

TOBY - 8

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Ban lifted, minors are deported

By Greg Gross
Staff Writer

It was back to deportation as usual yesterday for U.S. immigration authorities as a federal judge in Los Angeles lifted a court order stopping the Border Patrol from deporting unaccompanied minors.

The lifting of the temporary restraining order cleared the way for hundreds of youths — 511 in the San Diego area alone — to be sent back to Mexico, a process that began yesterday afternoon.

Meanwhile, the battle lines were firmly drawn yesterday over Mario Moreno-Lopez, the Santa Ana teenager whose mistaken deportation to Tijuana two weeks ago prompted the legal flap, with immigration officials swapping charges with attorneys for the boy's family.

In bus loads of 75, the Border Patrol began to empty its San Ysidro barracks and two area motels where detained minors had been kept. Friends and relatives, some of them clutching wallet-sized photographs and newspaper clippings of detained minors, waited at the Border Patrol's "Voluntary Return Gate" for their arrival.

But darkness cut short the release, leaving an undetermined number of children in Border Patrol hands.

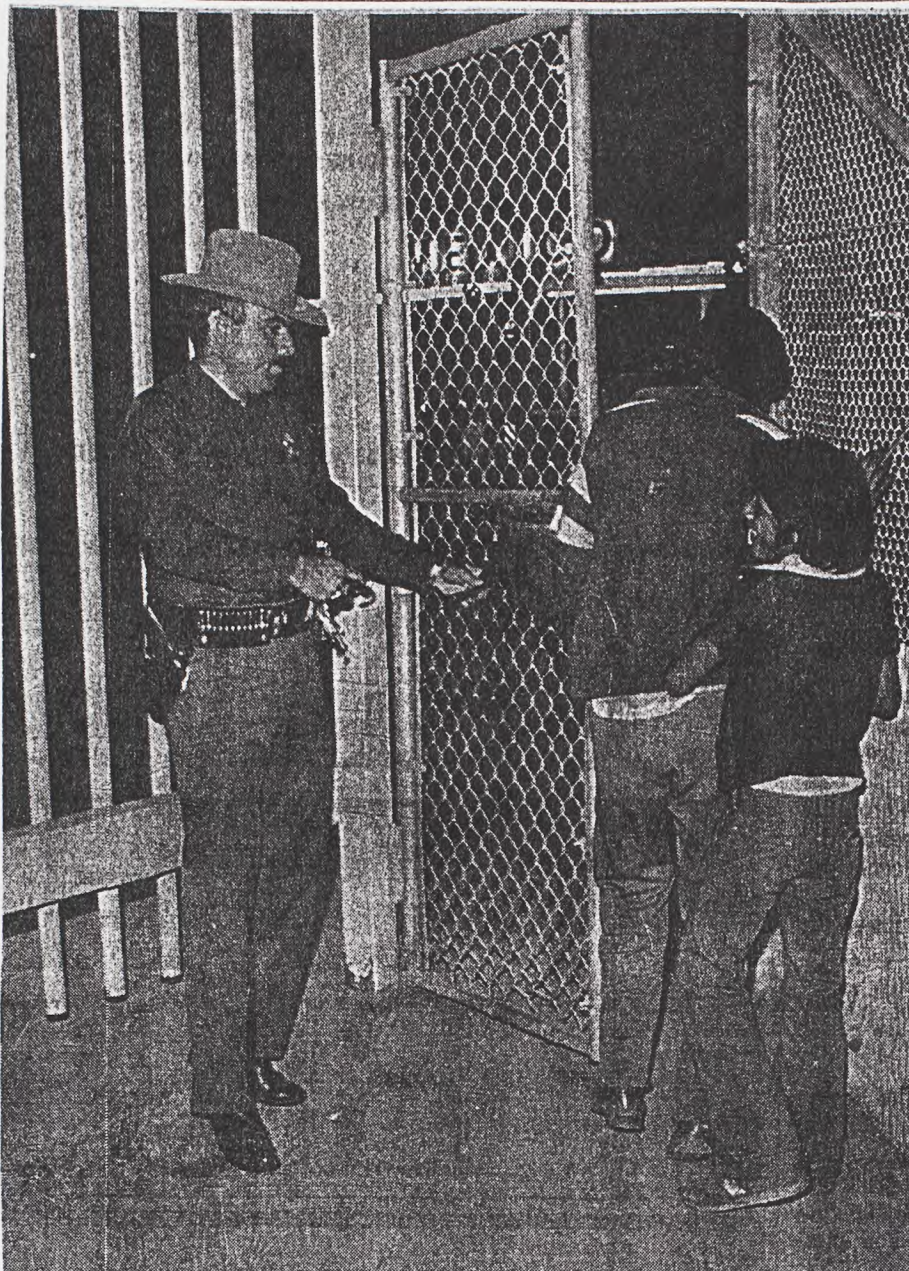
U.S. District Court Judge Edward Rafeedie yesterday vacated the order granted last Wednesday by another federal judge, Terry Hatter, who had ordered a hearing held for every unaccompanied, undocumented alien under age 18, whether he volunteered to be deported or not.

By yesterday morning, Border Patrol agents in the Chula Vista sector had 511 children on their hands, some as young as 11. Caring for them, including putting them up in motel rooms, posting a private security guard on each room and catering three meals a day, cost about \$50,000, according to chief Border Patrol agent Alan Eliason.

In addition to the 511 Mexican youths, the Border Patrol is holding another 40 to 50 children "from (countries) other than Mexico," Eliason said. "It's going to be a bit longer before their deportation can be arranged."

But Rafeedie ruled that there was no need to alter current procedures for treatment of alien minors. At 1 p.m. yesterday, Border Patrol and Mexican consular officers began screening the youths in San Ysidro for departure, Border Patrol spokesman Gene Smithburg said.

See DEPORT on Page B-3



The San Diego Union/Bob Ivins

Border Patrol Agent S.L. Salinas allows two young Mexican nationals through a gate into Mexico following a court hearing.

