a Dutch police official circulated to other European police officials a proposal to establish an international police bureau associated with the League of Nations. It failed. Four years later a Viennese police official convened the Second International Criminal Police Congress at which a proposal to create an international police organization affiliated with the League of Nations was considered but not implemented. Instead the International Criminal Police Commission was established as an independent organization with headquarters in Vienna. It was placed under the supervision of that city's police commissioner.<sup>28</sup> The choice of the Austrian capital was influenced in part by the Austrian government's willingness to provide funding but also of the excellent records on international criminals compiled by the Vienna police.<sup>29</sup>

During the interwar years the ICPC attracted little attention. In 1938 it was taken over by the Nazis. In 1946 it was revived at a conference held in Brussel because in the aftermath of the war police agencies in different countries needed urgently to be able to communicate with each other. At its revival there were 17 participating nations of which 14 were European.<sup>30</sup> As of October 30, 1997, global membership in INTERPOL was nearly universal with 177 member

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<sup>28</sup> Nadelmann. "Criminalization and Crime Control in International Society," IV.52.

<sup>29</sup> (Nadelmann 1992: IV.53} citing Malcolm Anderson, *Policing the World: Interpol and the Politics of International Police Co-Operation* (Oxford: Clarendon Press, 1989), 40.

<sup>30</sup> Malcolm Anderson, "Interpol and the Developing System of International Cooperation," in *Crime and Law Enforcement in the Global Village*, ed. William F. McDonald (Cincinnati, OH: Anderson Publishers, 1997), 90.

states participating.<sup>31</sup> The main function of INTERPOL is as a communication link for the transmission of messages concerning crimes and criminals between the law enforcement agencies of member states. Messages are routed through National Central Bureaus (national offices established in each country).

### Origins of EUROPOL

During the 1970s and 1980s INTERPOL was frequently criticized by the United States and other countries for providing services that were slow and too limited. Malcolm Anderson writes that J. Edgar Hoover at the FBI firmly established a preference for American federal law enforcement agencies to conduct international business bilaterally. Among critics the belief was that forms of police cooperation more intense than that available through INTERPOL were necessary. One such supranational, regional police institution (EUROPOL) is already under development in Europe.

It emerged out of political cooperation in the European Economic Community. Initially it was directed at the need for coordinated responses to the political terrorism and the drug trafficking of the 1970s and 1980s. It was later stimulated by the development of the European Union with its open internal borders and the fear of illegal immigration. The first meeting of the Trevi Group (June 1976) was to coordinate greater European cooperation against terrorism. In

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<sup>31</sup> Interpol, "INTERPOL" <<http://193.123.144.14/interpol.com/index2.htm>>, 1999.

1985 objective was expanded to include drug trafficking and organized crime. In 1992 the objective was further expanded to include an range of issues related to the police implications of open borders within the European Union. In 1991 the Ad Hoc Group on EUROPOL was established to develop the concept of a European Criminal Police Office.<sup>32</sup>

### III. American Federal Involvement in Transnational Crime Control

#### Growth of the Federal Apparatus

World War II left the United States government with a global role in a variety of matters including criminal law enforcement. Until then there had been little involvement by the federal government in international law enforcement cooperation. Even as late as 1967 when crime problems with clear international connections like organized crime and drug trafficking were analyzed by President Johnson's Commission there was still little interest in greatly expanding the American role in transnational law enforcement.<sup>33</sup> That changed quickly under the Nixon

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<sup>32</sup> Benyon, "The Developing System of Police Cooperation in the European Union," 112. Malcolm Anderson regards EUROPOL as the only current serious challenge to INTERPOL as an institutionalized system of police cooperation. He speculates that the North American Free Trade Agreement may in time produce an equivalent system of regional cooperation among law enforcement agencies. Anderson, "Interpol and the Developing System of International Cooperation," 96.

<sup>33</sup> None of the Commission's recommendations about organized crime proposed transnational cooperative efforts. Its recommendations regarding narcotic control did include increasing the number of Bureau of Narcotics agents. The Bureau had about 300 agents spread across 10 foreign countries as well as in the United States. They were already assisting foreign law enforcement agencies in their own countries. The proposed increase was not to increase the

administration which launched in 1969 a vigorous domestic and international effort against drug trafficking. The Bureau of Narcotic and Dangerous Drugs and its successor agency, the Drug Enforcement Administration (DEA), catapulted the United States into a full blown transnational law enforcement role. Nadelmann describes the DEA as "the first (nonimperial) transnational police organization in world history."<sup>34</sup>

In 1979 the federal role in international law enforcement took another leap forward. In that year both the Office of International Affairs (OIA) in the Justice Department and the Office of Law Enforcement and Intelligence (L/LEI) in the State Department's Legal Advisor's Office were created.<sup>35</sup> They assumed leading roles in negotiating and coordinating extradition and mutual legal assistance with other countries. In the 1980s and '90s the nature of the federal involvement in transnational law enforcement cooperation continued to grow.

#### The Italian-American Working Group Against the Mafia

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efforts abroad but to provide manpower for intelligence gathering. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime* (Washington, DC: Government Printing Office, 1967f); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Narcotics and Drug Abuse* (Washington, DC: Government Printing Office, 1967g).

<sup>34</sup> Ethan Nadelmann, "The Americanization of Global Law Enforcement: The Diffusion of American Tactics and Personnel," in *Crime and Law Enforcement in the Global Village*, ed. William F. McDonald (Cincinnati, OH: Anderson, 1997), 125.

<sup>35</sup> Nadelmann, "The Americanization of Global Law Enforcement: The Diffusion of American Tactics and Personnel," 125.

One development of special significance was the formation in 1984 of the Italian-American Working Group against the Sicilian Mafia. It was the first joint investigative effort of its kind at the federal level. How it came about is paradigmatic of the kinds of practical and interpersonal obstacles that have to be overcome in order for transnational cooperation to succeed. As Richard Martin has written based on his experience with the Group, the new legal structures permitting more efficient transnational cooperation are not enough. Fruitful cooperation requires a lot of personal diplomacy and the nurturing of interpersonal relationships among the agents of both sides as well as considerable political efforts to protect and support the workings of transnational joint efforts.<sup>36</sup>

During the late 1970s there had been a battle for control within the Sicilian Mafia and between the Mafia and high-level members of the Italian government and law enforcement. The new mafiosi became a pipeline for a flood of heroin to the U.S. American officials pressed the Italians to crack down on the mafia. However, they assumed that Italian law enforcement institutions would be unable to do much about such a powerful organization; and they further assumed that they had to work with the Italians at a distance. They were wrong.

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<sup>36</sup> For a detailed account of its formation see Richard A. Martin, "Problems in International Law Enforcement," *Fordham International Law Journal* 14 (1990-1991): 519; Richard A. Martin, *The Italian-American Working Group: Why It Worked*, A paper of The Working Group on Organized Crime (Washington, DC: National Strategy Information Center, 1998); Richard A. Martin, "The Italian American Working Group Against the Mafia," Presentation at Executive Leadership Seminar: Georgetown University, Strategic Approaches to Transnational Crime and Civil Society (Washington, DC, July 20-31 1998).

In 1982 the U.S. proposed two new treaties with Italy, for extradition and for mutual legal assistance. At same time, Italian and American investigators began running into each other in an increasing number of investigations of the same drug trafficking or money laundering groups. Eventually two Italian and two American investigators met to discuss the situation to see if there were any possibility for helping each other's investigations. Up until that time law enforcement cooperation between the two countries had not been easy or very productive. The idea of sharing law enforcement information with the Italians had been out of the question. Such information is confidential and could not be compromised. At the meeting the four people decided that they were all seeking the same goal and could trust one another. Subsequently they began working together on cases and sharing information in ways that were unimaginable in the past.

Doing so required approvals at the highest levels as well as convincing arguments that the exchanges would be beneficial. The investigators on both sides appealed to their respective governments to establish a "Working Group" as an official 'shelter' within which the alliances forged at the working level could operate with the assurance of approval. The first meeting of the Italian-American Working Group held in June 1984 was jointly presided over by the U.S. Attorney General and the Italian Minister of Justice. The US delegation included the heads of the main federal law enforcement agencies as well as State Department officials. The Italian delegation included the heads of the principal law enforcement agencies as well as other senior government officials. In addition there were numerous deputies and agents involved in the investigations being discussed. The meeting served the political purpose in both countries of

establishing the legitimacy of international cooperative efforts in law enforcement.<sup>37</sup>

### The President's International Crime Control Strategy

Through the 1980s and 1990s the federal government's involvement continued to grow rapidly on various fronts.<sup>38</sup> The Departments of State, Justice, and Treasury as well as the U.S. Agency for International Development took the lead in providing federal justice assistance to other countries. In 1995 the United States opened an international law enforcement academy in Budapest, Hungary, to help train police for the new democracies in Central Europe and the Newly Independent States. In his address to the General Assembly of the United Nations on the occasion of its fiftieth anniversary in 1995, President Clinton called for greater global cooperation in the fight against international crime and terrorism. "...I now invite every country to join in negotiating and endorsing a declaration on international crime and citizen safety; a declaration which would first include a no sanctuary pledge, so that we could say together to organized criminals, terrorists, drug traffickers and smugglers, you have nowhere to run and nowhere to hide," he said.<sup>39</sup> President Clinton's call led to passage of the Declaration on Crime and Public Security by nations attending the U.N. Commission on Crime Prevention and

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<sup>37</sup> Martin, *The Italian-American Working Group: Why It Worked*.

<sup>38</sup> McGillis, *Overview of Federal International Justice Assistance Efforts*.

<sup>39</sup> William J. U.S. President Clinton, "Address to the General Assembly of the United Nations." in The White House Electronic Files <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1995/10/23/3.text.1>>, October 22 1995.

Criminal Justice meeting in Vienna in May 1996.

In May 1998 President Clinton announced his International Crime Control Strategy, the first ever by an American President.<sup>40</sup> Implementing legislation, the International Crime Control Act of 1998, was submitted to Congress in June. The legislation was intended to "close gaps in current federal law, criminalize additional types of harmful activities, and promote a strengthening of both domestic and foreign criminal justice systems to respond to the new challenges posed by crime that crosses international boundaries...[and to] improve the ability of U.S. law enforcement agencies to investigate and prosecute international criminals...."<sup>41</sup> The bill included provisions allowing the Attorney General to defray the translation, transportation and other costs of state and local law enforcement agencies in cases involving fugitives or evidence overseas and would authorize the sharing of seized assets with foreign law enforcement agencies but otherwise focuses on matters relevant only to federal law enforcement agencies. This legislation plus the calls for greater cooperation with other nations suggest that for the foreseeable future the federal government's role in international crime control will continue to expand. Yet, even with that growth, it is not likely to replace any time soon the developments pioneered by the state and local police along the southwest border.

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<sup>40</sup> William J. U.S. President Clinton, "The International Crime Control Strategy" <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1998/5/13/17.text.1>>, May 12 1998.

<sup>41</sup> William J. U.S. President Clinton, "International Crime Control Act of 1998," in The White House <<http://www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1998/5/13/18.text.1>>, May 12 1998.

#### IV. American State and Local Law Enforcement and Transnational Crime Control

##### Early Outreach Efforts

In trying to separate out the roles of federal, state and local law enforcement in the contemporary American federal system, Geller and Morris suggest that federal law enforcement can be distinguished by three principal functions. One of them is “to inhibit and punish antisocial conduct with which the states are unwilling or incompetent to deal, in particular, conduct reaching beyond their boundaries.”<sup>42</sup> This statement bears examining from two distinct but related perspectives. First, although not intended by its authors, it aptly identifies the fundamental problem facing the law enforcement agencies of virtually all the nations in today’s global village. They are seeking ways to reach beyond their boundaries. They are now willing and increasingly competent to do so. Secondly, as a description of the American pattern of relationships among local, state and federal law enforcement agencies, it can be misleading if read as history. Local law enforcement agencies today do tend to leave matters beyond their boundaries to federal or other agencies. But there are important qualifications to this tendency.

Reaching beyond boundaries is something local law enforcement agencies have done in the past and promises to be an important practice in the future as the United States, Mexico and Canada develop regional law enforcement programs along their borders and as immigration from

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<sup>42</sup> Geller and Morris, "Relations Between Federal and Local Police," 237.

Mexico and other neighboring countries with Civil Law legal traditions continues at high rates. The division of labor among federal, state and local law enforcement agencies has always been an fluid, evolving, negotiated order.

The responsibility of the government (as opposed to the private victim) for the enforcement of criminal law evolved gradually from a minimal role during colonial times to its modern role where it is expected to bear the cost of pursuing criminals no matter how far they flee. First local governments and later the state and federal governments began assuming this responsibility. Not long after modern local police agencies were established in the 1840s their leaders began looking to extend their reach in pursuit of transient criminals some of whom just moved to the next town or state; and a few to Canada.

During the 1820's with the rapid growth of banking institutions and the proliferation of bank notes, counterfeiting flourished. Local authorities were useless because the problem was regional and even international. The response came not from the state or the federal governments but from private interests. The directors of banks formed mutual aid associations, such as the New England Association Against Counterfeiting. Formed in 1832 it succeeded in getting the Canadian government to raid and capture twenty-five offenders in one operation.<sup>43</sup> When detective bureaus were first added to police agencies in the 1840s and '50s the detectives often operated beyond the jurisdictions of their agencies, sometimes with funding from private

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<sup>43</sup> Roger Lane, *Policing the City: Boston, 1822-1885* (New York, NY: Atheneum, 1971), 55.

interests. The head of the Boston Police Department, Francis Tukey, for instance, was authorized to pursue criminals all the way to Canada on behalf of the New England Association Against Counterfeiting. The city of Boston lent out its detectives to other cities to pursue criminals.<sup>44</sup>

For the first 120 years of the nation's history, virtually all law enforcement directed at common crime was done by local agencies or private parties. Federal law enforcement was almost non-existent. The Justice Department was not established until 1870 and was not authorized to create its own law enforcement agency (later at becoming the FBI) until 1908.<sup>45</sup> Before the Secret Service was established in 1865 for the sole purpose of investigating counterfeiting, federal law enforcement in the United States consisted of three agencies: the Customs Service, the Postal Inspection Service and the U.S. Marshals Service. For well into the twentieth century criminals who moved from one town to the next or to another state or to another country could expect to evade capture. If they were brought to justice it was either because private interests hired their own detectives; or the local police allowed their own detectives to roam far and wide in pursuit of them; or bounty hunters brought them in dead or alive to collect rewards.

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<sup>44</sup> Lane, *Policing the City: Boston, 1822-1885*, 66.

<sup>45</sup> Nadelmann, "Criminalization and Crime Control in International Society," 51. citing Albert Langeluttig, *The Department of Justice of the United States* (Baltimore, MD: Johns Hopkins University Press, 1927).

Butch Cassidy and the Sundance Kid are a case in point. They carefully exploited the many gaps in the canopy of criminal laws and law enforcement agencies to rob trains with impunity. Their Hole-in-the-Wall hideout in Johnson County, Wyoming was located near the intersection of four states allowing them to take advantage of differences in laws among the states as well as the lack of a federal law enforcement threat. They assumed that local law enforcers would not come after them and they were right. It was the Pinkerton Detective Agency paid for by the American Bankers' Association that had pursued them in the United States; and, it was the Pinkerton Detective Agency that pursued them in the jungles of Bolivia. The Pinkertons were hired by the State Department after receiving protests from the Bolivian government about the crimes committed by the fugitive Americans.<sup>46</sup>

The transient criminal has always posed special problems for the law enforcement capacities of societies. Identifying who and where the criminals were and coordinating the efforts of others to help bring them to justice have been fundamental obstacles which only began to be solved in the late nineteenth century with developments in the technology for identification and communication. Before the telegraph, the teletype and the telephone; and before photographs, biometric measures of the Bertillon system of criminal identification and then fingerprinting, police agencies lacked the ability, if not the will or the motivation, to effectively pursue mobile criminals.

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<sup>46</sup> Nadelmann, "Criminalization and Crime Control in International Society," 60.

As the new technologies became available local law enforcement agencies began using them to improve their ability to locate and identify peripatetic criminals and to reach them in other jurisdictions. Among the items on the agenda of the first general meeting of American police executives held in St. Louis in 1871, was a proposal to “provide for a systematic plan of transmitting Detective Information throughout the several States of the Union....to adopt a system of [telegraphic] cypher for the use of police throughout the country;” to arrange for a more complete exchange among police departments of the photographs of criminals; and to establish as a permanent organization the National Police Association.<sup>47</sup>

#### The North American Response to International Crimes: Origins of the IACP

In 1893 the National Police Conference was reorganized as the International Association of Chiefs of Police (IACP).<sup>48</sup> Three years later the IACP set up a national clearinghouse for criminal identification records. Its purpose was to provide a central records system for known criminals. It originally consisted of photographs and the system of anthropometric measurements devised by Alphonse Bertillon in 1882. The later was gradually replaced by the fingerprint classifications after 1904. This National Bureau of Criminal Identification, eventually located in Washington, D.C., was supported by annual fees paid by fewer than 150

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<sup>47</sup> Smith, *Police Systems in the United States*, 260. quoting from National Police Convention, "Official Proceedings of the National Police Convention," The National Police Convention (1871).

<sup>48</sup> Smith, *Police Systems in the United States*, 261.

police departments plus an occasional appropriation of \$500 by Congress.<sup>49</sup>

In 1924 the IACP persuaded federal authorities to assume responsibility for maintaining the criminal records system it had developed. The record files were then transferred and consolidated with the files on federal prisoners and finally transferred to the Bureau of Investigation in the Justice Department. From that beginning the FBI's criminal record system has developed. What is particularly notable about this history is that it was the first systematic effort to coordinate the investigative efforts of the highly decentralized American police and it was solely the result of the determination of local police officials to reach beyond their boundaries to control crime.<sup>50</sup>

It was local police representatives, not federal law enforcement officials, who were concerned about the need for transnational law enforcement cooperation. No Americans participated in the various European and Latin American conferences on transnational policing in the nineteenth century or in those of the first two decades of the twentieth. The Americans believed the association they had founded was developing into a major international organization for police cooperation. At its 1905 convention the president of IACP was highly optimistic on this point in his annual address.<sup>51</sup> The first American delegate to a European conference about

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<sup>49</sup> Smith, *Police Systems in the United States*, 262.

<sup>50</sup> Smith, *Police Systems in the United States*, 262.