*SP Jmm
2/28/24*

Deport: Court order is halted

Continued from B-1

A Jan. 31 ruling by Rafeedie required that undocumented minors be given a more thorough explanation of their rights under immigration law and Eliason assured reporters that this was being done.

"We are in the process of advising all (detained undocumented) juveniles of their rights," Eliason said. "We intend to avoid a situation like that (of Moreno-Lopez) at all costs."

Moreno-Lopez was picked up Feb. 15 by Immigration & Naturalization Service agents on a Santa Ana street corner, where he had been standing among a group of laborers looking for work. He later claimed he did not divulge his legal status because agents "were hitting those who did not volunteer for deportation."

Despite an INS "lookout" order, he was apprehended again trying to

cross back into the United States and unwittingly deported a second time before slipping back across the border on his own. He was found safe in San Diego Feb. 20.

Meanwhile, Howard Ezell, INS western regional director, told reporters in Los Angeles that allegations of physical or verbal abuse in the case were "totally unfounded." But Doug Calvert, the agent who processed Moreno-Lopez after his arrest, admitted he had mistaken the boy for an adult, even after he had correctly given his birth year — 1969.

"In my mind, he was an adult," Calvert said. "If he had said or I had figured out he was a minor, this would not have happened."

At the same time, Calvert said the boy lied to him several times.

"He said he had entered the United States illegally only six days earli-

er," he said. "He told me his mother and father were residing in Mexico. He advised me he had never taken out any papers to establish legal residence in the United States."

Ezell also said Moreno-Lopez was not carrying documentation.

Ezell complained the youth was "being counseled by activists who seek to exploit situations which might discredit the agency."

In turn, Los Angeles attorney Peter Schey, who last week filed a \$100,000 false arrest claim on behalf of Mario and his father, accused INS of a coverup.

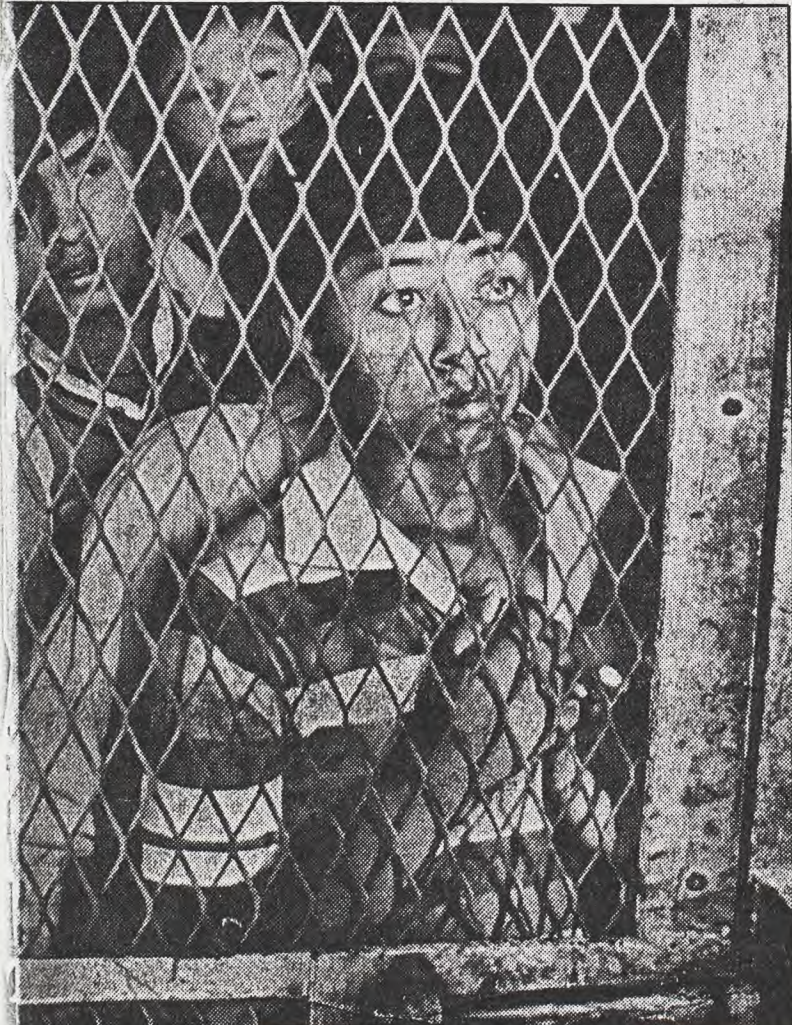
"It's our opinion that the immigration service is involved in a retroactive effort to alter the facts in this case," Schey said. "We believe that the agents involved have said what they think is necessary to protect their jobs."

FEB 28, 1984



BOB GRIESER / Los Angeles Times

Youths file off the bus and head for their homeland after they have been released from Border Patrol barracks at San Ysidro.



BOB GRIESER / Los Angeles Times

Deportation Restriction Lifted

Mexican Youths Released From San Ysidro Barracks

By MARJORIE MILLER and LAURIE BECKLUND, Times Staff Writers

SAN YSIDRO—Hundreds of Mexican teen-agers left overcrowded Border Patrol barracks and rented motel rooms late Monday to return to their homeland after a federal judge lifted a temporary court order restricting the deportation of foreign juveniles.

The youths, most of them from the interior of Mexico, had entered the country illegally in search of work, relatives or fun. Instead, they had encountered federal agents and had been detained during a legal battle over their rights that is being waged between the U.S. Immigration and Naturalization Service and immigration attorneys.

At barracks No. 3 in the INS headquarters here, the teen-agers pressed up against the wire mesh gate that held them. With ruffled hair and tired eyes, they shouted to agents that they wanted to be released.

"I have got to get out. I have to earn some money to support my brothers," said Roberto Ramirez, a 17-year-old from the state of Michoacan.

INS officials here said they had detained 511 unaccompanied minors since the order was signed Wednesday. They housed most of them in barracks and motel rooms, serving them catered burritos and detaining those in hotels with hired, private guards.

Alan Eliason, chief patrol agent in the Chula Vista sector, said he expected most of the youths to be released by late Monday night. They were taken to the border in busloads of 50 and were led slowly through a gate to Tijuana.

Impatient, Irritated

"Let's go," urged one impatient teen-ager, who carried a shoulder bag holding his belongings. Others behind him acted irritated, like commuters caught in rush-hour traffic.

Several interviewed said they would spend the night after their release with relatives in Tijuana, in an inexpensive hotel room or on a bus headed for home.

A handful of friends and relatives of detained minors looked on anxiously as the youths scurried off the bus.

"We're more worried than an Please see BORDER P...

Mexican youths listen for information about their release

Certificate

BORDER: Youths Are Released

Continued from Page 1

gry," said Micaela Hernandez Ramirez. She and her husband, Jose Leopoldo Ramirez, had been at the border since morning looking for two of their children. Theirs were not among the first released.

"They are going to be punished," said Ramirez, of Tijuana. His eldest of 10 children had crossed "as a game. To play. It's the sort of thing that occurs to children."

Meanwhile, INS officials in Los Angeles announced that an internal investigation had cleared INS agents of all wrongdoing in the case that sparked the court order.

Mario Moreno Lopez, 14, was to blame for his mistaken deportation on Feb. 15 because he had lied, telling agents who arrested him once in Los Angeles and again in San Diego that he was an illegal alien, INS officials said. An immigration attorney representing Moreno Lopez promptly denounced the INS investigation as "one-sided" and lacking in credibility.

"At no time did the boy ever claim to be a legal resident," Ernest Gustafson, director of the INS's Los Angeles district, said at a press conference. "The boy... led us to believe he was an illegal alien."

"He made no claim to be here legally," said Eliason. The youth was detained a second time at the Chula Vista sector.

Officials said Doug Calvert, the Los Angeles agent who arrested Moreno Lopez, was unaware that the youth was only 14 years old, and therefore did not read him the list of rights that are supposed to be read to minors.

However, the boy's birthdate, Sept. 9, 1969, was listed on the youth's official documents. When asked why he had failed to recognize that the youth was 14, Calvert, responded:

"I really can't answer that. His appearance, his demeanor with me, gave me no clue that he was a minor." Calvert said he never calculated the youth's age from the birthdate.

Victor Rostow, INS national director of litigation, said in answer to a question in an interview Monday that INS will consider prosecuting the youth for lying to a federal officer, which he said is a felony.

In response, Moreno Lopez's attorney, Peter Schey, said, "Even if every statement issued by INS were true, the fact would remain that Mario's deportations would have been avoided—if the agents had simply acted in a reasonably cautious manner and taken the few seconds required to calculate his age."

The INS made no effort to contact the youth, his father or Schey during the course of its investigation, Schey said. He said the youth "remains firm in his statements that he had advised the agents not only that he was legally present in the



BOB GRIESER / Los Angeles Times

Youths are happy when two Border Patrol agents inform them they are going to be released soon.

country but also that his father in Santa Ana was in possession of his permanent visa." He said any attempt to prosecute the youth for lying to a federal officer would "allow all sides of the story to be aired."

The ban on deportations that was lifted on Monday was issued by U.S. District Judge Terry Hatter Jr., Wednesday while U.S. District Judge Edward J. Rafeedie was on vacation. It was sought by immigration attorneys who contended the Moreno Lopez incident demonstrated that the INS was violating the injunction, and that emergency procedures were necessary to protect the juveniles.

In lifting the ban, Rafeedie warned the INS that he would be less tolerant of any future violations of the injunction he issued on Jan. 24, and welcomed a pledge by the INS to have all its agents sign statements confirming that they had read and understood his order.

Rafeedie's injunction requires INS agents to read a full page of rights to juveniles traveling unaccompanied by guardians. They must be told, among other things, that they have the right to talk with a lawyer or an official of a foreign consulate, to apply for political asylum and to accept "voluntary departure"—prompt return to their homeland.

On Monday, immigration attorneys sought additional protections for youths: mandatory legal advice, outside monitoring of INS processing of juveniles and—most significant in the view of some immigrants' rights advocates—the opportunity to call their families shortly after being apprehended. Rafeedie rejected these requests. But the attorneys, who are involved in a pending class action suit with



BOB GRIESER / Los Angeles Times

Micaela Hernandez Ramirez and Jose Leopoldo Ramirez hope to find their two children. He said they are going to be punished.

INS over foreign juveniles' rights, pledged to bring the matter up at future legal proceedings.

Currently, neither juveniles nor adults have the right to make a telephone call before they have made up their minds about whether to agree to be voluntarily deported or to protest their deportation through legal channels. No telephones are available in holding tanks where aliens are kept before they speak with INS investigators. Pay phones are available for detainees to call relatives later, however.

"One 11-year-old constantly asked to use the telephone to call her family and the INS officer said,

"Listen, don't make trouble, we have papers to sign and then you can make calls," said immigration attorney Timothy Barker. "In all fairness, obviously a child needs to talk to a relative before signing away all of his constitutional and statutory rights."

The INS disagrees. "The law requires us to question aliens as to their right to be here and until we have done so, we are not required, we believe, to give them the right to a telephone call before our investigation," said Rostow.

Asked if allowing juveniles to make phone calls would interfere with INS operations, he said, "I don't know."

Court Orders INS To Halt Juvenile Deportations

From California to Texas, the Border Patrol found itself with scores of juveniles on its hands as a temporary restraining order stopping their deportation went into effect throughout the nation last week.

The order, signed on Wednesday of last week by U.S. District Judge Terry Hatter, halted the deportation of unaccompanied minors until a court hearing is scheduled on the issue.

The emergency action was requested by immigrants' advocates, who charged that the U.S. Immigration and Naturalization Service is violating a recent injunction designed to

protect the rights of foreign-born children before they are returned to their homelands.