<sup>51</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 85.

developing transnational police cooperation was the Chief of the New York City Police Department, Richard Enright. In 1923 he attended the Second International Criminal Police Congress held in Vienna at which the participants decided to establish the forerunner of INTERPOL.<sup>52</sup>

#### IV. Current American State and Local Transnational Law Enforcement Practices

##### Local Police and International Pursuits

American local law enforcement agencies—except ones in border locations—never institutionalized a transnational role in their operations. Yet, they never conceded the prerogative of pursuing criminals internationally when it suited them although they rarely did so. Nadelmann was able to locate only three examples before 1970 of American police traveling abroad on criminal investigations. In 1885 two St. Louis police officers traveled to New Zealand to pick up a fugitive. In 1909 against a background of concern about the Italian mafia, the Chief of the New York City Police Department's own "Secret Service" unit, Joe Petrosino, went to Sicily. His mission was to get the criminal records needed to deport members of the mafia, to learn which Italian criminals had departed for the U.S. and to establish contacts with Italian officials who could continue to supply New York authorities with similar information. He made

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<sup>52</sup> Malcolm Anderson believes Enright's participation was prompted by an upswing in international criminality on the East Coast resulting from postwar conditions Anderson, "Interpol and the Developing System of International Cooperation," 90..

contacts with Italian officials and the American consul in Palermo but operated mostly on his own. He managed to send some records home before he was murdered by unknown assailants believed to be working for the local mafia.<sup>53</sup>

The New York Police Commissioner promptly sent two more detectives to Italy where they spent several months and succeeded in getting officials in Rome to supply penal records on hundreds of Italian criminals. But the initiative was undercut back home through corrupt politics which put a stop to the operation. In 1920 another New York Police detective, Michael Fiaschetti, went to Italy to locate two fugitives accused of murder and others who may have fled there and to try to identify the murderer of Petrosino. He returned to Italy two years later to testify in the trial of one of the fugitives, who was an Italian citizen and could not be extradited.

Some time after this the New York City Police Department instituted a policy prohibiting any police to travel abroad on official investigations. The policy was not reversed until 1972 when Detective Joseph Coffey was permitted to trail a mafioso to Europe.<sup>54</sup>

Smaller police departments interviewed during this study reported consistently that they make no effort on their own part to try to pursue fugitives who are believed to have fled the country. They just call the FBI. Larger police departments are also likely to call the FBI but not

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<sup>53</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 89.

<sup>54</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 90, 177.

always. Several departments had a case or two in the previous year or so which it decided to pursue across international boundaries with its own personnel independently of the FBI. It is not common even for the New York Police Department to do more than about two cases.

Pat Harnet, a former NYPD Chief, recalls going to Santo Domingo several times in 1988 as a detective in connection with a fugitive who had killed a police officer. Being on official business he had to go through the State Department. Once there the Drug Enforcement Administration was a point of contact for him. They got the Dominican police to arrest the suspect. The government would not extradite him because he was a national. The case became somewhat embarrassing. In the end the suspect died. It was said that he had accidentally fallen from the third tier of the prison block.<sup>55</sup>

The Miami (Florida) Police Department often has drug smugglers and dealers who flee to the Dominican Republic, Panama, and other Caribbean and Latin American countries. Normally it contacts the federal law enforcement agencies for help in these cases. They will take out a warrant through the U.S. Attorney's Office and try to get it served in the country of flight, although with little success even if they know the suspect's home address. They do not usually pursue cases internationally themselves. However, they did pursue the killer of a fellow police officer's mother. Their search went from Venezuela to California to Mexico and finally to Guatemala where they had to be get assistance from the FBI in order to get out of the country

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<sup>55</sup> Interview Aug. 20, 1999.

with their wanted man.<sup>56</sup>

It started with Venezuela because one of the two murder suspects had driven a car registered to someone from Venezuela. They contacted the Vice Consul from Venezuela, who happened to be a member of the Venezuelan national police. He immediately put a hold on the suspects. They fled to Los Angeles and then to Baja California. The Miami Police Department (Miami PD) investigator followed them. He contacted the San Diego Police Department (SDPD), without whose connections with Mexican law enforcement the Miami police say he could not have succeeded.

SDPD put Miami PD in touch with the Baja California Attorney General's Office.

Miami PD gave all the information he had to the Baja California Attorney General's Homicide Bureau officers who began searching for the suspects in Tijuana. The cooperation received from the Mexicans is described by the Miami police as "excellent." They distributed photographs of the suspects; escorted the Miami officer around Tijuana looking for the suspects and asking their contacts for leads. They expressed sympathy for the case because a fellow police officer's mother had been killed.

A couple of weeks later the suspects moved to Mexico City. Miami PD contacted the brother of one of the suspects living in southern California whom telephone traces showed he

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<sup>56</sup> Interviews with two Miami Police Department detectives, June, 1997.

had been calling. Through the brother and later through direct calls from the suspect the Miami police tried to persuade the suspects to give themselves up. They did not want to do so because they were afraid of what the police might do.

The Miami police obtained a provisional arrest warrant through the U.S. Department of Justice and made contact with the FBI attaché at the Embassy in Mexico City. After many phone calls, the Miami police convinced the suspects to give themselves up. But that presented a problem. The police wanted to get a confession. If the suspects were arrested in Mexico the FBI attaché would have to turn them over to Mexican authorities who may not get the confession or extradite them. So the Miami police got the FBI agent to convince the suspects to go to Guatemala. He guaranteed them that the FBI would protect them. The Miami police had to wire money to them for bus fare to Guatemala because the suspects said they were broke.

In Guatemala the suspects were taken into custody by the FBI at the American Embassy. Then there was a problem about getting them out of the country. The FBI could not use a commercial flight. Instead an FBI plane was flown in with a team of agents. But it had landed in Guatemala City where the military control the airport and would not let the FBI plane depart because of a failure to get the proper in-country clearance to land the plane. There was a 12 hour standoff between the Guatemala police and the military. It took a call from the U.S. Embassy to the President of Guatemala to break the impasse and allow the plane to depart.

Although local and state law enforcement agencies do little international travel in

criminal cases, they are linked to the international realm of crime control efforts in various institutionalized ways including INTERPOL; joint task forces; foreign liaison units; an international intelligence network; and the use of foreign prosecution procedures.

#### i. INTERPOL and the American Police

The United States joined INTERPOL in 1938 with the endorsement of J. Edgar Hoover whose assistant had attended its annual meeting the previous year. His assistant concluded that American law enforcement would not benefit as much from membership as the Europeans would but recommended joining the organization because of the opportunity for contact with foreign officials and obtaining information about criminals. Subsequently, Hoover shunned the organization preferring instead that American police agencies use the LEGAT (legal attaché) system for international communications and encouraging federal agencies to do so as well. The LEGAT system consists of law enforcement officials stationed abroad at embassies or consulates. They seek information and assistance from host governments on behalf of requests from home.

Until 1969 when the National Central Bureau (NCB) of INTERPOL for the U.S. was finally given an office and staff (seven years after it had been established) American law enforcement had little contact with INTERPOL. During the 1970s NCB operations continued to

be minimal averaging about 300 cases a year.<sup>57</sup> That changed with the appointment of a dynamic new chief in 1979. By July 1999 the staff at USNCB had jumped from 6 to 95 employees handling 1200 new cases per month plus message traffic on open cases. In addition to the NCB which is located in the Justice Department all fifty states plus New York City, Washington, D.C. and the territories have their own state-level central points of contact. Additionally many larger police departments have designated officers as INTERPOL liaisons. NCB officials attend national meetings of police associations, conduct training sessions and publish articles in the police literature actively promoting the use of INTERPOL's capabilities.

INTERPOL is not a police agency with its own investigative staff. It is a police-to-police communication system that allows the local police to communicate with foreign counterparts as if they were communicating with the American police agency in the next state. For example, the police in Poland checking vehicles at the border are able to enter the vehicle identification number in the INTERPOL terminal for an immediate check of the stolen vehicles file of the main American criminal records system, the National Criminal Identification Center. The capacity is being extended to other countries in the near future.

INTERPOL provides investigative assistance to law enforcement agencies on all elements of criminal activity and police work including: address verifications; all points bulletins; criminal record checks: probation and parole, criminal investigations, organized crime

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<sup>57</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 182.

cases; drug investigation inquiries; disaster victim identification; humanitarian requests (death, injury, and missing person notifications); interviewing witnesses; locating witnesses, and suspects/fugitives wanted for extradition; modus operandi information; name, criminal history, fingerprint, license checks; parental abductions; photograph and physical description checks; support for exclusion from the United States, and deportation of convicted criminals; recovery of stolen art and artifacts; telephone subscriber information; wanted person notices; weapons and vehicle traces.<sup>58</sup>

NCB officials have found that about half of the American police they have surveyed know about INTERPOL through movies or novels; but most are unaware of the services it provides or that it is available to them. That is changing due in part to the aggressive outreach efforts the NCB. One official estimates that in the past two years there has been about a six percent a year increase in the use of INTERPOL services. Nonetheless police agencies in other countries are more likely to use INTERPOL. About 70% of the traffic handled by the US NCB is incoming requests from foreign agencies. The balance is outgoing American requests.

NCB officials say they are not trying to compete with the LEGAT system that exists but they are trying to institutionalize the use of INTERPOL as the resource of choice in all but the special cases. In some cases it is critical to have a representative on the ground in the foreign country who can "shake the hand and show the face" to local officials. But most routine

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<sup>58</sup> INTERPOL U.S.National Central Bureau, "INTERPOL-USNCB Homepage" <<http://www.usdoj.gov/usncb/>>, Aug 9 1999.

matters can be handled via messages routed through INTERPOL's communication system. They will be delivered to the same foreign law enforcement agency as would usually happen via the LEGAT system. What is more, INTERPOL offers the possibility of posting international stop notices which in some countries are treated as equivalent to temporary arrest warrants. Thus fugitives who cross borders may be arrested by customs police.

Confirming our findings and those of Nadelmann regarding how rarely police departments pursue cases abroad themselves, the state liaison coordinator at the U.S. NCB, Lt. Michael Muth, is aware of only three instances in two years where a local police agency pursued a case abroad. In one instance the agency contacted the NCB for assistance in making contacts with American and foreign officials in the foreign country, Costa Rica. NCB discourages police agencies from pursuing cases themselves into foreign countries for several reasons. In some countries (e.g. Switzerland) it is a felony for a foreigner to interrogate someone about a crime. If a suspect's civil rights are violated the extradition may be jeopardized. If the investigation is bungled it may cause international repercussions and may sabotage other cases as well as future cooperation.<sup>59</sup>

NCB officials expect that as the demand from American police agencies for foreign law enforcement assistance increases the LEGAT system will not be able to keep up. Eventually the INTERPOL network will become standard procedure for American police. Meanwhile, we are

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<sup>59</sup> Interview Aug. 13, 1999.

in a transition period in which several alternative networks co-exist. In addition to INTERPOL and the LEGAT networks, there are networks operated by individual police agencies; professional police associations; and individual police officers.

## ii. Alternative Law Enforcement Networks

At this point in the development of international police cooperation, networks of various kinds link police agencies and resources in different countries. The networks often parallel each other. Some are redundant; some compete with while others complement each other. Some have the official endorsement of the highest authorities of their countries. Others are authorized on a more limited basis. Still others are based entirely upon the personal friendships developed by individual law enforcement officials in the course of their careers.

As the institutions of transnational police cooperation are built the local and informal methods of proceeding are being either wholly replaced or increasingly formalized. Local law enforcement officials who have worked out accommodations with their counterparts in the neighboring country have mixed feelings about the costs and benefits of the increased formality. Along the U.S. - Mexico border local police, who have functioned as liaisons with Mexican law enforcement, tell stories about how complicated and difficult things get when the federal authorities (U.S. and Mexican) get involved. An oft told tale is about the federal official who pays a visit to see how the locals are handling law enforcement at the border. On the ride from the airport as the local briefs the federal representative on the handling of a recent case, the

federal official repeatedly interjects. "But that is not how it usually happens, is it!"

A Sheriff with long experience in community along the Mexican border put it this way:

"The vast majority of the working agreements we had for years and years with the mexicans were informal . It was that touchy-feelly stuff. You lose that closeness when things start getting formal . We are always here. But the federal officials come and go, and set policies that differ in their strictness. You may have one tough policy or a person who was rigid about things and the Mexicans didn't trust him. Then it changes. That effects our relationship. Small things like attitude of the official make a lot of difference to the Mexicans."<sup>60</sup>

Problems and policies at the border which would be regarded as strictly local matters anywhere else become federal matters because of their international implications. American local officials get impatient and resentful at what they regard as federal interference in their affairs. Federal solutions are often insensitive to local priorities, fail to solve the problem and can make it worse. When El Paso (TX) Chief of Police, Russ Leach, was asked about the about all the support his department was giving the Ciudad Juarez (Mexico) police in solving crimes he replied: "Maybe I am naive. But if we get Mexico City or Washington involved, nothing gets done. Out here, we deal with real pragmatic issues. We need to work with each other."<sup>61</sup>

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<sup>60</sup> Interview July 1997.

<sup>61</sup> Richard A. Serrano, "Joint Efforts Boost Law Enforcement On Border," *Los Angeles Times*, Jan. 3 1998.

Sheriff Owen Fox of Imperial County (Calexico) California says he refused to let the State Department prevent him from cooperating with the city of Mexicali across the border:

"I have signed agreements with the city of Mexicali to provide assistance in cases of disasters, fire, police and public works, such as floods, earth quakes. The State Department called me and said, 'You can't enter into agreements with a foreign country.' I said, 'Bullshit!' If I want to take the some equipment down there to help out and if I have the permission of the Board of Supervisors, I'm going to do it. The Board has agreed to the assistance. Of course we don't bring in any guns. If there were a riot type disaster we'd probably go to the border but not cross. We would not go over with weapons."<sup>62</sup>

Local arrangements are often preferred because they are more informal and hence easier to operate and because they are readily available and of known reliability. They also permit local governments to tailor them to their own particular needs. For these reasons transnational police networks independent of the control of the U.S. federal government are likely to continue to exist and serve an important supplementary role to federally based systems.

iii. The Law Enforcement Intelligence Network (LEIU)

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<sup>62</sup> Interview July 1, 1997.

In addition to the LEGAT and the INTERPOL networks American state and local law enforcement agents have developed other networks. One of them is the Law Enforcement Intelligence Network (LEIU) founded in 1956 at the initiative of the Los Angeles and San Francisco Police Departments as a way around the FBI's unwillingness to provide them with intelligence about organized crime figures and operations on the West Coast. Representatives of twenty-six law enforcement agencies met in San Francisco that March and established LEIU. It represents yet another example of local police developing institutions that reach across boundaries in order to fight crime. Its purpose is to exchange confidential criminal information among law enforcement agencies on mobile criminals.<sup>63</sup>

Because of the sensitive nature of the intelligence information exchanged, LEIU takes special precautions regarding which law enforcement agencies will be admitted into membership. Only agencies judged through a review process to be trustworthy are permitted membership and membership can be suspended or revoked for cause by the Executive Board for improper handling of information or violations of LEIU policy. Applicant agencies must be sponsored by a LEIU member agency and must have three letters of endorsement from other LEIU member agencies. Applicants have information about their directors, the designated LEIU representative

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<sup>63</sup> Interview with confidential source July 11, 1997 and also, Law Enforcement Intelligence Unit, *Law Enforcement Intelligence Unit Report: 1997-98*, Pamphlet (Sacramento, CA: California Department of Justice, 1997); George O'Toole, "Exclusive: America's Secret Police Network," *Penthouse*, Dec. 1976; James Phelan, "Hoover of the FBI," *The Saturday Evening Post*, Sept. 1965; Anon, "Combatting Organized Crime," The Oyster Bay, NY, *Conferences on Combatting Organized Crime*. (1965), 46,47; W. H. Bishop, "Intelligence Systems - L.E.I.U. - An Early System," *Police Chief*, Sept. 1971, 30, 32; N.J. Loschiavo, "Law Enforcement Intelligence Unit," *Police Chief* 62, no. 2 (Feb. 1975): 46, 82.

and an operational overview of the agency circulated throughout the membership for comment.

Adverse information about the applicant agency is solicited.

As of 1999 a total of 260 police departments are members of LEIU. Most are American state or local agencies. In addition there are seven Canadian agencies as well as agencies from Australia, Great Britain and South Africa. The Canadian agencies have been members for more than two decades. The other foreign members joined more recently. LEIU has a Central Coordinating Agency which provides the necessary administrative support for the association. It is located in the California State Department of Justice. LEIU boasts that it is "the premier intelligence organization in the United States," that it is "rapidly expanding in the international community" and that it has "taken the lead in providing the law enforcement community with the first international link, via computer, to network criminal intelligence files and information."<sup>64</sup>

#### iv. Regional Information Sharing Systems (RISS): International Dimension

The ability of state and local law enforcement agencies to reach beyond their boundaries got a boost from Congress in 1974 with funding for the establishment of Regional Information Sharing Systems (RISS). The country was divided into six regions in each with a RISS project that provides three services: information sharing, analytical support, and telecommunications. Optional services include investigative support, specialized investigative equipment, technical

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<sup>64</sup> Law Enforcement Intelligence Unit, *Law Enforcement Intelligence Unit Report: 1997-98*, i.

assistance, and training. The purpose was to provide state and local law enforcement agencies with an intelligence capability to identify, target and suppress multi-jurisdictional criminal conspiracies and activities.<sup>65</sup>

The Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCEN) is one of the six RISS projects. Its membership grew from 11 agencies in 1981 to 473 in 1996. Included in its service area are the Canadian provinces of Ontario and Quebec. Ten Canadian law enforcement agencies are members.<sup>66</sup> As of December 1996 the MAGLOCEN Criminal Information Database contained information pertaining to more than 162,000 known or suspected criminals. Canadian activity with respect to the database involved 165 inquiries and 1,049 submissions. Also MAGLOCEN co-sponsored the Fourth Annual Canadian/American Organized Crime Conference. Other co-sponsors were: the Canadian American Law Enforcement Organization (CALEO); the Criminal Intelligence Service Ontario (CISO), and the Bureau of Alcohol, Tobacco and Firearms (ATF). Forty law enforcement

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<sup>65</sup> Institute for Intergovernmental Research, *Membership and Service Activities of the Regional Information Sharing System (RISS) Projects 1989- 1991: Summary Report*, NCJ Number: 142644 (Tallahassee, FL: Author, 1992); MAGLOCEN, *1996 Annual Report*, Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (Newton, PA: Author, 1996).