The order was signed after the attorneys argued that the mistaken deportation of legal resident Mario Moreno Lopez, 14, to Mexico two weeks ago showed that the INS had failed to fully implement a previous injunction.

That Jan. 24 injunction requires immigration agents to inform juveniles that they have a right to contact an attorney, to provide them lists of free attorneys and apprise them of other rights.

Moreno-Lopez was found wander-

ing on a downtown San Diego street on Monday evening of last week. Police said the boy was recognized by diners at a restaurant, who then summoned police at about 5:30 p.m. He was reunited with his father, Juan Moreno-Garcia, a plumber's assistant from Santa Ana, who had taken a bus to Tijuana to look for his son.

The boy told police through an interpreter that he had attempted to explain his legal status to immigration officials after his arrest in Santa Ana. He had been granted permanent resident alien status in 1981.

However, Mario said the officials

"wouldn't hear it" and "shoved" him into a van with about 40 other males who had been rounded in an area where undocumented workers looking for work frequently gather.

The youth told reporters that he was intimidated into signing a voluntary departure statement. He said he asked if he could wait until his legal status could be proven, but quickly acquiesced and signed the departure statement after seeing an immigration officer slug one of the detainees who refused to sign.

Moreno-Lopez said that he crossed back into the U.S. last Thursday

CONTINUED ON PAGE 2

ce Mexico
3/1/84

INS Deportations

CONTINUED FROM PAGE 1

night but was apprehended and deported a second time early Friday but made across the border later that day. Howard Dodds, the INS agent in charge of the investigation of the incident, said investigators "are getting the paper work ready" to determine why the youth was deported a second time.

The INS said juveniles are not deported before the Mexican Consulate is notified, but in Mario's case neither the consulate in Los Angeles or San Diego was notified before the youth was deported.

Meanwhile, the Immigration and Naturalization Service launched an internal investigation into the mistaken deportation of Moreno-Lopez to determine if the youth's civil

rights were violated. "If we find that there was in fact a civil rights violation, the evidence will be presented to the U.S. attorney in Los Angeles for prosecution of the affected immigration service employees."

Last week the boy's father announced plans to file a claim against the INS. The federal claim will allege that Mario's civil rights were violated when he was deported to Mexico, attorney Peter Schey said.

"I'm pursuing the legal action because they committed an injustice to my son," Juan Moreno Garcia said. "I want to ensure with this legal action that there is no repetition of this type of action for other children."

MSA 1, 1984

Not to blame

I can't recall a time when an economic crisis occurred that someone or some group did not look for scapegoats. Yesterday it was blacks, Jews, Puerto Ricans and unions. Today it's the undocumented worker. I don't like the term "illegal alien." How can a human being be illegal?

I have heard economists blame budget deficits, high interest rates and high taxes as the causes of our economic ills. Others say that government spending and the minimum wage are responsible. But I have never heard or read any economist who blamed the undocumented workers for our economic difficulties.

Long before there was an undocumented controversy, our country was plagued by recessions and unemployment. In fact any history book will show that there have been recessions and depressions since 1789.

Yes, we do need an immigration policy, but it has to

MAR 3, 1984

be humane and take into consideration the basic interests of the people. That's why I support Congressman Ed Roybal's bill (H.R. 1409).

The San Diego Union can perform a service to its readers by printing the provisions of the Roybal bill as well as other immigration bills so that its readers can form an intelligent opinion on the subject.

SAM GOULDIN
San Diego

Section
B

Judge awards \$579,000 to boy shot at border

By Bill Ott
Staff Writer

A Mexican youth who was shot by a Border Patrol officer near San Ysidro in 1985 was awarded \$579,000 yesterday by a federal judge who found that the youth was entitled to damages for past and future suffering from the incident.

U.S. District Judge Judith N. Keep awarded the damages to Humberto Carrillo Estrada, now 14, and his mother, Maria Elena Estrada of Tijuana.

Attorneys Carlos Alcalá of Sacramento and Marco Lopez of Los Angeles, who represented the youth in a non-jury trial before Keep, hailed the decision. Alcalá also indicated a possible trip to Mexico City to talk with officials who had complained to the U.S. government about the April 18, 1985, incident at the border here.

Although the Estrada lawsuit

asked for \$3 million in damages, Alcalá said he was "very pleased" with the \$579,000 award, which also covers past medical expenses.

Lopez, in a telephone interview, said: "We're very pleased that the American justice system has worked for a child in Mexico who had no other recourse."

Alcalá said the government had offered to settle the case for \$50,000, but it was rejected, setting the stage for trial.

Humberto was 12 when he was wounded by one of three shots fired by Border Patrol agent Edward Cole, who now patrols the Canadian border at Buffalo, N.Y.

An investigation by the district attorney's office concluded that Cole would not be prosecuted because he acted within California law, which

See SHOT on Page B-3

Shot: Judge awards Mexican boy \$579,000

Continued from B-1

allows use of deadly force when someone's life or serious bodily harm is threatened.

Assistant U.S. attorney Michael E. Quinton, representing the government, emphasized that self-defense aspect in the trial. He contended through witnesses and in final arguments that Cole fired his .357 Magnum handgun because he feared for the safety of two agents who had taken Humberto's older brother Eduardo into custody at a 9-foot chain-link border fence about a quarter-mile east of San Ysidro.

Agents Patrick Lonergan and Kenneth Foley had cornered Eduardo at the fence as he attempted to climb it to flee back into Mexico. The government claimed the agents were the targets of rocks hurled from the Mexican side of the border.

Humberto was wounded in the back as he bent over to pry a rock loose from the gravel road. A Mexican citizen carried him into the United States so the boy could get medical help. The bullet was removed in surgery in Mercy Hospital here.

Humberto, testifying in the trial through a Spanish-language interpreter, denied throwing any rocks,

but admitted he had tried to pry one loose from the road. He had to undergo further surgery in Mexico and, according to testimony, still suffers from pain and nightmares and is withdrawn, requiring psychotherapy.

Alcalá, in lengthy final arguments, insisted that an analysis of the scene of the incident by experts proved that the two agents could not possibly have been hit by rocks. One defense expert testified that the shooting was unnecessary.

In the civil suit, the Border Patrol was accused of assault, battery and negligence, but Keep ruled out negligence, leaving battery standing as a cause of action.

Alcalá said late yesterday that Humberto and his mother had not yet received word of their award. The youth frequently worked at the border, selling gum and carrying the luggage of tourists to help support his family.

When he was brought back to Tijuana from Mercy Hospital he returned to a wooden house on a hill, consisting of three small rooms and a hallway. The home had no electricity or water, and was in an area where squatters occupied lots, according to trial testimony.



Committee on Chicano Rights, Inc

FOR IMMEDIATE PRESS RELEASE

APRIL 25, 1985

SAN DIEGO, CA

THE COMMITTEE ON CHICANO RIGHTS (CCR) TODAY CALLED ON CONGRESS TO APPOINT A SPECIAL PROSECUTOR TO INVESTIGATE AND PROSECUTE U.S. BORDER PATROL AGENT EDWARD COLE FOR THE SHOOTING OF 12 YEAR OLD HUMBERTO CARRILLO ESTRADA. IN CALLING FOR THE APPOINTMENT BY THE U.S. CONGRESS, CCR CHAIRMAN HERMAN BACA STATED, "IT IS IMPOSSIBLE FOR EITHER SAN DIEGO DISTRICT ATTORNEY EDWIN MILLER, OR U.S. ATTORNEY PETER NUNEZ TO CARRY OUT A THOROUGH AND IMPARTIAL INVESTIGATION, OR A VIGOROUS PROSECUTION AGAINST ANY BORDER PATROL AGENT IN SAN DIEGO. THEIR DISMAL TRACK RECORD OF THE PAST ATTESTS TO THAT."

BACA, IN HIS LETTER TO HOUSE SPEAKER THOMAS "TIP" O'NEILL, POINTED OUT THAT THE LATEST SHOOTING INTO MEXICO BY A BORDER PATROL AGENT INVOLVES SERIOUS FOREIGN POLICY AND INTERNATIONAL IMPLICATIONS. "LOCAL DISTRICT ATTORNEY EDWIN MILLER HAS NO JURISDICTION OVER THESE MATTERS AND HAS NO BUSINESS INVOLVING HIMSELF."

ACCORDING TO BACA, "SAN DIEGO DISTRICT ATTORNEY EDWIN MILLER IN 1979 CHOSE NOT TO PROSECUTE BORDER PATROL AGENT DAN COLE FOR THE SHOOTING DEATH OF EFREN REYES AND THE WOUNDING OF BENITO RINCON WHILE BOTH MEN WERE HANDCUFFED TO EACH OTHER. MILLER AT THAT TIME CLAIMED THE KILLING WHICH TOOK PLACE IN U.S. TERRITORY WAS A FEDERAL MATTER OVER WHICH HE HAD NO JURISDICTION." U.S. ATTORNEY PETER NUNEZ, ON

THE OTHER HAND, WAS CRITIZED BY BACA FOR "FOR ABDICATING HIS AND THE U.S. JUSTICE DEPARTMENT'S RESPONSIBILITY. THEY HAVE FAILED TO ENFORCE THE POLICY PROHIBITING BORDER PATROL AGENTS FROM SHOOTING INTO MEXICO, AND HAVE REFUSED TO PROSECUTE AGENT COLE IN CLEAR VIOLATION OF NUNEZ' OWN 1979 POLICY WHICH PROHIBITS THE USE OF DEADLY FORCE EXCEPT IN THE FOLLOWING CIRCUMSTANCES:

1. THE AGENT IS ACTING IN DEFENSE OF HIS OWN LIFE;
2. IS ACTING IN THE DEFENSE OF ANOTHER AGENT;
3. OR WHEN SAVING THE LIFE OF AN INNOCENT 3RD PARTY.

IN CONCLUSION, BACA STATED, "THE SHOOTING OF A 12 YEAR OLD CHILD IS BUT THE LATEST INCIDENT OF VIOLENCE AGAINST PERSONS OF MEXICAN ANCESTRY RESULTING FROM:

1. THE MILITARIZATION OF THE U.S./MEXICO BORDER AS A POLICY TO RESOLVE THE IMMIGRATION ISSUE;
2. THE NAMING OF EDWIN MEESE AS U.S. ATTORNEY GENERAL, WHO HAS GIVEN THE GREEN LIGHT TO THESE TYPES OF ACTIONS;
3. THE HYSTERIA AGAINST PERSONS OF MEXICAN ANCESTRY CREATED BY THE ESTABLISHED MEDIA, ESPECIALLY THE COPLEY PRESS;
4. THE DIRTY POLITICS BEING PLAYED BY THE REAGAN ADMINISTRATION, THE INS/BORDER PATROL, AND ITS APOLOGISTS, TO APPROVE PASSAGE OF LEGISLATION LIKE THE SIMPSON-MAZZOLI AND LUNDGREN BILLS.

FOR FURTHER INFORMATION CALL (619) 474-8195.

HONORABLE CONSUL:

El Comité Pro Derechos Humanos
Respetuosamente solicita su
asistencia para realizar una reunión
con el Honorable Presidente Sr.
Miguel de la Madrid y por lo
tanto haga las gestiones necesarias
para hacer este encuentro posible.