<sup>66</sup> Canada Customs, Intelligence Service Division; Halton Regional Police Service; Metropolitan Toronto Police Service; Niagara Regional Police Service; Ontario Provincial Service; Peel Regional Police Service; Regional Intelligence Centre; Royal Canadian Mounted Police-Toronto; Surete Du Quebec; York Regional Police Force. MAGLOCEN, *1996 Annual Report*, 26.

personnel from Canadian member agencies attended MAGLOCEN conferences in 1996.<sup>67</sup>

#### iv. INTERNET-based Police Networks

In addition to the use of websites by local and state law enforcement agencies to solicit information about fugitives, police organizations are operating international intelligence networks of their own. The following message was downloaded from an unsecured police intelligence site operated by the Brussels Police Department in Belgium.

Total Number of Guests 42

Brussels Police Department

Record 35

Name: Sergeant ....

Website:

Referred by: Net Search

From: [small town], USA

Time: 1998-03-29 19:18:00

Comments: I am the Intelligence Officer for the North Regional Major Crimes Task Force. We are located in northern ... County, just north of ... I have been following the activities of a group of South Americans and recently learned your area may have investigated them. Our suspects are quite active in jewelry thefts. I am interested in setting up a information exchange concerning these subjects. I can be reached by mail at: ... Police Department Sergeant ....[address & telephone and email ] Thank you. Sergeant ... [the original was not edited in the downloaded version].

The Illinois local police officer who posted this message has 25 years experience in law enforcement. He believes that police officers in his neck of the woods tend to do their own networking in pursuit of international cases. He pursued these South American jewel thieves over

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<sup>67</sup> Kimberly A. Mazenko, Publicist, MAGLOCEN, Special analysis requested by W.F. McDonald (Newton, PA, July 28 1997).

ten years, frequently with the help of a colleague in the Intelligence Service of the Toronto (Canada) Metropolitan Police. The South Americans were active in Asia, Europe, Australia, and Africa. He did not call INTERPOL because he checked its website and found they did not have a local contact only contact with the Illinois State Police. He believes that INTERPOL is not interested in small jewelry theft cases. "They want the terrorists and the big time. I wasn't going to burn a call to them in Washington."<sup>68</sup>

#### v. Personal Networks

Personal contact lists are often developed by enterprising individual police officers anticipating the day when they may need assistance from a foreign agency. Such contacts are often a key justification for attendance at international police conferences. It is one of the reasons the FBI invites foreign police officials to participate in its training academies. It is an unofficial function of virtually every gathering of police officers. Many state and local agencies conduct training programs which foreign law enforcement agents attend and where networking is done. Additionally, big city police departments capitalize upon their contacts with foreign security and law enforcement officials while serving on security details for visiting foreign dignitaries.

Some officers are particularly diligent about developing these lists. Officer Art Madrid, who served in the Community Relations unit of the Los Angeles Police Department as the liaison

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<sup>68</sup> Interview Aug. 17, 1998.

with the Latino community, was always looking for contacts in Latin American governments. In his experience personal contacts are the only way to get anything done in Latin America. He was often assigned to security details for Latin American dignitaries and also had frequent contact with the staffs of the consulates of Latin countries. He used these opportunities to build a list of contacts for future reference.<sup>69</sup>

In 1976 he took an unusual approach to the task. He is a motorcycle enthusiast and a member of the LAPD motorcycle unit. He and a group of 12 others took a motorcycle tour from the tip of South America to Los Angeles. The tour was sponsored in part by Nissan motors. Along the way Madrid sought out law enforcement officials in various countries, established relations with them and entered their names and telephone numbers into his little black book. When he returned home, they became his points of contact for future reference. When LAPD established the International Liaison and Foreign Prosecution Unit, Madrid transferred into it.

#### vi. The International Association of Chiefs of Police Today

When the ICAP was founded in 1893 its membership was overwhelming drawn from two countries, the United States and Canada. In 1999 the IACP reports membership from 108 countries, an increase in the number of foreign countries of 17% in just one year. The IACP does not attempt to serve as a direct operational network to facilitate the handling of particular cases.

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<sup>69</sup> Interview July 14, 1999.

Its international objective is to "enhance the quality of law enforcement and policing at the international level...by facilitating the exchange of ideas, procedures, and specific information for professional leadership and management within police agencies."<sup>70</sup>

It holds two international conferences a year; holds observer status with INTERPOL and consultative status with the United Nations. It has two world regional offices, one in Europe (Stockholm, Sweden) and one in the Pacific/Asian Region (New Delhi, India). In October 1997 it began an international law enforcement exchange program with a grant from the U.S.

Department of State. The program will involve about 300 officers in exchanges lasting not more than 30 days. The purpose is to promote training opportunities between U.S. police departments and police from abroad. Police from the Newly Independent States, Russia, Ukraine, Central

America and the Caribbean regions are expected to participate.<sup>71</sup>

#### IV. Law Enforcement At the Borders

##### A Tale of Two Borders

State and local law enforcement agencies in border locations have necessarily had to deal

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<sup>70</sup> International Association of Chiefs of Police, "IACP: International Association of Chiefs of Police: International" <<http://www.theiacp.org/international/index.html>>, 1999.

<sup>71</sup> International Association of Chiefs of Police, "IACP: International Association of Chiefs of Police: International."

with criminals who cross borders and with other police matters that transcend borders. They have had to interact with law enforcement agents on the other side to a greater or lesser extent. Much of the other police business involves activities which have not been emphasized in discussions of the nature of the police function in modern society<sup>72</sup> but whose importance emerges when examining transborder police work. Much of it involves the seeking and delivering of information. Some of it is connected with investigations in specific cases; some with general intelligence. Some of it involves information about accidents and the delivering of death notices.

The story of the transnational practices and institutions of the American police in the border jurisdictions is a tale of two borders. They are dramatically different stories. The gap between the United States and Mexico in terms of differences in language, culture, legal traditions, economic development and law enforcement capability and professional is enormous. The same gap does not exist between the United States and Canada. The political relations between the two pairs of countries are also strikingly different. The United States has fought a war with Mexico; sent Marines into its capital city; annexed a vast track of Mexican territory; supported a dictator against liberal revolutionaries; and sent a punitive military expedition into northern Mexico to avenge atrocities by Pancho Villa. That history has left a heavy strain on the relations between the two countries. Anti-Americanism is a potent force in Mexican politics. No similar strain exists with the Canadians.

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<sup>72</sup> See e.g. Carl B. Klockars, *The Idea of Police* (Beverly Hills, CA: Sage, 1985).

Bridging the divide between American state and local law enforcement agencies and Canadian agencies has been a comparatively simple matter. They speak the same language; operate within legal systems from the same legal tradition; and have similar levels of education, training and supporting technological infrastructures. The police agencies in both countries have achieved a comparatively high level of professionalism and integrity. Corruption still occurs but it is not all pervasive nor taken for granted. Public confidence in the police is remarkably high.

In contrast the Mexican law enforcement agencies not only speak a different language and operate within a different legal system but must operate with limited training and resources and within a tradition of rampant corruption and little public respect for law enforcement. In addition, Mexican police are not organized along the same lines as American and Canadian police. Unlike the Americans and the Canadians, the jurisdiction of Mexican municipal police organizations is limited to minor crimes and traffic control. Serious crimes fall within the jurisdiction of the state judicial police organized at the state level and answerable to the state attorney general, a political appointee. Thus the chief of police of a Mexican city like Nuevo Laredo or Tijuana does not command the same kind of investigative force that his counterpart does across the border.

It is not surprising to find that Canadian law enforcement officials have been working together with their American counterparts for over a century to develop transnational mechanisms of cooperation. Canadian law enforcement officials were members of the National Police Conference which in 1893 was reorganized as the IACP. For many years the Canadians

and the Americans constituted the great majority of the IACP membership. In contrast only a seven Mexicans were members in 1998. It is not known when Mexicans first joined the organization.<sup>73</sup> Similarly, several Canadian police agencies have been admitted to membership in the highly selective LEIU. No Mexican law enforcement agency, or for that matter, any agency from a non-English speaking country is a member of LEIU.

#### Law Enforcement Cooperation along the U.S. - Canada Border

Law enforcement cooperation across the U.S. - Canadian is highly institutionalized and operates at least as well as cooperation among local, state and federal agencies within the United States. American local police agencies in urban jurisdictions along the border have regular formal and informal contacts with Canadian police agencies at every level. They contact each other for assistance in criminal investigations. They exchange intelligence and criminal record information in person as well as through the electronic Regional Information Sharing System operated by MAGLOCEN. They coordinate arrests and expulsions of criminals. They regularly participate on joint law enforcement planning committees. They also socialize together attending "law enforcement day" celebrations on either side of the border. They develop personal and professional friendships which help speed cooperation in particular matters but are not essential.

The particular details and degree of accommodation among the law enforcement agencies

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<sup>73</sup> Interview with IACP membership secretary, Aug. 17, 1999.

at the Canadian vary somewhat from place to place. In some locations the police are permitted by informal agreement regarded as a kind of professional respect to retain their weapons under certain circumstances when crossing the border. In most places there is a strict observance of the rule that weapons can not be brought across the border. In some places, the police allow their foreign counterparts to conduct their own surveillance of cases in the host country.

There are several institutions that promote and sustain binational cooperation between Canadian and American law enforcement agencies in the New York region. Project NorthStar is a binational law enforcement group of federal, state and local law enforcement representatives with a full time person assigned to it that meets quarterly to discuss matters of mutual interest. Each district of the U.S. Attorney's Office (USAO) has a Law Enforcement Coordinating Committee (LECC) that includes representatives from state and local law enforcement. The Western District's LECC also includes representatives from four major Canadian law enforcement agencies including Toronto, Ontario, and Hamilton-Windsor. There is also informal binational group, with rotating leadership for a year and regular meetings, known as CALEO, the Canadian American Law Enforcement Organization, which co-sponsors meetings.

American law enforcement contact with Canadian law enforcement occurs both formally through these groups and informally. The USAO's contact is daily. At one LECC meeting in the summer of 1997 there were two Canadian prosecutors and three investigators present. The focus was on asset forfeiture, environmental crimes and telemarketing fraud. Telemarketers have

located in Canada but are targeting Americans.<sup>74</sup>

Every federal agency in the northern New York area has a designated liaison person to help Canadian law enforcement connect with anywhere else in the USA. Recently, some Canadian law enforcers came to the USAO there to get a briefing on the law and practice in Arizona for a case they were handling. In 1993 the World University Games (the Olympics of college sports) was held in Buffalo with two venues in Canada. Over 9,000 people from 52 countries for three weeks participated. There was close cooperation among the law enforcement agencies on both sides. In November 1996 the Canadian Casino in Niagra Falls Canada opened. By May Canadian law enforcement officials were briefing the LECC on the details associated with the casino and on what kinds of support they needed from American law enforcement.

The New York State Police (NYSP) does not have a separate international crimes unit but does get involved in many assignments involving foreign criminals on a case by case basis and through liaison with various task forces including those of the High Intensity Drug Trafficking Area (HIDTA) group and the NorthStar program. The NYSP conducts an annual conference, the Henry F. Williams Homicide Seminar, to which representatives from 150 agencies come including foreign agencies from Canada, England, Russia and China. The NYSP relies upon the FBI and INTERPOL for cases of fugitives that flee abroad.<sup>75</sup>

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<sup>74</sup> Interview with Kathleen M. Mehlretter, Chief, Criminal Section, International Crimes, U.S. Attorney's Office, Western District of New York, July 11, 1997.

<sup>75</sup> Interview with New York State Police official, July, 1997.

The Niagra Falls Police Department (NFPD) has regular formal and informal contact with Canadian police agencies including the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP) and city (Toronto) police. NFPD works with the Canadian police agencies frequently regarding drug cases but rarely regarding homicides, robberies, rapes, assaults. People who commit those crimes do not flee to Canada (less than three a year). If they flee at all, they head south. When there is a possibility of flight, the police post a lookout with U.S. Customs and wait for the suspect to try to cross.<sup>76</sup>

The Buffalo Police Department has a lot of cooperative interactions with Canadian law enforcement agencies but does not have specialized international liaison unit devoted to Canadian affairs. The experience has been quite positive. "The Canadians bend over backwards to help us." The new gambling casino that opened on the Canadian side of the border is owned by the government but run by a private company. It generates a lot of calls to the Niagra and the Buffalo Police Departments requesting intelligence about people coming from the Buffalo area to play. The casino does a \$2 to \$3 million a month business and worries about criminals passing bad checks, fixing slot machines or otherwise defeating the system. The casino law enforcement officials are in frequent communication about who these people are. If there is some big-spender, or flashy dresser with women surrounding him, or otherwise suspicious acting person, the casino will ask if the Americans have any warrants outstanding for him. They are not likely to expel him from Canada just because he has a criminal record in America. But if there is a

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<sup>76</sup> Interviews with two experienced members of the Niagra Police Department, July, 1997.

warrant they may prevent his entry into the country the next time he tries to enter.<sup>77</sup>

The Buffalo Police Department plays a major role as a processor of persons wanted on warrants in the U.S. who are caught at the Peace Bridge at the international border. U.S. or Canadian Customs catch and refer to the Buffalo Police about 50-150 incidents per year involving fugitives from somewhere in the U.S. Every car entering the country has a license plate check via the computer link to NCIC by the time the car gets to booth with the Customs inspector. Any additional suspiciousness may prompt a check of the names of the persons in the car. Also Customs officials check the buses for suspicious persons. If there is an outstanding warrant, they will turn the individuals back.<sup>78</sup>

Federal officials can not extradite cases involving violations of state crimes. Extraditions (for violations of state crimes) must be done state to state. So they call Buffalo PD and turn them over. Buffalo PD and local district attorney's office do the processing of the cases. Federal officials can only extradite/render directly persons wanted on federal charges.

Canada prefers to use immigration laws (expulsion) rather than extradition as a way to get rid of American undesirables. Those are cases that will often end up being handed over to the Buffalo Police Department or the nearest port of entry. Canada will extradite its own nationals

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<sup>77</sup> Based upon interviews with members of the Buffalo and the Niagara Police Departments July 1997.

<sup>78</sup> Interview with Buffalo Police Department official, July 1997.

but most extraditions requested by the United States are not of Canadians. The USAO for the Western District of New York requests about 3 to 4 extraditions per year. Canada will not accept hearsay evidence for extradition. So it is more difficult to prepare extradition requests. Packages are big with long transcriptions of testimony. A Canadian justice official in 1997 reported that the rate of granting extradition requests from the USA was in the high 90%'s.<sup>79</sup>

The Detroit Police Department has remarkably little spill over crime from its sister city across the international bridge, Windsor. It has cordial relations with the Canadian law enforcement but does not do much in the way of cross-border cooperative investigations except for information exchange especially in connection with the casino that has opened in Windsor.<sup>80</sup> Similarly at International Falls, Minnesota, the local police have few crime problems that cross the Canadian border. They report excellent relations with their Canadian counterparts. If there is any need for cooperation they simply call each other. There are no particular formalities observed, not even having to go through the chain of command. Officers just pick up the phone and try to find out the information the other side needs.<sup>81</sup>

On the West Coast Canadian-American law enforcement cooperation is equally well integrated. The Seattle Police Department has frequent formal and informal contacts with

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<sup>79</sup> Interview with Kathleen M. Mehlretter, Chief, Criminal Section, International Crimes, U.S. Attorney's Office, Western District of New York, July 11, 1997.

<sup>80</sup> Interview with a lieutenant, Detroit Police Department, June, 1997.

<sup>81</sup> Interview with a member of the International Falls Police Department, June, 1997.

Canadian law enforcement agencies, particularly the Vancouver Police Department. The cooperation is often informal and between members of the same units who have had long standing relations between them. Cooperation is so well established, however, it does not depend upon personal contacts. Much of it involves information exchange. The Seattle Police make considerable use of the Canadian Law Enforcement Unit (CLEU), an intelligence unit. They also work together through LEIU. Some times they work directly with the Vancouver Police on common cases which involve activities on both sides of the border. In cases that the Seattle Police were pursuing but parties went to Canada, the Seattle Police might ask the Canadians to do the surveillance work for them and vice versa. However, the police do not care to spend much time on cases that are going to be tried in the other country.<sup>82</sup>

#### Transnational Law Enforcement At the U.S.- Mexico Border

International law enforcement cooperation along the U.S. - Mexico border is an entirely different story. That border has had a tumultuous history with a legacy of crime, disorder, lawlessness, distrust and racism. For decades law and order on both sides of the border was sporadic at best. Cooperation between law enforcement agencies of the two countries rarely happened. When it did, it was *ad hoc*, based on personal relationships and hence subject to with personnel turnover. Instead of cooperation U.S. and Mexican law enforcement agencies have often been at odds with each other occasionally accusing the other of complicity in cross-border

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<sup>82</sup> Interview with member of Seattle Police Department's Intelligence Unit, June 1997.

criminality or corruption.<sup>83</sup> Transnational law enforcement was often done unilaterally by agents who entered the other country without permission. The lack of a reliable system for returning fugitives from Mexico to the United States fostered the use of bounty hunters and the practice known euphemistically as “irregular rendition,” the kidnaping and forcible delivery of wanted persons to the United States.

The building of social relationships that allow work that spans different organizations and different political units to proceed efficiently is truly analogous to building bridges. They are investments of time and energy in what might be called “relationship capital.” Personnel turnover in situations where transactions among organizations are not otherwise institutionalized are destabilizing and constitute real costs. Add to that, if the context is one in which there has been a history of mutual antagonism and suspicion between the two larger communities from which replacements are drawn, the possibilities for serious set backs are plentiful. Renewing and maintaining productive relationships with Mexican law enforcement officials is one of the ongoing tasks of American law enforcement officials along the border. In many places for a long time these were left up to the ingenuity and initiative of individual law enforcement officials whose attitude toward this task varied from enthusiasm to contempt.

For some time this task has been facilitated and regularized in a few places by the institutionalization of gatherings of U.S. and Mexican law enforcement officials to discuss

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<sup>83</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 64ff.

matters of mutual concern regarding border law enforcement. The agendas of these gatherings are often repetitious. Attendees with careers in law enforcement are sometimes bored at the repetition and want to do more in the way of setting policies or resolving disputes. But they recognize that the instructional and policy making values of the gatherings are secondary to their most important function, showing mutual respect and establishing a climate of trust and good faith within which cooperation can occur.

Every meeting of U.S. and Mexican law enforcement officials is haunted by the ghosts of the past. Either in their minds or the minds of the publics that read about the meetings in the press there are certain questions. Who is getting the best in this bargain? Is the U.S. asking too much? Is Mexico doing too little? Are the Mexicans overly sensitive about matters of honor and status? Are the Americans oblivious to racism and the sleights of power? The new economic and social realities are forcing American and Mexican officials to put the past behind them and build an effective systems of law enforcement cooperation. That work has begun.