La reunión con el Presidente y
con la dependencia responsable
es con el fin de presentarle
documentación sobre el asunto
de violencia — crímenes perpetrados
por la SIN/Patrulla Fronteriza —
contra personas ~~de ascendencia~~ de
ascendencia mexicana. Nuestra
organización ha solicitado similares
sesiones con Amnistía Internacional,
y con Thomas "Tip" O'Neil, "Speaker"
de la Cámara de Representantes

El reciente tiroteo en la frontera
US/Mexico donde el patrullero
"Ed Cole Balacedo" al niño
Numberto Carrillo Estrada mientras
que este estaba en territorio mexicano

ES EL ÚLTIMO EN UN SIN FIN DE
DE ACTOS VIOLENTOS DE ESTA
AGENCIA CONTRA PERSONAS DESARMADAS
DE ASCENDENCIA MEXICANA.
EL HECHO QUE ESTE CRIMEN
HASTA ESTA FECHA NO HA SIDO
CASTIGADO, DEJA A NUESTRA ORGANIZA-
CIÓN SIN OTRA ALTERNATIVA MAS
QUE ^{RECURRIR} A NIVELES SUPERIORES
EN BUSCA DE JUSTICIA Y UNA SOLUCIÓN
~~A ESTE PROBLEMA IMPRESCINDIBLE~~
A ESTA IMPRESCINDIBLE SITUACIÓN.

CON ESTE FIN NUESTRA ORGANIZACIÓN
ESTÁ SOLICITANDO LA REUNIÓN CON
EL PRESIDENTE MIGUEL DE LA MADRID.
TODA ASISTENCIA QUE NOS PUEDA
PROPORCIONAR SERÁ MUY APRECIADA.
SI SE REQUIERE MÁS INFORMACIÓN
FAVOR DE LLAMAR AL (619) 474-8195

ESPERAMOS SU PRONTA CONTESTACIÓN

ATENTAMENTE

RICHARD D. HUFFMAN
Assistant District Attorney

RICHARD J. NEELY
Chief Deputy District Attorney

WAYNE A. BURGESS
Chief Investigator

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
EDWIN L. MILLER, JR.
DISTRICT ATTORNEY

COUNTY COURTHOUSE
SAN DIEGO, CA 92101
(619) 236-2329

May 1, 1985

William B. Kolender
Chief of Police
San Diego Police Department
801 W. Market Street
San Diego, California 92101

Re: Shooting of HUMBERTO CARRILLO ESTRADA by
U.S. Border Patrol Agent Edward Cole
April 18, 1985 - SDPD Case #85-029330

Dear Chief Kolender:

Members of my staff and I have reviewed the investigative reports prepared in this matter by officers of your department. In addition, a reviewing deputy district attorney visited the scene of this incident as your investigation was being conducted. I have also discussed the matter specifically and generally with U.S. Attorney Peter Nunez. The reports submitted by Lt. Paul Ybarrando of your department evidence a complete and altogether professional investigation.

Those reports demonstrate that at approximately 3:45 p.m. on April 18, 1985, agents of the U.S. Border Patrol were patrolling near the border fence just east of the San Ysidro port of entry. While on patrol, Agents Cole and Patrick Lonergan began to pursue a young male who was on the United States side of the fence and who was in flight from other agents. That person was later identified as Eduardo Carrillo and was apprehended at the fence by Agent Lonergan and a third Border Patrol agent. These two agents pulled Carrillo from the fence and, as he violently resisted, they attempted to subdue him and take him into custody. This involved striking him on the legs with Agent Lonergan's baton as he clung to the fence, and general grappling with him on the ground on the American side of the border in the shadow of the fence. As this struggle was taking place, rocks and bottles were thrown by onlookers on the Mexican side of the fence and fell within the immediate vicinity of the agents and Carrillo.

At this point, the chain link fence stands some nine feet high, and is punctuated with numerous large holes. According to the accounts of the federal officers, the Mexican onlookers picked up large rocks and lobbed them into the air from the Mexican side so that they would clear the top of the fence and came crashing down

on the American side at or near the position of the agents. The entire landscape in that area is littered with rocks, bricks, bottles and other potential missiles. The reports describe rocks the size of small boulders and capable of causing serious injury when thrown over the top of the fence.

Agent Cole had followed the two arresting officers to this scene. He stood on a small knoll, which placed him approximately 10 feet in height above the level of the bottom of the fence where the struggle was taking place. By his account, from this vantage point, he observed two fellow officers being met with a fusillade of rocks, bricks and bottles. He saw that they were fully occupied with the attempted arrest of Carrillo and were thus vulnerable to the assault.

The reports reflect that Humberto Carrillo Estrada, brother of the arrested suspect, was standing on the Mexican side of the fence while this struggle was taking place. This boy, aged 12, was observed by Agent Cole to be one of the persons throwing rocks over the fence and imperiling the Border Patrol agents. Agent Lonergan singles Humberto out as the sole person he positively identified as throwing rocks. Despite subsequent assertions that no rock throwing whatsoever took place until after Humberto was shot, contemporaneous witness statements clearly establish that the bombardment began as the two agents grappled with the suspect Carrillo. Indeed, Humberto himself admitted to having thrown rocks.

Having dispatched the rocks in his hands, Humberto turned and stooped over to pick up additional missiles. At that point, Agent Cole, from a distance of some 25 feet, fired three shots. Although some witnesses describe the firing of two warning shots into the air, followed by a third shot which struck Humberto, Agent Cole told your investigators that he fired no warning shots. Indeed, Border Patrol policy expressly forbids warning shots. Cole fired three times at the youth, striking him once across the shoulder blades. Humberto was then carried to the U.S. side of the border and from there was transported in the Life Flight helicopter to Mercy Hospital. It is expected that his recovery will be complete. His brother, Eduardo, was placed under arrest as an illegal alien, but was subsequently given a five-day entry permit to allow him to visit Humberto at the hospital.

This is a truly unfortunate case, and was saved only by the intervention of providence from becoming tragic. It presents emotional and political issues which are real, are important and are deep. The legal issues presented, although serious, are less difficult under state law but are complicated by the international nature of the incident and the federal officer status of Agent Cole.

First, there is no question as to the validity of the arrest of Carrillo as was being attempted by the agents. By his own account,

Carrillo was in the United States unlawfully and whether or not it is prudent for Border Patrol officers to pull from the fence a person attempting to scramble back into his own country, it is clear that they have every legal right to do so.

Second, in the process of making a lawful arrest, these agents were assaulted by a group of persons and were fearful of great bodily injury or death as expressed by Agent Cole. Their choice at that point was to continue with the arrest or retreat. The law places upon law enforcement officers no obligation to cease effecting a lawful arrest simply because the surrounding crowd grows hostile.

Third, Humberto was not a mere bystander but had been identified as one of the persons actively posing imminent danger to the agents, in the perception of Agent Cole.

The question presented is quite narrow. We must determine whether Agent Cole committed an unlawful act under California law in his use of deadly force against Humberto Carrillo Estrada. The question is not whether the law permits shooting at rock throwers, or other such broad issues.

In making a determination as to the reasonableness of the officer's conduct, we must take into account the conduct of the shooting victim. It is well settled in California law that an assault by rocks can constitute an assault with a deadly weapon. Penal Code section 245(a) prohibits "an assault upon the person of another... by means of force likely to produce great bodily injury." As that section focuses on force likely to produce harm, it is immaterial whether or not the force actually resulted in less than great bodily harm or no harm whatever. People v. Wingo, 14 Cal.3d 169 (1975). An instrument which is not a deadly weapon may become so by reason of its use. People v. White, 212 Cal. App.2d 465 (1963).

In this case, we have a person who, had he been standing in American territory, would have been chargeable under California law with a violation of Penal Code section 245(a). Agent Cole stood some 25 feet away, powerless to personally intervene in what he perceived as a potentially deadly assault upon his fellow officers and the suspect. It was his perception that the use of deadly force was his only alternative.

California Jury Instruction (Criminal) 5.32 specifically states that "It is lawful for a person who, as a reasonable person, has grounds for believing and does believe that bodily injury is about to be inflicted upon (another) to protect him from attack. In doing so, he may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent."

Indeed, even had the incident been tragic and the victim had died as a result of the officer's shot, California law would present him with a complete defense. In making that determination, we look to state statutes and case law which sets the standard for use of deadly force by law enforcement officers. Penal Code sections 196.2 and 197.1, both dealing with justifiable homicide, provide some measure of guidance. Section 196.2 provides for the use of such force in the overcoming of actual resistance to the discharge of a legal duty, such as effecting a lawful arrest. Section 197.2 pertains to the use of deadly force in defense of third persons who are the subject of assaults involving an attempt to do great bodily injury. The question of whether Agent Cole's use of deadly force fell within the acceptable ambit of either or both of these statutory sections is determined by whether his apprehension that the two agents were in peril of great bodily injury or death was reasonable.

With that as the court's command, we look to determine the reasonableness of Agent Cole's apprehension. Clearly, heavy rocks which fall from a nine foot height are potentially deadly. The descriptions of the rock throwing as contained in the reports are consistent with such a threat. The evidence is uncontroverted that similar rock throwing incidents have in the past resulted in serious injury to federal officers in the same general area. This history of injury was known to Agent Cole. The distance and physical barrier presented by the thrown rocks prevented, in Agent Cole's mind, any course of action other than the use of deadly force to repel a potentially lethal assault upon two fellow agents. As a result, we have no ability in the case to prove beyond a reasonable doubt that Cole's apprehension was unreasonable. Consequently, we decline to prosecute.

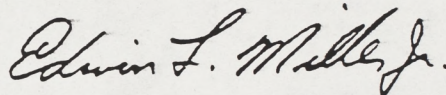
This matter has been presented by your officers for my review under applicable California law, notwithstanding that it involves an action by a federal officer in the course of his duties. The United States Attorney has no available criminal statute to consider for possible prosecution of the agent in this instance and therefore he has no jurisdiction under federal law. I am aware, as well, that if a federal officer should be charged in a California court in such a case, he could demand removal of the case for trial in the federal courts and could seek defense representation by the United States Attorney in the criminal matter prosecuted by us. Although the current United States Attorney would not in any fashion seek such removal, federal law does not vest the decision in him but vests it instead in the defendant. Clearly, it would be onerous to the point of becoming untenable for a state prosecutor to take to trial in federal court a federal officer charged in connection with his federal duties and represented by the United States Attorney. This question of jurisdiction and of venue, while not determining the outcome of my review, does add another extraordinarily complicating factor to the consideration of any such matters.

William B. Kolender
May 1, 1985
Page 5

I must confess to a certain sense of the absurd, that although a potentially criminal act by a federal officer should logically be a matter for federal review, the shooting victim having stood not on U.S. soil but in Mexico makes this an incident truly international in scope and simultaneously strips the federal prosecutor of all hope of jurisdiction. As a consequence, it falls to us to contend with a federal matter that is better handled by the federal government. This situation arises not from any lack of resolve on the part of the United States Attorney in this district, who would willingly undertake such reviews. Instead, it arises from his having no statutory authority to involve himself in such matters and the review then falls to me by virtue of federal default. This situation can be rectified only, and must be rectified, by federal authorities; specifically, the Congress must enact a federal statute providing meaningful federal review of alleged felonious conduct by federal officials.

If your conclusion in this matter differs from that expressed above, please contact me at your earliest convenience. The reports submitted will be retained as a permanent part of the records of this office.

Very truly yours,



EDWIN L. MILLER, JR.
District Attorney

ELM:ty



NEWS FROM
ASSEMBLYMAN
RICHARD ALATORRE
55 TH ASSEMBLY DISTRICT

CONTACT : Marc Grossman/(916) 445-7587

RELEASE DATE : May 2, 1985

ALATORRE URGES STATE ATTORNEY GENERAL TO INVESTIGATE AGENT WHO
FIRED ACROSS BORDER AND SHOT 12-YEAR OLD MEXICAN BOY IN BACK

"In the interest of justice" Assemblyman Richard Alatorre called on California Attorney General John Van De Kamp to begin a state investigation of a shooting incident in which a U.S. Border Patrol agent fired across the international border and shot a 12-year old Mexican boy in the back.