Over the past three decades things have improved. The two countries have been moving towards more cordial and cooperative relationship. The movement has been happening at all levels: local, state and federal. It is being driven by the growth of enormous urban communities along the border as well as by the global restructuring of the world economy. State and local law enforcement agencies in California and the Southwest are playing a lead role in pioneering the institutionalization and regularization of cooperation with Mexico. The local and personal relationships they have cultivated for years with their Mexican counterparts continue to operate

on mostly a personal basis. They are fragile and can be disrupted by political events and other factors. But since the 1970 they have been increasingly sustained by institutions and supported by a broader recognition of the need for mutual cooperation.

One institution in particular, foreign prosecution, has become a cornerstone of the new law enforcement cooperation with Mexico. A second is the special new Mexican police units established to protect immigrants from bandits. A third is the establishment of binational law enforcement coordination groups at the state and federal levels. A fourth is the proliferation of international liaison positions in American local law enforcement agencies away from the border as well as other transnational connective ties such as "sister city" arrangements.

There is still a lot of room for improvement in cooperation with Mexican law enforcement. But on the other hand, the days when American law enforcement agents could expect almost no help from Mexico and had to choose between either irregular rendition or impunity for criminals are fading. The bounty hunting method for getting wanted persons out of Mexico has not yet been extinguished. Mexican officials decry it as lawless and an invasion of sovereignty. It can still be used even as a mere threat, as the Texas Ranger did who convinced the family members of Angel Resendez, the Mexican believed to be the "railroad serial murderer," to turn himself in before a bounty was placed on him.<sup>84</sup>

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<sup>84</sup> Terri Langford, "Murder Charge for Railroad Suspect," *The Washington Post*, July 15 1999, A2.

The following sections of this report describe the developments in transnational law enforcement cooperation between U.S. state and local law enforcement agencies and Mexican law enforcement agencies. It does not cover cooperation with regard to the drug war; and it touches illegal immigration only tangentially. Both of those matters are treated as special topics by the local law enforcement agencies along the border. Law enforcement concerns about the safety of immigrants has been the source of a notable success story in U.S. - Mexican law enforcement cooperation. Law enforcement regarding drugs has been notable for its lack of success. Indeed drug enforcement is largely compartmentalized and kept separate from the kinds of conventional crime fighting and police work about which the agencies from the two sides do cooperate.

It is important to distinguish cooperation between the U.S. and Mexico regarding drug law enforcement from all other areas of law enforcement cooperation, and not to judge the latter by the former. Cooperation regarding drug enforcement has been a dismal failure. The most recent example is the disarray in the joint law enforcement units that were intended to gather intelligence and attack the growing drug cartels. Bilateral Task Forces initially established in Tijuana and Ciudad Juarez were in a "shambles" after 14 months of the program. At least five senior Mexican officials in the program were arrested for taking drug money, kidnaping witnesses or stealing confiscated cocaine. The issue of personal security for American law enforcement agents working on the task forces in Mexico could not be resolved. The American request for permission for its agents to carry weapons was described by the Mexicans as a

possibly unresolvable issue.<sup>85</sup>

Unfortunately images from the failure of the drug enforcement efforts tend to skew American thinking about the possibilities for cooperation with Mexican law enforcement. There is a more hopeful side to the story. It lies outside the work of the federal authorities and the campaign against drugs. It consists of efforts at the state and local levels of U.S. and Mexican law enforcement officials who attempt to enforce law and administer justice with respect to serious crimes other than drug violations within the limits of a very asymmetrical binational environment. That story has not been told but deserves to be told in full detail. The sections below provide a few glimpses of it.

#### i. Avoiding Drug Enforcement Cooperation

Local law enforcement agents on both sides of the U.S. Mexico border recognize that pursuing drug cases is likely to lead into difficult situations. Even worse it may disrupt the ability to get cooperation needed to solve other crimes. Consequently in order to prevent drug enforcement from compromising their normal ability to work together they try to avoid or restrict dealing with drug issues. An American sheriff, who handles much of the cross border work with

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<sup>85</sup> Douglas Farrah and Molly Moore, "2,000 Miles of Disarray in Drug War: U.S.-Mexico Border Effort 'a Shambles,'" *The Washington Post*, March 9 1998, A15. For an account of U.S. - Mexico law enforcement in the campaign against drugs see Martha L. Cottam and Otwin Marenin, "International Cooperation in the War on Drugs: Mexico and United States." Unpublished paper. (Program in Criminal Justice, Washington State University, 1998).

Mexico himself put it bluntly: "We don't even ask the locals [Mexican law enforcement agents] about narcotics. It is strictly off limits. It never comes up. We deal with murder, rape, robberies, etc but never narcotics."<sup>86</sup>

Tolerating one kind of criminal activity in order to achieve some other law enforcement goals is a pragmatic moral choice that the police make all the time. Certain criminal activities of informants and "special employees" are often ignored so that their services can be obtained. Along the border, staying away from drug enforcement appears to be a condition for the successful conduct of transnational cooperation at the state and local level. This is facilitated by the jurisdictional distinctions among Mexican law enforcement agencies. The law enforcement agencies which the state and local law enforcement agencies mostly deal do not handle drug investigations. The Mexican state judicial police, the municipal police and other Mexican police agencies, such as those of the immigration service, do not conduct narcotics investigations. Drug cases are handled by the federal judicial police and the army.

## ii. Grupo Beta: Hope of the Future

Illegal immigration at the border also needs a separate comment. There is some irony here. American local police have gotten out of the role they once willingly played in assisting the Border Patrol with arresting illegal aliens. On the other hand, the Mexicans, who have long

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<sup>86</sup> Interview with border sheriff July 1, 1997.

criticized American border control efforts<sup>87</sup> and maintained that there is little they can do to help because their constitution grants their citizens right to emigrate, began shifting their views in light of the new realities of the 1990s. For one thing, Mexico's interest in achieving the North American Free Trade Agreement contributed to its establishing, Grupo Beta, the elite new law enforcement agency whose mission is to reduce the mayhem and banditry at the border.

Secondly, Mexico became a major transit route for illegal immigrants coming from Central and South America and from China. Thousands of illegal immigrants cut through Mexico on the way to the U.S.. Many settled in Mexico. Permanent settlements of Salvadorans and Guatemalans sprang up inside Mexico contributing to the already high unemployment rate.<sup>88</sup> In light of the success of Grupo Beta at the Tijuana border Mexico has created several additional Grupo Beta units stationed at other points along the U.S. - Mexico border. In 1996 it some in southern Mexico to deal with the immigrants coming from Central America.<sup>89</sup>

Mexico's move to create Grupo Beta came during the negotiations for NAFTA, at a time when illegal immigration from Mexico (most of which went through Tijuana) was becoming a political lightning rod in California and after more than a decade of efforts to bring order to the

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<sup>87</sup> See e.g. William Claiborne and Kathryn Wexler, "Deputies Used Excessive Force After California Chase, Sheriff Says," *The Washington Post*, April 4 1996, A12.

<sup>88</sup> Louis Freedberg, "Mexico Slowly Getting Tougher On Illegals," *The San Francisco Chronicle*, Aug. 12 1994, A1.

<sup>89</sup> Colin McMahon, "Mexico Acts to Solve Own Migrant Woes: Officials React to Reports of Human Rights Abuse: Special Police Force Is Charged with Protecting Central Americans Illegally Entering Country from the South," *Chicago Tribune*, June 4 1996.

Tijuana - San Diego border by law enforcement had once again fallen apart in the wake of accusations of abuse.

Banditry happens all along the border. Illegal immigrants are preyed upon both coming from and returning to Mexico. In San Diego in 1976 the Police Department (SDPD) tried to stop it. During calendar 1975 in a small stretch of land along the border, a kind of no-man's land of canyons and mesas where illegal immigrants made their nightly crossings, there had been 130 known robberies (with multiple victims), 3 rapes, 3 homicides and many other crimes believed to have gone unrecorded.<sup>90</sup> The San Diego Police with some initial help from the Border Patrol fielded a special squad of plain clothes officers to protect the immigrants, the Border Alien Robbery (BARF). Its harrowing experiences were chronicled by Joseph Wambaugh's book, "Lines and Shadows." Eighteen months and more than one hundred arrests and seven shootings later it was terminated. Shoot outs with bandits an embarrassing number of whom turned out to be Mexican police officers had caused international tensions.<sup>91</sup>

In the mid-1980s the San Diego Police Department fielded a similar unit called the Border Crime Intervention Unit (BCIU). It operated from 1984 through January 1989. It shot 44

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<sup>90</sup> William B. Kolender, "Remarks Regarding Illegal Aliens," in *The Police Yearbook 1978*, ed. International Association of Chiefs of Police (Gaithersburg, MD: International Association of Chiefs of Police, 1978), 47-50; Joseph Wambaugh, *Lines and Shadows* (New York, N.Y.: William Morrow, 1984).

<sup>91</sup> Lee Romney, "Belated Honors for Celebrated Border Unit," *The Los Angeles Times*, Aug. 29 1992, B1.

suspects, killing 18. It was disbanded after the shootings of two Mexican suspects who witnesses said were in handcuffs.<sup>92</sup> It was subsequently revived in mid-1989 and continues to operate.<sup>93</sup>

On the Mexican side the unit known as the Border Inspection Group was dissolved in 1989 because of constant complaints about its corruption. For a while the border reverted back into a no-man's land again. In 1990 there were 10 murders on the American side. During that year, Javier Valenzuela Malagon, a reform-minded Mexican psychologist, together with a hand full of Mexican police officers began an experiment which evolved into Mexico's most highly acclaimed law enforcement success, one with an important transnational connections to the United States.

Valenzuela had been a student activist in the '60s, a university professor for 10 years, and a community organizer with indigenous peoples in the rural communities for eight years. When appointed to the Interior Ministry of President Carlos Salinas de Gortari in 1988 he found an opportunity to put his ideals into practice. He was an administrator for immigration services based in Tijuana. Mexico was negotiating the North American Free Trade Agreement with Canada and the United States. Illegal immigration, and chaos and crime at the border were threatening the agreement. Both Salinas and Baja Governor, Ernesto Ruffo Appel, were

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<sup>92</sup> Sebastian Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimze Them," *The Los Angeles Times*, March 8 1992, B1; Romney, "Belated Honors for Clebrated Border Unit."

<sup>93</sup> Romney, "Belated Honors for Clebrated Border Unit."

promoting reforms. So federal, state and city officials agreed to establish a new police force named Grupo Beta whose purpose would to protect the immigrants and reduce the violence at the border.<sup>94</sup>

The new unit was located in the immigration service with Valenzuela as commander. It began with 45 men and women carefully selected from the federal immigration police, the Baja California state judicial police, and the Tijuana Municipal Police. Members were psychologically screened; and given extensive training, a salary of \$1,000 per month (roughly three times what the Municipal police make and double what state police make), a life insurance policy and 15 days off each six months.

Adopting the undercover tactics employed by SDPD's BARF unit, they dressed like illegal immigrants and mingled with them along the border at night. Bandits and smugglers who offered them the usual bribes to be left alone were astonished to find that the rules had changed. This Mexican police force did not take bribes. A few members suspected of doing so were dismissed.<sup>95</sup> Valenzuela insisted that the new unit "had to be distinct from traditional police. It has to be a professional, honest project with a mystique of protection and service. In the moment

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<sup>94</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimze Them."

<sup>95</sup> Sebastian Rotella, "Reducing the Misery at the Border: Immigration: Grupo Beta Is an Elite Mexican Multi-Agency Force with the Task of Protecting Migrants. It Has Cut Violence and Improved Relations Between U.S. and Mexico," *Los Angeles Times*, Mar. 10 1992, A3; Arthur Golden, "Grupo Beta Seen as Law Enforcement's Shining Light," *San Diego Union-Tribune*, February 10 1997.

we gave in to temptation, we would become another group like all of those who prey on people at the border."<sup>96</sup>

Grupo Beta has received high praise from U.S. and Mexican authorities but has not been without controversy. In Mexico it has run into resistance, threats and ostracism from other Mexican police. Beta members arrested fellow Mexican police officers for robbing and abusing migrants, effectively closing down a traditional source of illicit income for corrupt officers. Some Mexican police responded by refusing to provide back up when Grupo Beta called for it and by ridiculing Beta members as traitors. It has also been the target of a long standing concern among some Mexicans, the reluctance to be too helpful to the United States. Beta also aroused tensions with U.S. immigration officials with eye witness accounts of alleged excessive force by the Border Patrol.<sup>97</sup>

Generally, it has been lauded. It contributed to the drop in homicides at the border from 10 in 1990 to none in 1991. "They reduced crime by 85 to 90 percent by the bandits," according to Roberto Martinez of the American Friends Service Committee, an immigrant rights group in San Diego. He said, "We used to get 8 to 10 cases a month of migrants robbed, raped, beat up.

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<sup>96</sup> Rotella, "Reducing the Misery at the Border: Immigration: Grupo Beta Is an Elite Mexican Multi-Agency Force with the Task of Protecting Migrants.It Has Cut Violence and Improved Relations Between U.S. and Mexico."

<sup>97</sup> Rotella, "Reducing the Misery at the Border: Immigration: Grupo Beta Is an Elite Mexican Multi-Agency Force with the Task of Protecting Migrants.It Has Cut Violence and Improved Relations Between U.S. and Mexico."; Sebastian Rotella, "Walking a Tightrope at the Border," *The Los Angeles Times*, Sept. 15 1993, A3.

Now it's down to practically nothing."<sup>98</sup> It has broken up rock throwing groups on the Mexican side helping to shrink the budget for replacing windshields in Border Patrol cars by half and assaults on Border Patrol agents by 39%.<sup>99</sup> It was a factor in the sudden rise in marijuana seizures by the Border Patrol in 1991.

The new steel border wall being erected that year channeled smugglers away from the gaping hole in the chain link fence which used to mark the boundary. Grupo Beta assisted in many of that year's drug seizures using radio communication with Border Patrol officers to coordinate efforts.<sup>100</sup> Similarly, cocaine seizures were up. In two months the Border Patrol seized more than five times the amount the previous year. More than 60 percent of the seizures occurred near the border in joint operations with Grupo Beta.<sup>101</sup>

At the 12th Annual Border Law Enforcement Conference in San Diego in March 1992, San Diego Chief of Police, Bob Burgeen, praised the work of Grupo Beta crediting it with helping to bring down crime at the border. "I'm so pleased with the way things are going—I've

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<sup>98</sup> Tim Golden, "Mexico Is Now Acting to Protect Border Migrants From Robbery and Abuse," *The New York Times (International)*, June 28 1992, L3.

<sup>99</sup> Rotella, "Reducing the Misery at the Border: Immigration: Grupo Beta Is an Elite Mexican Multi-Agency Force with the Task of Protecting Migrants. It Has Cut Violence and Improved Relations Between U.S. and Mexico."

<sup>100</sup> Chet Barfield, "Seizures of Cocaine Soar Here: New Border Fence, Mexican Aid Help Snare Smugglers," *The San Diego Union-Tribune*, Dec. 5 1991, A1.

<sup>101</sup> Lisa Petrillo, "60 Pounds of Cocaine Is Seized," *The San Diego Union-Tribune*, Dec. 7 1991, B3.

been in the force 32 years and this is the best cooperation we've ever had [from Mexican authorities]. The Beta team is working so well...they have done such a tremendous job since they moved in (almost 1 ½ years ago) we have not had a murder in (that area) in more than a year. The crime rate at the border—rape, robbery, assaults—has been reduced to almost nothing. We used to have six, eight murders a year there. It's a unique partnership (between San Diego and Tijuana police agencies). People are being protected like they've never been (protected) before."<sup>102</sup>

Grupo Beta and the San Diego Police Department developed a close cooperative relationship. Grupo Beta officers were performing the same kind of immigrant protection function as SDPD's BCIU unit. Officers from the two units often practiced shooting together at the San Ysidro firing range. They held monthly joint training sessions. They maintained radio contact and even share criminal intelligence. BCIU donated bullet proof vests and hand radios to its Mexican counterparts. For his report on Grupo Beta, San Diego Times Mirror reporter, Sabastian Rotella accompanied BCIU officers cross the border one Friday night for a visit with Grupo Beta in their cramped offices just inside the Mexican port of entry. He found a convivial exchange all in Spanish of jokes as well as information about a robber with a shotgun who had been operating in along the border.<sup>103</sup>

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<sup>102</sup> Fernando Romero, "Neutral Border Site Sought for Crime Testimony," *The San Diego Union-Tribune*, March 27 1992, B1.

<sup>103</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimze Them."

"It is an excellent relationship," said Lt. Adolfo Gonzalez of BCIU. "It is one of the most exciting projects I have worked in. This is police work of the 21<sup>st</sup> Century."<sup>104</sup>

In 1991 Grupo Beta was assigned to help crack down on "port running" through the San Ysidro Port of Entry, a delicate policy shift for Mexico given its traditional defense of the right of its citizens to emigrate. The construction of the new fence along the border had forced immigrants and alien smugglers to find new routes. As the return illegal immigration began to pick up in January professional smugglers, known as *polleros* (chicken herders because the immigrants themselves act like *pollos*, chickens), began staging mass runs of groups of immigrants through the Mexican port of entry into the on-coming southbound lanes of Interstate 5. Motorists driving down the freeway into Tijuana would suddenly find dozens of people, men, women and children, running directly towards them. The runners would head to the I-5 median where smugglers waited with vehicles to whisk them away. The tactic succeeded because U.S. officials declined to chase them fearing that it would cause an accident. An estimated 250 to 300 people a day were making the dangerous run often among speeding cars.<sup>105</sup>

Mexican officials have no authority to stop or arrest migrants trying to enter the U.S. illegally. They could not arrest the port runners but they could act to enforce public safety; and

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<sup>104</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimze Them."

<sup>105</sup> Gregory Gross and Fernando Romero, "New Danger Lurks at Border Gates: Smugglers Send Migrants Racing Into U.S. Against Freeway Traffic," *The San Diego Union-Tribune*, Feb. 4 1992, A1.

they could arrest smugglers. Immigrant smuggling is a crime in Mexico, although in the past it was rarely enforced.<sup>106</sup> Mexican officials shared the American concern about the safety of the migrants and drivers. With NAFTA under negotiation they were also concerned about the anarchic image of the border being broadcast by the numerous media reports showing groups of men, women and children sprinting past U.S. and Mexican border officials headlong into waves of cars speeding southward. After a high level consultation between the two countries, Emundo Salas Garza, chief inspector of the Mexican Immigration Service announced that his office had begun to post agents at strategic points around the Puerta Mexico to prevent groups of people from gathering. Also he said that Grupo Beta helped by pointing out *polleros* to immigration agents who arrested 40 of them over one weekend.<sup>107</sup>

“This is one of the most rapid diplomatic responses of the Mexican government that I have ever seen,” observed Jose Luis Perez Canchola, a Baja California human rights prosecutor and immigration expert. “These are special times in which the Mexican government does not want to disturb the negotiations. Everything is negotiable.”<sup>108</sup>

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<sup>106</sup> Mexico has cracked down on immigrant smuggling engaging not just Grupo Beta units but also the Federal Judicial Police and the military officers assigned to it. In August 1997 the first Mexican federal official operating against migrant smugglers ever to be killed was shot to death in a shoot-out at a safe house. Gregory Gross, "Mexican Agent Dies of Wounds from Shootout," *San Diego Union-Tribune*, Aug. 12 1997.

<sup>107</sup> Gross and Romero, "New Danger Lurks at Border Gates: Smugglers Send Migrants Racing Into U.S. Against Freeway Traffic."

<sup>108</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimize Them."

This change in Grupo Beta's mission from protecting migrants to interfering with their choice of method of leaving the country and going after alien smugglers was problematic. Gustavo de la Vina, Chief of the San Deigo Border Patrol who requested that Emundo Salas make the shift knew that the issue would be very sensitive. In Mexico *polleros* or *coyotes* (guides) have been seen as service providers outwitting the hated "migra" (U.S. immigration officials) rather than as ruthless exploiters.<sup>109</sup>

One critic of the shift, Perez Canchola, said, "I am against the Mexican government doing the dirty work of the Border Patrol." In the kind of paranoia that often influences thinking about the border, some critics believed that the port running had been cleverly manipulated by the Border Patrol and then exploited to bring attention to illegal immigration. Perez Canchola had high praise for Grupo Beta's efforts to fight bandits and protect migrants. He did not want Beta diverted from their crime-fighting mission to cracking down on alien smugglers. But he, as others, recognize that the two are related. "Of course, there is a fine line between combating the *polleros* and persecution of migrants. There is a great deal of criminality among the *polleros*; there are many who cheat and abuse people."<sup>110</sup>

Valenzuela was not troubled by his unit's being asked to help control port running. "Our

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<sup>109</sup> Audrey Singer and Douglas Massey, "The Social Process of Undocumented Border Crossing," Paper presented, Meetings of the Latin American Studies Association (Guadalajara, April 19 1997).

<sup>110</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimize Them."

fundamental mission is protection of the migrant. For us, crossing the border is not a crime. At the same time, that does not mean people can cross anywhere they want, especially in dangerous places such as the customs stations."<sup>111</sup>

Beginning in February 1993 the future of Grupo Beta seemed to be in jeopardy. There were administrative changes in the Mexican Interior Ministry in which Beta and the Immigration Service are located. Valenzuela transferred to the Mexican consulate in Los Angeles. The monthly training sessions with SDPD's BCIU were suspended. The number of migrants being abused and extorted at the border began to increase. Beta started to become more secretive about its operations. Perez Canchola, the state human rights ombudsman for Baja California and other sources believed that immigrant smugglers had succeeded in buying Mexican federal officials who were reigning in Grupo Beta.<sup>112</sup>

In July a new commander of Grupo Beta, Mario Arturo Coutino, took over and began shaking up the unit, claiming that it was too passive and inadequately supervised. He began an aggressive roundup of criminals including smugglers. He said that Beta had become tolerant of the smugglers. He also fought with other Mexican police agencies trying to prey upon migrants. At one point he confronted Mexican judicial police at gunpoint and ordered them to leave the border. In addition he re-examined the relationship with U.S. law enforcement agencies.

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<sup>111</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimize Them."

<sup>112</sup> Rotella, "Walking a Tightrope at the Border."

"It was a relationship that diluted the differences. It must be clear that Beta is a Mexican force. It had reached a point where we were a complement of the agencies of our neighbors...We should develop a concrete agenda, demarcating clearly our functions."<sup>113</sup>

During the course of the present study I visited Grupo Beta's Tijuana unit twice (July 1996 and Nov. 1997) in the company of San Diego Police officers from the substation where the BCIU is located. Whatever cooling off in relations that happened in 1993 had passed. The kind of open, jocular and supportive relationship between Beta and the SDPD officers described in reports on Beta during its early success were again in display. The BCIU officer with whom I patrolled the border as well as the Border Patrol officers with whom I rode along were unanimous in their praise of Beta. Both stay in touch with Beta through radio communication and both coordinate activities with Beta when needed. During one of the ride alongs with the Border Patrol shots were fired along the border coming from the Mexican side. By the time our car reached the spot there was a man in plain clothes on the Mexican talking calmly to people who had gathered and convinced them to move on. He was a Beta officer who discreetly walked over to us and said everything was ok.

SDPD officers took me for late evening visits to the same offices of Grupo Beta. The office is literally on the other side of a gate in the fence along the sidewalk and main road into

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<sup>113</sup> Rotella, "Walking a Tightrope at the Border."

Tijuana. SDPD drive their squad car through a roundabout backyard approach right up to a few feet from the gate where they park the car, lock their weapons inside the car and use their set of keys to unlock the gate. (Grupo Beta has their own set of keys to the gate.)

The Beta members and the SDPD officers knew each other. This meeting was a routine that clearly had happened many times. They joked and talked freely in Spanish. It appeared that the Beta officers present did not speak English. The openness to inquiry from outsiders which Beta's first leader, Valenzuela, had established was still in evidence. The ranking Beta officers readily agreed to answer questions about their mission. Their description of their mission fit the official description that has been given. They and the San Diego Police officers described their relationship as friendly and supportive. Privately some of the San Diego officers speculated that Beta's standard of integrity might be changing. They had noticed a few Beta officers had lately begun carrying expensive weapons which they could not afford and showing other indications of wealth beyond their means.

Mexican leaders point hopefully at Grupo Beta as an example of what can be expected in the future.<sup>114</sup> Gabriel Szekely, a professor of the College of Mexico, wrote in the Mexican magazine, Nexos, "Beta represents a model of what it is possible to achieve. It's not easy to

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<sup>114</sup> Americans familiar with the story of the campaign against organized crime and bootleggers waged by the famous Elliot Ness and "The Untouchables" will recognize the similarities to Mexico's Grupo Beta. The name "untouchable" refers to the law enforcement group's distinctive feature that allowed them to succeed where others had failed. They could not be corrupted whereas other American law enforcers could.

establish a group of police officers who work with enthusiasm and are incorruptible.”<sup>115</sup>

“Grupo Bea is demonstrating how, with political will, there can be a police force free of corruption that does its job well.” said Victor Clark Alfaro, a Tijuana human-rights advocate. “It is an example for other Mexican police agencies.”<sup>116</sup>

“The custom of police in Mexico was, the first thing after you arrested someone, to slap him around,” said an experienced Beta officer. “What I learned in Beta was respect for human rights, whether migrants or criminals. Beta was based on respect for the law. It was a policeman’s dream.”<sup>117</sup>

The Mexican government embraced the success of Grupo Beta and established the so-called Beta Groups for the Protection of the Migrant. They are located at other border locations in both northern and southern Mexico.

### iii. Early Transnational Policing of the U.S. Mexico Border

The principal criminal activities along the border from the 1860s to the end of the century

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<sup>115</sup> Rotella, "Walking a Tightrope at the Border."

<sup>116</sup> Rotella, "Watching From the Shadows: An Elite Mexican Police Unit Is Keeping An Eye on Migrants and the People Who Victimze Them."

<sup>117</sup> Rotella, "Walking a Tightrope at the Border."

were smuggling, cattle rustling as well as raids by Indians, outlaw gangs, military personnel and revolutionaries. Responsibility for maintaining law and order fell mostly to the U.S. and Mexican armed forces. In addition posses organized by U.S. marshals and Texas Rangers tried to maintain order. Both sides freely made incursions across the border sometimes in pursuit of criminals, sometimes to commit crime themselves. In 1872 the U.S. Attorney in Texas sent the following report to the attorney general: "Mexican officers and soldiers make regular raids into Texas, stealing, robbing and murdering."<sup>118</sup>

There was little respect for sovereignty. American law enforcers felt free to pursue bandits into Mexico. The author of a study of the border wrote that "the United States government, starting in 1836, more or less consistently for the next forty years held to the right of purity by United States force of marauders fleeing into Mexico....As a rule permission was asked for such crossing and when it was not forthcoming—as it never was in the explosive state of Mexican public opinion—crossings were carried out without permission."<sup>119</sup>

During the Mexican revolutionary period between 1910 and 1920 rebel attacks in Mexican border cities such as Agua Prieta in Sonora and Nogales, Sonora, spilled over into the

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<sup>118</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 64.

<sup>119</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 64. citing Robert D. Gregg, *The Influence of Border Troubles on Relations Between the United States and Mexico* (Baltimore, MD: Johns Hopkins University Press, 1937), 15.

injuries on the American side. This led to calls for military intervention which Presidents Taft and Wilson resisted. Even when Mexican revolutionaries conducted raids north of the border as part of the campaign known as the Plan of San Diego which called for the slaying of all Anglo males over the age of sixteen, Wilson resisted. But in 1915 after Pancho Villa massacred a group of American mining employees and later attacked Columbus, New Mexico, killing seventeen Americans, Wilson order General Pershing to conduct a "punitive expedition" into Mexico in pursuit of Villa. General Pershing never apprehended Villa. His units returned to the United States in 1917.<sup>120</sup>

#### iv. Forces of Change: Economic and Social Integration

The population in the catchment areas on either side of the 2,000 mile long U.S. - Mexico border is 10.6 million residents. By the year 2020 it is projected to be between 16 and 25 million. The population is concentrated in twelve twin cities. Two regions, the San Diego/Tijuana area and the El Paso/Ciudad Juarez area account for two thirds of the border population.<sup>121</sup>

The creation of the North American Free Trade Agreement (NAFTA) which entered into

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<sup>120</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 75.

<sup>121</sup> Gregg Cooke, "Key Environmental Issues," Powerpoint presentation by Regional Administrator, EPA Region 6, 18th U.S. Mexico Border States Attorneys General Conference (San Antonio, TX, June 4 1999).

force in 1994 has intensified an economic integration between the two countries which was already well underway. When the United States co-signed the \$20 billion emergency financial rescue package to help Mexico overcome the 1994 devaluation of the peso it was acting in its own self interest. Mexico is America's third largest trading partner. The trade between Texas and Mexico alone is expected to surpass \$150 billion before 2010 which is equal to all U.S. trade with Japan in 1995.<sup>122</sup> In 1997 California was expected to export 9 billion dollars

American manufacturing companies as well as other international firms have been relocating their operations in Mexico. They are the "maquiladora" firms in northern Mexico, literally a few yards inside the border. The business and political leaders in the San Diego /Tijuana area are aggressively marketing the region to corporations around the world. Their slogan is "Discover the Two Californias: Two Countries, One Region."<sup>123</sup> They have succeeded in capturing 41% of the maquiladora firms located in the six Mexican border states. Twelve million television sets are produced annually in Tijuana.<sup>124</sup>

The legal traffic between the two communities is intense. According to San Diego Dialogue, a binational regional advisory council, in 1992 there were 1,400,000 border crossings

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<sup>122</sup> Gilbreath, "The Mexico-Texas Relationship: Redefining Regionalism."

<sup>123</sup> California Trade and Commerce Agency and Baja California State Government Secretariat of Economic Development, *Discover the Californias: Two Countries, One Region*, A pamphlet describing the advantages of locating business in the region (San Diego, CA & Ensenada, Baja CA: Authors, 1996).

<sup>124</sup> San Diego Dialogue. *The San Diego / Tijuana Binational Region: 1996: A Briefing Book for Media Covering the Republican National Convention*, 42.

per month for the purpose of shopping in the U.S. These crossings were made by between 45,000 and 60,000 individuals who spent \$2.8 billion in the U.S. on an annual basis. Nearly 40,000 people cross the border daily in San Diego/Tijuana to work legally in the U.S.<sup>125</sup> The San Ysidro Port of Entry, fifteen miles south of downtown San Diego, is the busiest land border crossing in the world. It inspects more than 40 million persons and 15 million vehicles annually.<sup>126</sup>

In addition to the economic integration of the two countries social integration is running apace as the result of the large flow of immigrants from Mexico as well as the massive amnesty granted to more than 2 million Mexican-born illegal aliens by the Immigration Reform and Control Act of 1986.<sup>127</sup> Under these circumstances the two countries are being forced to reconsider the attitudes for dealing with each other that developed during the nationalistic conflicts of earlier times.

The old governing paradigms are being chipped away at directly by high level officials with broad visions of the need for cooperative law enforcement;<sup>128</sup> by the proliferation of

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<sup>125</sup> San Diego Dialogue, *The San Diego / Tijuana Binational Region: 1996: A Briefing Book for Media Covering the Republican National Convention*, 59.

<sup>126</sup> Alan D. Bersin, "El Tercer Pais: Reinventing the U.S./Mexico Border," *Stanford Law Review* 48, no. 5 (May 1996): 1417.

<sup>127</sup> Jeffrey S. Passel, "Recent Efforts to Control Illegal Immigration in the United States," Paper, OEECD Working Party on Migration (Paris, June 1996), 5.

<sup>128</sup> See for example the framework for regional law enforcement cooperation proposed by former U.S. Attorney and "Border Czar," Alan Bersin who tries to cut through the stalemate

binational mechanisms and indirectly by the incremental improvements in cooperation achieved by an ever growing number of American law enforcement agencies in California and the Southwest that have created liaison positions to deal with Mexico. The cooperation between the two Californias, especially the binational efforts to develop the regional economy, has been a rich source of new thinking about the possible collaboration unfettered by the burdens of history.

#### v. Binationalism at the Federal Level

Since the early 1980s there has been a major effort by U.S. and Mexican federal governments to improve cooperation between the two countries in all areas including law enforcement. In 1981 they created the U.S.- Mexico Binational Commission. It is composed of U.S. Cabinet members and their Mexican counterparts. The Commission holds annual plenary meetings and many sub-group meetings including legal affairs and anti-narcotics cooperation. In 1996 the U.S. and Mexico established a High Level Contact Group to coordinate the anti-narcotics efforts and to promote closer law enforcement cooperation.<sup>129</sup>

In 1993 the two countries set up the Border Liaison Mechanism. This new agreement is

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rhetoric by U.S. and Mexican officials regarding rights to control illegal immigration. Bersin argues that binational attention should center on achieving regional public safety and security for everyone involved. That includes security from abuse by law enforcement agents as well. Bersin, "El Tercer Pais: Reinventing the U.S./Mexico Border."

<sup>129</sup> U.S. Department of State, "Background Notes: Mexico, April 1997" <<http://www.state.gov/www/regions/ara/index.html>>, April 1997.

designed to allow local officials to deal with low-level local transnational matters quickly before they turn into international incidents. For example, a common problem is American law enforcement officers being caught carrying weapons into Mexico.<sup>130</sup> Such incidents can mushroom into political crises. In the past their resolution would have been through the federal officials far removed at the capitals. Now they can be resolved on the spot. This permits local matters to be treated as such and disengages them from international issues.

Law enforcement cooperation with Mexico and other countries has had additional attention directed at it since Congress required the President to make a finding each year as to which countries are "fully cooperating" with the United States drug control efforts. Those countries that are decertified stand to lose U.S. aid and U.S. votes for low-interest loans at international lending institutions. The requirement does not extend to all dimensions of law enforcement cooperation. It does not include the many forms of cooperation that normally go on, for example, between U.S. and Canadian law enforcement cooperation. It brings visibility to a topic that would otherwise get little notice, but it is questionable whether the attention has produced a net gain.<sup>131</sup>

#### vi. Cooperation At the State and Local Level

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<sup>130</sup> Ryan Tate, "Mexico Aims To Stop Guns At the Border," *The Wall Street Journal*, Aug. 18 1999.

<sup>131</sup> Thomas W. Lippman and Douglas Farrah, "Mexico's Drug-Enforcement Certification Challenged by Congress," *The Washington Post*, March 5 1998, A 12.

The new binationalism between the United States and Mexico at the federal level had been happening earlier at the state and local levels. The federal efforts are building upon, learning from and supportive of the state and local efforts. As cities grew along both sides of the border their law enforcement agencies had contacts with each other. Some of the American agencies created a special position designated as liaison officer. Others were less formal about it. But, virtually all major law enforcement agencies along the border have some kind of contact with adjacent Mexican law enforcement agencies.

a. El Paso - Ciudad Juarez

In her analysis of transnational law enforcement relations between El Paso, Texas and Ciudad Juarez, Mexico, in the late 1970s Marshal Carter found a surprising number of separate local, state and federal law enforcement agencies present in both communities and a notable lack of institutional support for transnational cooperation. In El Paso there were more than 1,000 officers and multiple agencies. There were 16 federal agencies with law enforcement authority ranging from the one-agent Fish and Wildlife Service to the FBI, Customs, the Border Patrol and the 500 military police at Ft. Bliss. At the state level there was the Department of Public Safety and the University police. At the local level there were the municipal police, the county sheriff plus 17 private security police and 15 private detective agencies and three railroads with their private police.<sup>132</sup>

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<sup>132</sup> C. Richard Bath, H. Marshall Carter and Thomas J. Price, "Dependence, Independence, or Detachment?: Three Case Studies of International Relations Between El Paso,

On the Mexican side there were over 750 officers divided similarly among many separate agencies: the *federales*, the army, the *rurales*, immigration, the municipal police and numerous private police agencies. Nearly all the U.S. agencies had one or more agents whose time was spent mostly in contact with the various agencies in Juarez. Some of them—the auto theft contact in the El Paso Police Department, the Border Patrol investigator, and the five-man team at Ft. Bliss--devoted daily full-time efforts to the transnational work but the arrangements were essentially ad hoc rather than official positions. She found no official institutional contact between the Mexican and the U.S. law enforcement agencies. There was no planning council of agencies or no law enforcement coordinating council.

Some contacts were fostered through joint training programs. A few Mexican officials exchanged training sessions with U.S. federal agencies. Some Juarez police officers were given training at the Sheriff's academy. For a while there were regular lunch visits across the border but they collapsed when U.S. Customs confiscated weapons upon entry and then Mexican Customs retaliated.. Although some individuals were able to sustain personal and professional friendships across the international divide, she concluded the arrangement was "very fragile" and dependent upon an attitude she described as "tolerant cynicism." Underlying the relationships were often contempt by American officials at the corruption and perceived lower standards of their counterparts and by indignation by Mexican officials at being slighted or insulted particularly by immigration officials.

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Texas and Ciudad Juarez, Mexico," Unpublished paper., Third World Conference, Omaha, Nebraska, (Oct. 28, 1977).

Carter's description of the state of U.S. Mexican law enforcement relationships is less accurate for El Paso - Juarez in 1999. although it does fit fairly well the situation at the Laredo - Nuevo Laredo border in 1999.<sup>133</sup> The El Paso - Juarez situation changed for the better as a result of a change in personnel in critical police positions and as a result of the effort by the U.S. and Mexican federal officials to implement the new Border Liaison Mechanism. In 1995 Jose Luis Reygadas, a grocer and accountant by training, became Chief of the Ciudad Juarez municipal police. At about the same time, Russ Leach, a 20-year veteran of the Los Angeles Police Department took over as Chief of the El Paso Police Department.

In August bodies began piling up in Ciudad Juarez as the drug cartels assassinated dealers and others. Chief Reygadas asked Chief Leach for help. Since then the two agencies a bilateral operation which the Clinton administration regarded as model effort in the fight against drugs. The El Paso Police Department provided expertise and technical assistance to their counterparts who welcomed the help. When a serial murderer left bite marks on his victims El Paso Police showed Mexican police how to run dental records and brought in a forensic anthropologist from Dallas to help identify the victims. In other murder cases El Paso Police helped trace a vehicle believed to be involved and checked hair samples, fibers and bloodstains.<sup>134</sup>

In 1996 the U.S. and Mexican consular officials in El Paso - Ciudad Juarez began holding

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<sup>133</sup> Interview with Deputy Chief, Fructos San Miguel, Laredo Police Department, June 4, 1999.

<sup>134</sup> Serrano, "Joint Efforts Boost Law Enforcement On Border."

meetings with each other and law enforcement representatives from both sides as part of the implementation of the Border Liaison Mechanism. The new agreement allows local officials to deal with low-level local transnational such as incursions across the border in connection with "hot pursuit" cases. Both consuls recognized that the success of the new mechanism depended upon the ability of officials on both sides to be able to discuss issues rapidly and come to a resolution. The goal was to be able to pick up the phone and speak to one's counterpart. When the acting U.S. Consul General contacted American law enforcement officials in the region they reported they had no regular contact with Mexican counterparts. At the first meeting of the group it took some trust for the American law enforcement officials to leave their guns behind. The participating U.S. and Mexican officials had dealt with each other on the level of rules but did not know each other personally.

One of the issues that Mexicans raised at the meeting was the matter of repatriation. Mexican officials wanted to know the times and the places where the US INS would be deporting Mexicans at the border. The solution achieved through the meeting was an agreement to have a direct linkage between the Border Patrol in El Paso and the Mexican Consul General's office there. The link was to provide immediate access to Mexican officials in the case that minors, women or other problems related to immigration arose plus an agreement to try to forewarn the Mexicans about arriving INS busloads of deportees.<sup>135</sup>

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<sup>135</sup> Remarks of the Acting U.S. Consul General for Ciudad Juarez, David Stewart, and Mexican Consul General for El Paso, Lic. Armando Ortiz Rocha, 16<sup>th</sup> Meeting of the U.S.-Mexico Border States Attorneys General Conference, Chihuahua, Mexico, Jun 18-19, 1997.

b. The Two Californias

The greatest degree of institutionalization of law enforcement cooperation with Mexico has happened in California. Numerous law enforcement agencies there have established ties with Mexico in some form more than the *ad hoc* arrangements found elsewhere. The San Diego Police Department has had a Mexican liaison position since the 1930s. The California Department of Justice established an international liaison position in 1957.<sup>136</sup> In 1978 it expanded the position to handle foreign prosecutions. In 1977 the Attorney General's Office established a "hotline" between Mexican authorities and the California Department of Motor Vehicles to allow Mexican police to conduct immediate checks of vehicle registrations of vehicles that appeared to have been stolen.<sup>137</sup> In 1984 the Los Angeles Police Department created a foreign prosecution unit.<sup>138</sup>

Other California law enforcement agencies have established international liaison units of varying size. The larger ones devote full time to dealing with international matters usually from Mexico. The California Highway Patrol has a Mexican liaison office in San Diego with five full-time officers and a commander. There are units in the San Diego District Attorney's Office;

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<sup>136</sup> Robert L. Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, NCJ Number: 102732 (Ph.D. diss.) (Rockville, MD: National Institute of Justice/National Criminal Justice Reference Service, 1986), 59.

<sup>137</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, 59.

<sup>138</sup> Daryl F. Gates and Keith E. Ross, "Foreign Prosecution Liaison Unit Helps Apprehend Suspects Across the Border," *The Police Chief*, April 1990, 153-54.

the San Diego Sheriff's Department, the Orange County District Attorney's Office; and the San Jose Police Department. The small town of Gilroy has a twin city program with the city of Tecate, Mexico to whom the Gilroy Police Department donates its surplus equipment. Once when trying to crack into a local motorcycle and drug pushing gang, Gilroy Police got Tecate police officers to work as investigators for them, infiltrating the gang. The cost for a few weeks of their work was limited to per diem expenses. The investigation resulted in arrests and successful prosecutions.<sup>139</sup>

The International Liaison Unit of the San Diego District Attorney's Office has a staff of two investigators and two attorneys. It is headed by a Mexican born and trained lawyer who is a naturalized citizen. The unit's describes its duties as follows:

#### DUTIES OF THE INTERNATIONAL LIAISON UNIT:

- I. Preparation and filing of cases for Foreign Prosecution in any Latin American country that allows the prosecution of its own citizens who have committed a crime in a foreign country. (e.g. Article Four of the Federal Penal Code in Mexico; Article Five of the Federal Penal Code in Honduras; etc.).
- II. Preparation and filing of Extradition Requests for any Latin American country that has an Extradition Treaty with the United States allowing the extradition of its own citizens and/or United States Citizens);
- III. Preparation and filing of "Applications for Assistance" in cases regarding child(ren) abducted by one of the parents and taken to any Latin American Country that is a party to the "Hague Convention on International Child Abduction",
- IV. Investigative and Legal Assistance for D. A, Investigators and Deputy District Attorneys in cases regarding Mexico;

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<sup>139</sup> Interview with Daniel Castanedo, Gilroy Police Department, Oct. 211, 1998.

- V. Investigative and Legal Assistance for all Law Enforcement Agencies in our county in any cases regarding Mexico;
- VI. Investigative and Legal Assistance for some Law Enforcement Agencies outside our county in cases regarding Mexico;
- VII. Provide the District Attorney with International Border Information; and
- VIII. To act as Liaison between the District Attorney's Office and Mexican Authorities.<sup>140</sup>

In the two Californias law enforcement cooperation has benefitted over the years by political support from high places and leaders in both countries who realized the necessity for such cooperation and who fostered mechanisms for regularizing it. In his examination of transnational relations between California and Mexican law enforcement agencies in the early 1980s, Wilhelm found considerable contact occurred between 14 selected federal, state, county and municipal police agencies and Mexican agencies. Many of the American agencies provided with training, equipment to various Mexican law enforcement agencies. The contacts between the liaison agents of some of the California agencies and Mexican authorities ran as high as an average of 100 per month.<sup>141</sup>

Beginning in 1978 a series of at least 11 meetings called the Annual Border Crime Conferences were sponsored by the California Department of Justice were held-- alternatively in

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<sup>140</sup> San Diego District Attorney's Office, "Duties of the International Liaison Unit," Unpublished document (San Diego, CA. 1996).

<sup>141</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*.

San Diego or Tijuana.<sup>142</sup> As many as 300 law enforcement officials usually attended representing "just about all the federal, state and local agencies from both sides of the border."<sup>143</sup> The agendas addressed such things as drugs problems, auto theft, identification of unknown John Does; foreign prosecution and the exchange of information. Invitations were usually mailed by Ruben Landa, the agent who served as the Mexican Liaison Officer for the California Department of Justice. Invitations were sent to Mexican agencies as well as all interested law enforcement agencies in California and in other regions of the United States. On some occasions law enforcement representatives from as far away as Texas attended.<sup>144</sup>

In 1983 Calexico Chief of Police, J. Leonard Speer initiated set of monthly meetings open to state and federal agencies and all law enforcement agencies in Imperial County and Baja California. Chief Speer felt the Border Crime Conferences were useful but too infrequent and not dealing with some problems the particularly concerned local border officials in both countries. The monthly meetings dealt with things like lighting problems along the border, gaping holes in the fence, and poor communication between various police agencies. The meetings grew in attendance. Although the Mexican liaisons spoke English, Chief Speer always delivered some of this remarks in Spanish in order to score a few points for mutual respect.

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<sup>142</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, 179.

<sup>143</sup> Ruben Landa quoted in Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, 179.

<sup>144</sup> Based on interviews with officers who attended some of these conferences and still retain the agendas from them and Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*.

Participants praised the value of the meetings and credited them with promoting more effective liaison work.<sup>145</sup>

With the important exception of Chief Speer's monthly meetings the relationship between Mexican and U.S. law enforcement agencies in the Calexico-Mexicali area was one of informal cooperation similar to that found elsewhere. Oren Fox, Imperial County Sheriff, has worked there in law enforcement for decades and at one time did the liaison work for his agency. He says that because the relationships depended so much on the personalities involved their quality fluctuated. Sometimes it was easier to cooperate with the Mexicans than other times. Changes in personnel on either side of the border could be disruptive.<sup>146</sup>

At one time the Mexicans were allowed to bring their guns with them when they came to the Old Gun Club shooting range. Then one day U.S. Customs would not let them do it anymore. Excellent relations carefully cultivated with Mexican authorities would be lost overnight with a change in administrations. Mexican state attorneys general and other Mexican law enforcement officials are politically appointed.. They bring into office their own people. The process of winning their trust and coming to common understandings about what is possible and how it should be done begins anew each time.

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<sup>145</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, 182ff.

<sup>146</sup> Interview July 1, 1997.

In the summer of 1997 Fox described the cooperation with the Mexicali municipal police and the state judicial police as "excellent." "We have very good relations with them." What it means in operational terms when American law enforcement officials like Sheriff Fox describe their relationship with their Mexican counterparts as "excellent," however, can be less than an outsider might imagine especially when drugs are involved.

In the spring of that year Imperial Valley was feeling the effects of the crackdown on illegal immigration at the San Diego and Tucson, Arizona. Chaos broke out along the border. Imperial County was flooded with immigrants and drug smuggling increased. Apprehensions of illegal immigrants in the Calexico area rose from about 14,000 in FY94 to about 42,00 in the first six months of FY97. Smugglers quadrupled their fees. Border Patrol agents and local police were shot at along the border. On five occasions American law enforcement agencies were shot at and they called Mexican police agencies for help.<sup>147</sup> Sheriff Fox believes drug smuggling was involved in each of the five incidents. In the third incident his Department was heavily involved. The Mexican municipal police were called but took 35 minutes to arrive. It should have taken about 2 or 3 minutes because the city of Mexicali abuts the border and the incident happened right there.

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<sup>147</sup> Steve Dimeglio, "Border Chaos Shifts East," *The Desert Sun (Coachella, CA)*, June 1997, A1, A3; Steve Dimeglio, "Focus on Immigration: Coyotes Prey on Immigrants' Hopes of a Better Life," *The Desert Sun (Coachella, CA)*, April 20 1997, B5; Steve Dimeglio, "Focus on Immigration: Illegals Deluge Valley: San Diego Border Crackdown Turns Region Into Back Door for Mexico," *The Desert Sun (Coachella, CA)*, April 20 1997, B1.

The Sheriff's Department was also heavily involved in the fourth incident. Smugglers were in boat on the All American Canal with 600-800 pounds of marijuana in large sports bags. They landed and loaded the marijuana onto a truck which drove away. A Sheriff's deputy pursued joined by the Border Patrol Three miles east of Calexico the smugglers dumped the truck in the canal and swam back to Mexico. Meanwhile people on the Mexican side had followed the chase in parallel and fired upon the officers while the smugglers swam across the canal. They continued firing for about an hour as the police began making preparations to retrieve the truck from the water.

The Americans called the Mexicali municipal police for help. They said would come but they "never got there." It took them over an hour. The Mexican state police also never got there. Their duty officer explained that they would have to call out their swat team and it would take 15-20 minutes. The Americans waited an hour. The Mexicans said they went to the wrong address and had to call back. The Americans found the explanation less than compelling. "It was hard to believe they did not understand the address we gave them on the first call. We didn't say anything about being close to where they went to."

The federal police never arrived although they claim that they did respond and made five arrests. After two and a half hours the gun firing stopped. The Americans asked the federal police to provide a copy of their report of the incident and the names of the arrestees for their records. The federals never did. "The federals never like to give you a report of anything."

The San Diego - Tijuana region has benefitted from officials on both sides who have pushed for more effective cooperation a variety of issues of common concern including law enforcement. Their efforts waxed and waned with political strains between the two countries. In the mid-1980s when Maureen O'Connor first took office as mayor of San Diego she was responsible for having periodic joint meetings of the city councils of Tijuana and San Diego.<sup>148</sup> Eventually the joint meetings faded away but the search for joint solutions for regional problems did not.

In November 1991 Mayor O'Connor, Chief of Police Bob Burgreen met with Baja California Governor Ernesto Ruffo Appel and agreed to study the feasibility of prosecuting in Mexico those Mexican citizens suspected of murder in San Diego as well as having Mexican citizens convicted of murder in San Diego serve their sentences in Baja California.<sup>149</sup> Murders in San Diego had reached 150 by November. Although the U.S. and Mexico already had a treaty allowing transborder prosecutions, Burgreen said the legal procedure was difficult and had not been used "to any appreciable degree, and ... that's why we're here; to set up the procedures by which we can do that on serious crimes, particularly ... on the crimes of homicide." Governor Ruffo said the Baja California judicial system would have to "devise a way to help our federal government use the international ways that have already been established to find a more practical

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<sup>148</sup> Neil Morgan, "Listen, San Diego: Tijuana and Border Won't Just Go Away," *The San Diego Union-Tribune*, July 2 1992, A2.

<sup>149</sup> Fernando Romero, "Baja and City Reach Pact on Border Justice," *San Diego Union-Tribune*, Nov. 14 1991, A1.

way” of doing such prosecutions.”<sup>150</sup>

O’Connor was delighted that the strained binational relations in the region had improved. “I’ve been major for over five years now, and we’ve had numerous issues to deal with on both sides of the border,” she said. “but when you’re really talking about the highest murder rate in the history of San Diego, and you’re going to your friends in Mexico and say, ‘Would you please help us with our problem?’ and they’re reaching out and saying, Absolutely; it’s both our problem, not just yours,’ there’s no question it’s...a bonding between both our countries.”<sup>151</sup>

Not everyone appreciated the binationalism. The Baja news media accused Governor Ruffo of pandering to the United States and questioned how the state could afford the costs involved in such an agreement. Nonetheless efforts to build better cooperation continued. In March 1992 San Diego District Attorney, Ed Miller, speaking at the 12<sup>th</sup> Annual Border Law Enforcement Conference,<sup>152</sup> proposed that the U.S. and Mexican governments establish a neutral-ground office at the San Ysidro Port of Entry where Mexican witnesses of crime in the United States could be interviewed without requiring them to leave the United States. He proposed that

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<sup>150</sup> Romero, "Baja and City Reach Pact on Border Justice.". It is unclear from the news report whether they are referring to foreign prosecution available under Article 4 of the Mexican Penal Code.

<sup>151</sup> Romero, "Baja and City Reach Pact on Border Justice.".

<sup>152</sup> This seems to be the last meeting of the series of conferences mentioned earlier under the name Border Crime Training Conference.

it be used by either Mexican or American authorities.<sup>153</sup>

In June 1997 the U.S. and Mexican governments announced the creation of a Council for Public Safety in the San Diego-Tijuana Region. The improvised arrangements that characterized the relations between U.S. and Mexican federal, state and local law enforcement agencies in the Tijuana-San Diego region and every other twin city along the border were finally being replaced by a permanent institution. The council was one of three new working groups created under the aegis of the Border Liaison Mechanism. The other two were on border transportation matters and immigration.

The U.S. members of the council are drawn from the Border Patrol, the FBI, the U.S. Attorney's Office, the U.S. Customs Service, the INS, and the U.S. Consulate in Tijuana as well as the chiefs of police from the San Diego area and the Sheriff's Department. The Mexican members will come from the federal Attorney General's Office in Tijuana and its representatives in Los Angeles; the chief Immigration Officer for Baja California, the Baja California state Attorney General's Office and the Tijuana municipal police.

At the same time Mexico opened a new Regional Council of Public Safety for Baja California and Sonora in Mexicali. That council is composed of Mexican federal, state and local authorities. It is intended to reinforce the institutional framework for giving prompt and adequate attention to questions of public safety and emergencies which involve the U.S. and

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<sup>153</sup> Romero, "Neutral Border Site Sought for Crime Testimony."

Mexico, and to improve Mexican coordination with the United States.<sup>154</sup> The new Council for Public Safety in the San Diego-Tijuana Region is to act as a linking mechanism that connects U.S. law enforcement to the new all-Mexican Council for Baja California and Sonora.

In connection with the announcement of the Council for Public Safety in the San Diego-Tijuana Region the Presidents of Mexico and the United States issued the following joint statement:

JOINT STATEMENT REGARDING BORDER-RELATED  
PUBLIC SAFETY IN THE TIJUANA-SAN DIEGO REGION  
June 22, 1997

This Joint Statement is in accordance with the joint declaration of Presidents William Jefferson Clinton and Ernesto Zedillo do affirm our governments will to strive to fulfill a vision of our shared border in the twenty-first Century as a place that supports and depends in building communities of cooperation. It is issued consistent with several written agreements between the United States and the Governments of Mexico intended to enhance bilateral cooperation along our common border in order to increase regional public safety, to reduce violence and to prevent criminals from evading justice in one of our countries by fleeing to or remaining in the other. The statement proceeds on the basis of mutual respect for our distinct national sovereignties coupled with our shared commitment to ensure cross-border security and our joint determination to prevent use of our common border as a safe harbor for criminal activities. Accordingly-

1.-The Authorities of each Government acknowledge the need to develop effective institutional mechanisms that can assure rapid response to criminal activities threatening public safety in border areas that affect our common frontiers on both sides of the border. This coordinating efforts should not address immigration control efforts conducted on either side of the border which remain subject to independent processes of consultation established elsewhere by our respective governments.

2.-In order to strengthen existing operating methods utilized by Authorities from both sides of the border to prevent and respond to cross-border incidents endangering the safety of individuals who live, work and transit the border zone in our region, the

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<sup>154</sup> Angel Gurria, "Remarks on U.S. - Mexico Cooperation," Inaugural conference of the Forum Fronterizo (San Diego, CA, June 20 1997).

Authorities of each Government announced a Binational Border Public Safety Council for the San Diego-Tijuana Region. This Council will operate within the framework of the Tijuana San Diego Border Liaison Mechanism.

3. - The Authorities of each Government that participate in responding to any particular incident can mutually determine, consistent with existing bilateral arrangements and respect for principles of sovereignty and reciprocity: (a) the appropriate cooperative investigative approaches to be undertaken with the respective national authorities responsible for the investigation within their correspondent jurisdictions; (b) the coordination and augmentation of patrol activities are required; (c) the exchange of information and proposals concerning preventative measures to be instituted; and (d) the consultative process among prosecutors from pertinent jurisdiction in the two countries to cases that arise from incidents of cross-border crime and violence.

4.-The appropriate exchange of information, proofs, evidence, declarations, and other items related to investigations conducted consistent with this Joint Statement should take place in an expeditious manner within the framework of procedures authorized by existing bilateral arrangements for law enforcement and judicial cooperation between the United States and Mexico. The judicial proceeding which commence against the perpetrators of criminal actions along the border of both countries will be carried out in accordance with appropriate procedures set forth in bilateral arrangements which govern these matters.

5.-The Authorities of each Government consider it convenient and advisable to continue to address this matter within the framework of the Border Liaison Mechanism for this Region and to report periodically Through the Consuls General to the Binational Group for Consular Affairs all pertinent information on this subject,

UNITED STATES OF AMERICA

Charles Brown  
Acting Consul General of the United States  
In Baja California

UNITED MEXICAN  
STATES

Luis Herrera-Lasso  
Consul General of Mexico  
in San Diego

### c. Foreign Prosecution

Mexico and other civil law countries have a procedure with which they can prosecute people who commit crimes abroad on behalf of the country where the crime occurred. Article 4

of the Mexican Penal Code (translated) reads:

Crimes committed in a foreign territory by a Mexican against a Mexican or against a foreigner, or by a foreigner against a Mexican, will be punished in the Republic of Mexico, in accordance with federal law, if the following requirements are met:

- I. That the accused be in the Republic of Mexico;
- II. That the prisoner has not been definitively tried in the country where he committed the crime, and;
- III. That the infraction with which he is charged be a crime both in the country where it was committed and in the Republic of Mexico.<sup>155</sup>

Article IV was established by the Federal Penal Code of 1931.<sup>156</sup> The Mexican Penal Codes have contained the same procedural provisions since 1871. The provisions were put there for three reasons: 1) so that Mexican nationals would be tried in their own country and by their own peers; 2) so Mexico would not become a safe haven for Mexican fugitives who committed crimes in other countries; and 3) so that Mexico could apply the principle of "non-extradition" of its own nationals.<sup>157</sup> Article IV establishes the procedural basis for meeting the general principle of international law regarding fugitive criminals, *aut dedere, aut iudicare* (extradite or prosecute). If a state chooses not to extradite a criminal then it must prosecute him/her itself.

According to Nadelmann this principle is often neglected in practice and this is one of the

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<sup>155</sup> Yuri Calderon, Paco Felici and Elizabeth T. Buhmann, *Criminal Prosecutions Under Article 4 of the Mexican Penal Code*, A Technical Assistance Manual of the International Prosecutions Unit (Austin, TX: Texas Attorney General, 1994).

<sup>156</sup> Eduardo Ibarrola, "International Legal Cooperation," in *XVI Conferencia Procuradores Fronterizos*, ed. Anon (Chihuahua, Mexico: Attorney General of the State of Chihuahua, 1997), 18-25.

<sup>157</sup> Juan Jose Briones, "Foreign Prosecutions," Documentation prepared for the International Liaison Unit of the San Diego District Attorney's Office (San Diego, CA, July 1996).

reasons why the U.S. government refused to incorporate it into its extradition treaties until well into the twentieth century. Experience suggests that governments that refuse to extradite their nationals tend to give little priority to requests for prosecutions from foreign governments. At the same time, foreign governments tend to lose interest in their cases because of obstacles to successful prosecutions.

The obstacles Nadelmann cites, however, are from the European experience. He based his comments on a lecture given by Paul Wilkitzki, Director of the Office of International Criminal Law Enforcement Matters of the German Federal Ministry of Justice, whose unfavorable remarks were based on the costs peculiar to those systems. An investigating judge has to travel abroad to prepare the case according to his countries procedures. Witnesses must be persuaded to travel to another country; and other problems. "Consequently," Nadelmann concludes, "most requests to prosecute offenders for crimes committed abroad prove unsuccessful. The principal exceptions are cases in which high-level U.S. officials express strong and repeated interest in seeing the fugitive prosecuted."<sup>158</sup>

Nadelmann's account needs amending. It does not accurately describe the foreign prosecution experience with Mexico. There are costs but they are not for the same reasons Wilkitzki gives and efforts are being made to consolidate and reduce them *pro rata* as American officials become more experienced with the use of this procedure. And, foreign prosecutions

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<sup>158</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 435.

with Mexico have been succeeding without the intervention of the U.S. federal government. Mexican and U.S. state and local authorities these days regard extradition and foreign prosecution as complementary procedures, allowing for alternative routes to the same end when difficulties arise in one of the two.<sup>159</sup>

The United States has had an extradition treaty with Mexico since 1861.<sup>160</sup> It provided for extradition for twelve listed offenses. Political offenses were excluded. It also provided that neither signatory was bound to deliver up its own citizens or subjects. Between 1874 and 1891 U.S. Secretaries of State interpreted this as precluding the extradition of nationals. Accordingly they refused to deliver an American to Mexico and refused to request the Mexican government to extradite a Mexican citizen for crimes committed in the United States. In 1891 a Texas federal court in *Ex parte McCabe* adopted this view. In contrast, in 1879 the Supreme Court of Mexico had concluded the opposite.<sup>161</sup>

The State Department responded by drafting a supplementary clause to be added to all

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<sup>159</sup> See for example the comments of Lic. E. Ibarrola, Deputy Attorney General for International Affairs, Mexican Federal Attorney General's Office Ibarrola, "International Legal Cooperation," 21.

<sup>160</sup> Extradition Treaty, Dec. 11, 1861, U.S.-Mex. 12 Stat. 1199. See also Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 42ff; Bruce Zagaris and Julia Padierna Peralta, "Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers--150 Years and Beyond the Rio Grande's Winding Courses," *American University Journal of International Law And Policy* 12, no. 4 (1997): 524.

<sup>161</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 428.

U.S. extradition treaties that had the same defect. In 1899 the United States and Mexico concluded a new extradition treaty which repeated that neither party "shall be bound to deliver up its own citizens," but added a clause stating that "the executive authority of each shall have the power to deliver them up, if in its discretion, it be deemed proper to do so."<sup>162</sup> By 1926 the U.S. accused Mexico of refusing to extradite nationals notwithstanding the power to do so. The Mexican Minister of Foreign Affairs assured the U.S. ambassador that there was no *de facto* policy of non-extradition. Nevertheless the practice of non extradition continued. In 1939 the U.S. denied a Mexican extradition request on the grounds of non-reciprocity. Later the same year it granted a Mexican request in order to show that it had not established its own non-extradition policy.<sup>163</sup> For decades Mexico did not extradite anyone although it did occasionally prosecute cases on behalf of the U.S. federal government.<sup>164</sup>

In 1976 with a growing number of Mexican fugitives and drug dealers, the U.S. government responded to Mexican government's continued practice of *de facto* non- extradition with Operation JANUS. It was an effort to assist Mexican criminal justice officials with foreign

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<sup>162</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 429.

<sup>163</sup> Zagaris and Peralta, "Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers--150 Yeras and Beyond the Rio Grande's Winding Courses," 530.

<sup>164</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 429. Nadelmann says that prior to 1960 Mexico had occasionally prosecuted cases for the United States. But uncharacteristically he gives neither detail nor reference. Prior to 1960 Mexico may have been prosecuting cases for state and local governments unbeknown to federal officials of either country. See text *infra* for reports on the history of foreign prosecutions along the border.

prosecutions of drug traffickers in Mexico who violated U.S. drug laws. The program was supported by the Mexican Attorney General. Within a few years it was terminated as a failure.<sup>165</sup>

Mexican sources report that between 1984 and the Spring of 1996, the United States requested the extradition of 151 fugitives from Mexico.<sup>166</sup> These requests resulted in: sixty-eight detentions; twenty persons surrendered; two people expelled; five escapees; fourteen cases still being processed; and eight requests granted but delayed.<sup>167</sup> As of July 1996 there were ninety-one U.S. extradition requests pending in Mexico of which fifty-two were related to drug trafficking, according to an undated update prepared by the Mexican government. In 1996 Mexico broke with the past and extradited two Mexican nationals.<sup>168</sup>

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<sup>165</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 435.

<sup>166</sup> It has long been recognized that crime and justice statistics of all kinds must be interpreted cautiously not only because of possible errors in book keeping but also because these statistics often serve political purposes. Statistics about transnational criminal events are no exception and should be read with the understanding that accounts of the same phenomena may not be reconcilable without a deeper appreciation of the operational definitions of terms involved. As a precaution it is useful to "triangulate" i.e., present multiple measures of the same subject. Better to have the multiple measures with whatever discrepancies than one set of measures with no means of judging the possible magnitude of error.

<sup>167</sup> Zagaris and Peralta, "Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers--150 Years and Beyond the Rio Grande's Winding Courses," 532. citing an undated document prepared by the Office of the Mexican Attorney General obtained from the Commission on Justice at Mexico's Chamber of Deputies.

<sup>168</sup> Zagaris and Peralta, "Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers--150 Years and Beyond the Rio Grande's Winding Courses," 532.

In another analysis prepared by the Mexican federal Attorney General's Office and presented at the 16<sup>th</sup> U.S. - Mexico Border States Attorney Generals Conference in Chihuahua, June 1997, it was reported that between February 1980 and June 1997 Mexico filed 627 requests for extradition from the United States of which 98 persons were returned to Mexico and 31 are detained in connection with the extradition process. During the same period the United States made 283 requests for extradition. Of those 45 persons have been returned to the United States and 40 were detained subject to being extradited.<sup>169</sup>

Although Mexican law has permitted foreign prosecution since 1871 there is no record of how often it has been used prior to May 19, 1981 when the California Department of Justice's (DOJ) Foreign Prosecution Unit file its first recorded request for a prosecution under Article IV.<sup>170</sup> The California DOJ Unit has been keeping records ever since. Before then, however, the procedure was known, at least locally, in various border locations and may have been used at the federal level.

Nadelmann alludes to it in a context suggesting that prior to 1960 it was occasionally used at the federal level instead of extradition.<sup>171</sup> In a paper presented in 1979 Marshal Carter

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<sup>169</sup> Ibarrola, "International Legal Cooperation," 21.

<sup>170</sup> Enrique Mercado, "The Foreign Prosecutions Unit: California Department of Justice," Power point presentation, 18th U.S.- Mexico Border States Attorneys General Conference (San Antonio, TX, June 2 1999).

<sup>171</sup> Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*, 435.

wrote: "...there has long been a practice on the U.S. side [of the border at El Paso - Ciudad Juarez] of requests for prosecution within Mexico of those suspected by U.S. authorities of criminal acts who have since fled the country, an arrangement possible under Mexican law."<sup>172</sup> She also mentions it in a paper presented in October 1977. But there she implies that these requests often come to nothing citing the fact that since November only one such prosecution occurred in auto theft work.<sup>173</sup>

In an interview in October 1984 Sheriff Oren Fox in Imperial County, California, Article IV prosecution had been used successfully by law enforcement agencies in Imperial County for at least ten years. In interview in July 1997 Sheriff Fox estimated that Article 4 prosecutions were going on in the Imperial County-Mexicali area as far back as the 1950s. He was sure they were happening in the 1960s.<sup>174</sup>

A critical turning point in the history of the use of Article IV happened when the California Department of Justice's Mexican Liaison Unit began using the procedure and started to institutionalize its use. Ruben Landa, the Special Agent of CALDOJ's Mexican Liaison Unit,

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<sup>172</sup> H. Marshall Carter, "Law, Order, and the Border: El Paso Del Norte," Unpublished paper, National Council on Geographic Education, Annual Meeting ( Nov., 1979b), 12.

<sup>173</sup> Bath, Carter and Price, "Dependence, Independence, or Detachment?: Three Case Studies of International Relations Between El Paso, Texas and Ciudad Juarez, Mexico," 10. Carter refers to the El Paso Times of March 16 and May 4, 1977 for examples of successful and unsuccessful work between the prosecutors in El Paso and Juarez. Neither article contains references to foreign prosecution.

<sup>174</sup> Interview July 1, 1997.

who spent much of his time in Baja California making contacts and exchanging information is credited with "discovering" Article IV.<sup>175</sup> He was frequently asked by California law enforcement agents to check on the whereabouts and doings of particular fugitives. During one of his inquiries a Mexican prosecutor mentioned to him that although it might not be possible to get the suspect extradited he could be prosecuted by Mexican authorities under Article IV.<sup>176</sup> In about 1978 the CALDOJ began holding a series of meetings with the chief federal Mexican prosecutor in Tijuana and the Mexican Consular Corps from several California cities to establish a program that would assist local law enforcement agencies statewide with the use of the Article IV process.<sup>177</sup> In 1984 the California Attorney General's Office produced a written set of procedural guidelines for its use and distributed them to law enforcement agencies throughout the state.<sup>178</sup> The Attorney General's Mexican Liaison Unit became its Foreign Prosecution Unit whose new purpose included assisting California law enforcement agencies with prosecutions in Mexico.

Shortly after the unit began the Los Angeles Police Department referred more cases to it than it could handle. Discussions began about the feasibility of LAPD operating its own unit. In 1984 LAPD reviewed its list of outstanding murder warrants and found that of the 237 open

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<sup>175</sup> John Van De Kamp, "Remarks of the California Attorney General," Unpublished transcript on file., Eighth Annual Border Crimes Conference (San Diego, CA, May 8 1986).

<sup>176</sup> Interview with Ruben Landa Nov. 8, 1997.

<sup>177</sup> Briones, "Foreign Prosecutions."

<sup>178</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*, 154.

cases 100 involved suspects who were Mexican nationals presumed to have fled back to Mexico. LAPD asked State Department officials about the possibility of extraditing them and was told about Mexico's refusal to extradite its nationals. So LAPD adapted a draft of the Attorney General's guidelines for foreign prosecutions and, following CALDOJ's example, established a Foreign Prosecution Unit. It opened in April, 1985 staffed with two detectives quickly expanded to four. They were selected because they spoke Spanish and were familiar with the laws of Mexico.<sup>179</sup>

Similarly the Office of the District Attorney of San Diego County initially relied upon CALDOJ to handle its cases. But in 1986 it decided to file its own complaints in Mexico and set up its own Foreign Prosecution Program. The San Diego DA's program was the only District Attorney's Office that handled all county foreign prosecution cases directly. In neighboring Orange County the District Attorney's Office also established a foreign prosecution unit.

In an article published in the April 1990 edition of *The Police Chief* magazine, LAPD Chief Daryl Gates and his co-author rendered a very different verdict about the value of foreign prosecution than that given by Director Wilkitzki of the German Federal Ministry of Justice. "The results more than justify the tedious and exacting procedures required," they wrote.<sup>180</sup> As of that date LAPD had filed 74 murder cases in Mexico, of which 32 had resulted in arrests,

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<sup>179</sup> Gates and Ross, "Foreign Prosecution Liaison Unit Helps Apprehend Suspects Across the Border." and interview with Art Madrid, July 14, 1999.

<sup>180</sup> Gates and Ross, "Foreign Prosecution Liaison Unit Helps Apprehend Suspects Across the Border.".

prosecutions, convictions and sentences comparable to those in the U.S. for similar crimes. In addition there had been 26 prosecutions for crimes other than murder.

At same time, LAPD reciprocated the cooperation it received from Mexico as well as it could. Mexican officials have sometimes complained about the lack of reciprocity in Article IV prosecution. They found it difficult to understand that the U.S. does not have an equivalent procedure.<sup>181</sup> LAPD compensated in other ways including locating suspects wanted for serious crimes in Mexico. In response to requests Mexican authorities and with the assistance of the U.S. Immigration and Naturalization Service they caused 32 murder suspects, two kidnap suspects and two child-stealing suspects to be deported back to Mexico.<sup>182</sup> In the mid-1990s LAPD's unit began working with other Central American countries which have similar provisions for foreign prosecution and have succeeded in getting .<sup>183</sup>

The institutionalization of the use of Mexico's Article IV was further extended in the 1990s by yet another new institution of transnational cooperation the U.S. - Mexico Border States Attorneys General Conference.<sup>184</sup> In 1986 Sergio Garcia Ramirez, the Mexican Federal

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<sup>181</sup> Wilhelm, *Transnational Relations of U.S. Law Enforcement Agencies in the Imperial County-Baja California Border Region*.

<sup>182</sup> Gates and Ross, "Foreign Prosecution Liaison Unit Helps Apprehend Suspects Across the Border."

<sup>183</sup> Interviews with Gil Moya and Arturo Zorrilla, LAPD, Foreign Prosecution Unit, various occasions, 1997, 1998.

<sup>184</sup> Hereinafter, the Border States A.G.'s Conference.

Attorney General, suggested to the United States Attorney General that the ten border state attorneys general meet in order to enhance coordination. The First Border Attorneys General Conference was held in Guaymas, Sonora in November 21-22, 1986 with no set agenda.<sup>185</sup> The 10<sup>th</sup> Conference was held in Tijuana and produced a document referred to as the Tijuana Resolution. It called for seven actions including promoting better police training. Foreign prosecution was not mentioned.

The 11<sup>th</sup> Conference, hosted by the newly elected Attorney General, Dan Morales, was held in San Antonio, Texas, November 13-15, 1991. The agenda was divided into four sessions: criminal law enforcement issues; extradition and prisoner transfer issues; border children issues; and a discussion of NAFTA's impact on the border states. There was no explicit mention in the printed agenda of Article IV prosecutions.

During the presentations, Mike Hodge, the Chief of the Criminal Law Enforcement Division of the Texas Attorney General's Office, described the law enforcement activities of his office. No cooperative enforcement activities with Mexico were listed. He explained that the Texas Attorney General's Office had a small unit known as the Prosecutor's Assistance and Special Investigations Unit. Criminal justice issues had not been a priority for the previous

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<sup>185</sup> Dan Morales, *United States - Mexico 11th Attorneys General Border Conference: Executive Summary*, Conference, November 13-15, San Antonio, TX. Unpublished mimeo and transcript of proceedings. (Austin, TX: Office of the Attorney General, 1991), I. Attorney General Sergio Garcia Ramirez attended the first meeting. Personal communication from Tim Cornish, June 17, 1999.

administration but was changing under Morales.<sup>186</sup> The only reference to cooperation with Mexico came in his introduction of Michael Carey, the Associate Deputy Attorney General of the U.S. Department of Justice. He was going to give an overview of federal law enforcement cooperation with Mexico and to describe the U.S.-Mexico Binational Commission (BNC).

In his remarks Carey alluded to Article IV prosecution and to the CALDOJ's new Foreign Prosecution program. In reporting on the recent law enforcement Working Group of the BNC chaired by the federal attorneys general of the two countries he said that several issues were discussed including "the respective extradition treaties and the mechanism for domestic prosecution in Mexico where no extradition is possible, which I might add is based on a program development by the State of California."<sup>187</sup>

In the Session on Extradition Issues and Prisoner Transfers, Drew Arena, Director, Office of International Affairs, U.S. Department of Justice, said his Office "has begun following the lead of the State of California to develop a mechanism for taking advantage of Article 4 of the Mexican Code of Criminal Procedure."<sup>188</sup> The Office had already had one successful conviction in the federal court in Baja California Norte and had three other cases underway.

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<sup>186</sup> Morales, *United States - Mexico 11th Attorneys General Border Conference: Executive Summary*.

<sup>187</sup> Morales, *United States - Mexico 11th Attorneys General Border Conference: Executive Summary*, in transcript not paginated.

<sup>188</sup> Morales, *United States - Mexico 11th Attorneys General Border Conference: Executive Summary*.

The 12<sup>th</sup> meeting of the Border Attorneys General Conference was held in Arizona in September 1992. During the break before dinner one of the investigators from LAPD's Foreign Prosecution Unit, Gil Moya, approached Roberto San Miguel, a policy analyst for the Texas Attorney General's Office, and said, "We hear you have a problem down here." He was referring to the 1991 yogurt-shop slaying of four teen-agers involving a Mexican national who fled to Mexico. Moya slipped San Miguel a copy of the California Attorney General's manual, Guidelines for Foreign Prosecution. Attorney General Morales had made improved cooperation with Mexican law enforcement a high priority and had invested a lot in the 11<sup>th</sup> meeting of the Conference including the production of a substantial briefing book; the video taping of the sessions and transcribing the tapes. San Miguel had done much of that work including all the transcription. He realized the significance of the California manual and brought it to the attention of his boss.

In December 1993 Attorney General Morales established an International Liaison Unit of his own. Working with the California manual as model and after consulting with Mexican officials in several states, Morales's Office produced its own manual for conducting foreign prosecutions with Mexico.<sup>189</sup> The manual was presented to the Border States Attorneys Conference in Sonora, Mexico, in May of 1994 and officially released at a convention of U.S.

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<sup>189</sup> Calderon, Felici and Buhmann, *Criminal Prosecutions Under Article 4 of the Mexican Penal Code*.

state attorneys general in San Antonio in June 1994.<sup>190</sup>

At the 14<sup>th</sup> meeting of the Border States Attorneys General in Houston, Texas, September 20, 1995, the United States Deputy Assistant Attorney General, Mary Lee Warren described the extensive meetings that were occurring between U.S. and Mexican law enforcement officials at the federal level. She said the working group on fugitives had labored intensively over the matter of extradition. The group also considered the topic of Article IV. In this connection, she said, "The Department of Justice defers to the expertise developed by state border prosecutions in the Article IV process."<sup>191</sup> At the same meeting Attorney General Morales publicly thanked Rafael Estrada Samano, Deputy Attorney General, Republic of Mexico, for his office's action in the first case the Attorney General's Office had sought to prosecute under Article IV. Two suspects in a murder for hire case had been arrested and taken into custody by Mexican officials on behalf of the State of Texas.<sup>192</sup> Six months later at the 15<sup>th</sup> meeting of the Border State Attorneys General, the International Prosecution Unit of the Texas Attorneys General office reported that it had filed eleven Article IV cases which resulted in five arrests and an arrest warrant in another case. Arrest warrants were pending in six other cases and an additional 20

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<sup>190</sup> Christopher Anderson, "Texas Takes Steps to Ensure Fleeing Mexicans Face Justice: Morales Outlines Policy to Help Southern Neighbor Try Fugitives," *San Antonio Express-News*, June 23 1994.

<sup>191</sup> Dan Morales, *14th United States - Mexico Border State Attorneys General Conference: Executive Summary*, Conference, Sept. 20-22, Houston, TX. Unpublished mimeo and transcript of proceedings. (Austin, TX: Office of the Attorney General, 1995), 4.

<sup>192</sup> Morales, *14th United States - Mexico Border State Attorneys General Conference: Executive Summary*, 8.

cases were under review for possible Article IV requests.<sup>193</sup>

The Mexican government has supported the development of the use of the Article IV procedure. The Mexican Federal Attorney General's Office has assigned legal attachés to its consulates in Los Angeles, San Diego and San Antonio for the purpose of promoting and assisting with Article IV prosecutions. As the use of the procedure increased the Federal Attorney General established its own office to coordinate all the requests for Article IV prosecutions. In 1995 a special task force was created in Mexico City within the Federal Judicial Police to assist in the administration of foreign prosecutions. They accompany the federal prosecutors to the various Mexican states where the warrants must be served.<sup>194</sup>

#### d. Foreign Prosecution: Statistical Profiles

At the 18<sup>th</sup> meeting of the Border States Attorneys General conference, Lic. Agustin de Pavia Iturralde, General Director of International Affairs, Mexican Federal Attorney General's Office presented statistics on Article IV prosecutions for which its office has records since 1990 (see Table 7.1). California and Texas are the biggest users but it is noteworthy that twelve other states have at least one case that has been processed by the Attorney General's Office. Also noteworthy are the sentences for the sample of six cases from 1999 (see Table 7.2).

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<sup>193</sup> Dan Morales, *15th United States - Mexico Border State Attorneys General Conference: Executive Summary*, Conference, Jan. 9. Unpublished agenda and briefing book. (Austin, TX: Office of the Attorney General, 1996), Sec. IV.

<sup>194</sup> Briones, "Foreign Prosecutions," 6.

Table 7.1 American Requests for Prosecutions Processed  
Through the Mexican Federal Attorney General's Office  
September 1993 - May 1999

Requestor	Investiga- -tions	In Judicial Process	Guilty Verdicts	Not Guilty	Appealed Sentence	Cases Processed in USA
ARIZONA	6	1	4	0	0	0
CALIFORNIA	51	19	75	4	2	7
COLORADO	0	0	1	0	0	0
GEORGIA	0	0	1	0	0	0
IDAHO	1	0	1	0	0	0
IOWA	0	0	1	0	0	0
MICHIGAN	1	0	0	0	0	0
NEVADA	1	1	0	1	0	0
NEW YORK	0	0	1	0	0	0
N. MEXICO	1	1	0	0	0	0
OREGON	1	0	2	0	0	0
PENNSYLVANI A	0	0	0	1	0	0
TENNESSEE	0	1	0	0	0	0
TEXAS	29	3	15	0	1	0
TOTALS	91	26	102	5	3	7

Source: Lic. Augustin de Pavia Iturralde

General Director of International Legal Affairs

Office of Attorney General of the Republic of Mexico

18<sup>th</sup> U.S. - Mexico Border States Attorneys General Conference, June 2, 1999, San Antonio, TX.

Table 7.2 Outcomes of Article IV Prosecutions

January - May 1999

Accused	Source	Offense	Jurisdiction	Proceso Penal	Sentence
1. Antero Ayala Hernandez	Arizona	Homicidio Calificado	1 Dto. Edo. De Mex.	152/951	35 years
2. David Alex Alvarez, (a) "Spooky"	California	Homicidio Calificado	4 Dto. D.F.	91/98	50 years
3. David Alex Alvarez, (a) "Spooky"	California	Homicidio Calificado en Grado de Tentativa	11 Dto. D.F.	14/98	33 years, 4 months
4. Martin Avalos Tescucano	California	Homicidio Calificado	4 Dto. D.F.	32/98	45 years
5. Marco Antonio Flores Hernandez	California	Homicidio Calificado	1 Dto. Jalisco	51/90	14 years
6. Jose Eustaquio Chavez Laines	Texas	Homicidio	1 Dto. Edo. De Mex.	53/97	17 years, 6 months

Source: Lic. Augustin de Pavia Iturralde  
 General Director of International Legal Affairs  
 Office of Attorney General of the Republic of Mexico  
 18<sup>th</sup> U.S. - Mexico Border States Attorneys General Conference, June 2, 1999, San Antonio, TX.

Between April 1981 and November 7, 1997 the California DOJ Foreign Prosecution Unit had handled 265 cases related to foreign prosecutions from California law enforcement agencies. Of those cases it filed 227 requests for prosecution in Mexico. The final outcomes of those filings are not always known to the Unit. Its records show that of the filed cases 55 resulted in arrest warrants being issued by Mexican judges. In another 23 cases the last known information was that the suspect was in custody pending prosecution. There were 48 cases convicted and sentenced. Many of the cases are homicides. The sentences ranged from 6 months to 50 years with all but six falling between 8 and 27 years. Eleven were between 9 years and 10 years, 11 months; 11 between 11 years and 15 years, 11 months; six between 16 years and 20 years, 11 months; four between 21 years and 30 years, 11 months; three for more than 30 years; one for six months; one for three years; one for eight years; one for nineteen years to life; one for 18 to 25 years. In four cases the suspects were eventually found to be serving sentences in American prisons. In an additional ten cases the suspects were listed as having been arrested in the United States.<sup>195</sup>

The Los Angeles Police Department's Foreign Prosecution Unit activities through 1996 are presented in Table 7.3 below. In reading these numbers one must remember that the method of finding out about the outcome of cases is somewhat haphazard. It depends upon learning about earlier cases during subsequent contacts. The table shows what is currently known about the outcome of the cases filed for each year. The more recently filed cases are less likely to have resulted in an arrest (recorded in the data).

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<sup>195</sup> Data provided to the present project by the California DOJ Foreign Prosecutions Unit.

Table 7. 3 Outcomes of Foreign Prosecution Cases Filed

Los Angeles Police Department: 1985-1996

Year	Cases Filed	Warrant Outstanding	Arrested*	(Arrested in USA)	Sentenced	Other
1985	12	4	3	2	5	0
1986	14	6	5	1	2	1
1987	17	7	5	0	5	0
1988	18	5	6	3	3	4
1989	28	14	10	3	3	1
1990	33	15	14	1	4	0
1991	22	11	9	1	2	0
1992	20	8	10	5	1	1
1993	17	12	3	0	1	1
1994	18	9	5	1	4	0
1995	14	7	4	0	2	1
1996	13	11	0	0	1	1

\* Arrested includes arrests that occurred in the USA but excludes arrests that resulted in sentences. Arrests in USA are a subset of the Arrests column. After removing Arrests in USA row figures total to all Cases Filed.

The rows add up to the total cases filed for the year minus cases arrested in the U.S. Thus for 1985, for example, of the 12 cases filed five resulted in being arrested and sentenced. In addition there were three other arrests made, two of which happened in the U.S. Their outcomes are not yet known to LAPD. Also, there were four warrants for arrest issued by Mexican judges.

The San Diego District Attorney's Foreign Prosecution Unit experience with foreign prosecution is reported in Table 7.4 below.

Table 7. 4 Foreign Prosecution Cases Filed

Year	Cases Filed	In custody/convicted	Pending Arrest
1986	4	2	2
1987	6	4	2
1988	5	3	2
1989	12	6	6
1990	14	10	4
1991	6	5	1
1992	6	3	3
1993	8	6	2
1994	5	3	2
1995	7	4	3
1996	1	0	1
1997	2	0	2

Source: Private communication from J.J. Briones, Foreign Prosecution Unit, San Diego County District Attorney's Office, Oct. 11, 1998.

The Orange County (CA) District Attorney's Office's experience with foreign prosecution is presented in Table 7. 4 below:

Year	Cases Filed	Warrants Outstanding	Arrests	Sentenced	Other
1975	1			1	
1981	1				Unknown
1982	2			1	1
1984	1			1	
1985	4	3			1
1986	1	1			
1987	1	1			
1989	2	1		1	
1990	2	1		1	
1991	1				1
1992	5	1	1	1	2
1993	5	3	1	1	
1994	3	3			
1995	1	1			
undated	4		1		3

Source: Personal communication from Frank V. Lopez, Supervising Investigator, Orange County, District Attorney's Office, Aug. 18, 1998.

The Office of the Attorney General of the State of Arizona's experience with foreign prosecution is given in Table 7.5 below.

Year	Cases Filed in Mexico	Warrant Pending	Warrant Issued	Arrested	Sentenced
1993	2		1	1	
1995	5	1	3		1
1997	2		2		
1998	2	2			

Source: Personal communication from Norma B. Martens, Foreign Prosecutions Unit, Assistant Attorney General, State of Arizona, May 1998.

The San Jose (CA) Police Department's Special Investigations Unit reports three cases filed in Mexico. Two of them had warrants issued. In one the subject was in custody. It also reports that in 1997 and 1998 it made four arrests resulting in criminal deportations on behalf of four different Mexican law enforcement agencies (Guanajuato; Zacatecas; Michoacan; Tlanspentla). It also assisted in nine homicide and one child molestation investigations on behalf of Mexican law enforcement agencies plus one missing persons investigation for the Mexican Embassy and another for the Panamanian Consulate.<sup>196</sup>

e. Foreign Prosecution: Relative Merits

One noteworthy point in the data from the several sources presented above is that a substantial number of cases end up being arrested in the U.S. That reflects the fact that while people may flee to Mexico to avoid prosecution they do not always stay there. Many return to the United States and some are caught in connection with other crimes. Knowing that fugitives return to the U.S. some American District Attorneys have been unwilling, especially in high

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<sup>196</sup> Personal communication from George Della Rocha, San Jose (CA) Police Department, Sept. 28, 1998.

profile cases, to use the Foreign Prosecution procedure. They would prefer to wait for the suspect to return and be recaptured by American law enforcement so that they can prosecute the case under their own jurisdiction. Some times this position is based on political judgements about public reaction to the idea of allowing the case to be tried in Mexico. The perception that the Mexican criminal justice system is corrupt and that offenders will walk out of prison is widespread and could be a liability for District Attorneys.

They must approve the filing of the case in Mexico and agree not to prosecute the offender a second time for the same offense. In murder cases from states like California and Texas which have the death penalty, this can be a political risk. Mexico has abolished the death penalty. If the death penalty is not an issue, however, American law enforcement officials familiar with the working of the Article IV prosecutions are virtually unanimous in their endorsement of it use. There are costs but there are also advantages.

The main advantage is that it provides a lawful method for getting justice done in cases that probably either would have gone unpunished or would have resulted in a kidnaping and irregular rendition that not only strains the relationship between the two countries but undermines the rule of law which the U.S. and the Mexican governments are trying to promote at the border and in both countries. Another advantage (from the point of view of American state and local officials) is that it does not operate through treaties. Thus it circumvents the political problems associated with extradition where getting justice done in individual cases seems to get sacrificed to the larger concerns of international relations. Local law enforcement officials often

express a felt personal/ professional responsibility to the relatives and friends of victims of serious crimes. They do not like having to tell victims that there is nothing they can do, and they have little patience for the high game of international politics.

The costs of filing foreign prosecution include those of translating the documents into Spanish; getting proper certifications; and delivering the package of materials to Mexican authorities. These costs are not trivial but the American state and local officials are finding ways to reduce them on a per capita basis using such things as computerized boiler-plate language for translations and packaging several cases into one trip to Mexico. The Mexican trial does not require live testimony from witnesses. The trial is based on the written record. Thus witnesses do not have to travel to Mexico.

Mexican law has its standards of proof that have to be met and legal procedures must be followed. Article IV cases are occasionally dismissed or rejected for insufficient evidence or failure to follow procedures. Some times cases are lost due to bureaucratic errors. However, the rate of these problems does not appear to be remarkably higher than what one might expect in court systems in the United States. Moreover, Mexican law does not have an exclusionary rule as does the United. States.

As for corruption, American local law enforcement people familiar with foreign prosecution point out that corruption operates only for those who can afford it. The rich drug lord or business man may be able to payoff officials, live in prison in comfort or even walk out of

prison. But, most of the vast majority of the cases likely to be referred through the foreign prosecution process involve suspects who are not wealthy. When they are convicted they serve real time, which in Mexican prisons can be hard time. What is more, Mexican sentences tend to be longer than those found in the U.S. American officials who work with Article IV cases believe that in many cases it is better to seek justice through the Mexican system than what would have happened in an American system.

## VI. Conclusion

Criminals have always taken advantages of borders for opportunities for crime and for impunity. Their ability to exploit borders for these purposes increased at an ever-faster pace since steam powered boats made transoceanic travel for the masses a reality and telecommunications began revolutionizing the meaning of space. Law enforcement leaders have responded to the challenge. Although progress was slow at first today the response is well underway. An growing number of networks at the regional and international level are being put into place. Some of those networks are imbalanced due to the asymmetry among nations in the resources and professionalism of the law enforcement agencies. Building effective transnational law enforcement networks with those countries involves helping them develop democratic and professional law enforcement at the same time as getting the business at hand transacted.

In the United States, state and local law enforcement leaders played a lead role in the development of the capability to reach beyond their local jurisdictional boundaries to pursue

criminals. Their efforts in their regard reveal the extent to which they regarded the role from earliest times as crime fighters and not merely peace keepers. As local agencies their primary responsibility is to their communities and local matters. International and transnational crime control and cooperation has become a major responsibility for federal law enforcement agencies. But there is a substantial and growing amount of police work that crosses international borders that state and local law enforcement agencies do. Some of it is in cooperation with federal agencies. Much of it is not.

The procedure known as foreign prosecution has been developed by state and local law enforcement agencies in California with the assistance of the Mexican government. They and the Texas Attorney General's Office are prepared to assist other U.S. agencies with prosecutions in Mexico and other Civil Law countries such as central and south America. The procedure they have developed and institutionalized provides a powerful and effective alternative to extradition for assuring that justice is done beyond the borders. The arm of the law just got longer.

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