On Wednesday, San Diego authorities announced that Border Patrol Agent Edward "Ned" Cole would not be charged out of the April 18 incident which wounded 12-year old Humberto Carrillo Estrada. Federal immigration officials have claimed that the shooting was provoked by rock throwing from Mexican nationals at the border.

"However, witnesses at the scene state that no rocks were thrown and that Agent (Cole) crouched down in a firing position, took careful aim, and fired his weapon at least three times at the 12-year old minor," Alatorre wrote.

"Local authorities often seem to have difficulty in building cases against alleged assailants when they involve Mexican citizens

Capitol Office
State Capitol
Sacramento 95814
Phone: (916) 445-7587

- more -

District Office
5200 York Blvd.
Los Angeles 90042
Phone: (213) 255-7111

Border Incident
2-2-2-2

at the border," Alatorre told Van De Kamp in the letter. "The only recourse for those who wish to see justice served is if the California Attorney General initiates a state investigation and -- if the evidence warrants action -- to pursue criminal prosecution."

(Attached is a copy of Alatorre's letter to the Attorney General.)

LEGISLATIVE ADDRESS
STATE CAPITOL
SACRAMENTO, 95814
PHONE (916) 445-7587

DISTRICT OFFICE
5200 YORK BLVD.
LOS ANGELES 90042
PHONE (213) 255-7111

Assembly California Legislature

COMMITTEE MEMBER:
HEALTH
HEALTH PERSONNEL SUBCOMMITTEE
INTERGOVERNMENTAL
RELATIONS
LABOR & EMPLOYMENT
SPECIAL COMMITTEE
ON MEDICAL
OVERSIGHT

RICHARD ALATORRE
ASSEMBLYMAN

CHAIRMAN

COMMITTEE ON GOVERNMENTAL ORGANIZATION

ATWATER, BOYLE HEIGHTS, CITY TERRACE, CYPRESS PARK, EAGLE ROCK,
EAST LOS ANGELES, ECHO PARK, EL SERENO, ELYSIAN VALLEY,
GLASSELL PARK, HIGHLAND PARK, LINCOLN HEIGHTS,
MONTECITO HEIGHTS, MT. WASHINGTON, PASADENA

May 2, 1985

Honorable John Van De Kamp
Attorney General of California
1515 K Street, 6th floor
Sacramento, California 95814

Dear John:

In the interest of justice I am calling on you to initiate a state criminal investigation of an April 18 border incident in which a 12-year-old Mexican boy was shot in the back by a U.S. Border Patrol agent who fired across the international border.

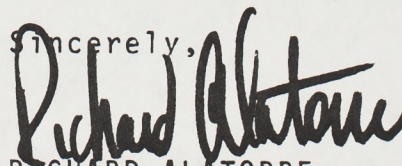
According to witnesses, Humberto Carrillo Estrada, a Mexican national who was standing on the Mexican side of the border, was shot while protesting the beating of his brother by a Border Patrol agent on the U.S. side. The Immigration and Naturalization Service contends that the agent fired in response to rock throwing by Mexican citizens at the border. However, eyewitnesses at the scene state that no rocks were thrown and that Agent Edward "Ned" Cole crouched down in a firing position, took careful aim, and fired his weapon at least three times at the 12-year-old minor.

The San Diego District Attorney refused on Wednesday to file charges against the agent. Local authorities often seem to have difficulty in building cases against alleged assailants when they involve Mexican citizens at the border.

The only recourse for those who wish to see justice served is if the California Attorney General initiates a state investigation and -- if the evidence warrants action -- pursues criminal prosecution.

Thank you for your consideration of this request.

Sincerely,



RICHARD ALATORRE
Assemblyman

Mexico Seeks Punishment of U.S. Border Patrolman

By DENNIS CUSHMAN, *Times Staff Writer*

SAN DIEGO—The Mexican government Tuesday called for the punishment of the U.S. Border Patrol agent who shot a 12-year-old Mexican national through the border fence at the San Diego community of San Ysidro, Mexico's consul general here reported.

"The Minister of Foreign Affairs in Mexico has instructed its ambassador in Washington, D.C., to request that the U.S. Department of State assure that the offending border patrol officer be punished to the fullest extent of the law," said Consul General Javier Escobar, reading from a statement.

"These instructions include also a request that the minor, Humberto Carrillo-Estrada, be compensated for the damages suffered," Escobar said.

State Department officials in Washington said they could not comment on the Mexican government's request, because they have yet to receive any communication on the subject from Mexican officials.

According to San Diego Police officials, Border Patrol Agent Edward D. (Ned) Cole shot the boy during an altercation involving the youth's 15-year-old brother, Ed-

uardo.

Officials said Eduardo was caught by Border Patrol agents as he attempted to climb the border fence near the San Ysidro Port of Entry. As agents attempted to subdue Eduardo, a group assembled on the Mexican side of the fence and began throwing bottles and rocks, police said.

Cole reportedly fired two warning shots into the air, and then fired at least one shot through the fence, striking the boy.

Homicide Lt. Paul Ybarrondo said the boy "had a rock in each hand."

The boy was listed in very good condition at Mercy Hospital Tuesday, where he is recovering from a single gunshot wound to the side of the chest.

Meanwhile, Deputy Dist. Atty. Steve Casey said late Tuesday that his office had received a report compiled by the San Diego Police department detailing the incident.

Casey said it will be "a couple of days to a week" before the district attorney's office decides whether to file a complaint against Cole.

Times staff writer Don Shannon in Washington also contributed to this story.

Trouble at the Border

L.A. TIMES 4-24-85

Tensions between the United States and Mexico may become further strained as the investigation into the shooting last Thursday of a 13-year-old Mexican boy by a U.S. Border Patrol agent unfolds.

So far the Border Patrol has said so little publicly that it's impossible even to tell just which facts are in dispute, much less to understand what happened. What is known is that Border Patrol Agent Edward D. Cole and his partner spotted 15-year-old Eduardo Carrillo-Estrada on the U.S. side and chased him back to the border fence, and that Cole ultimately shot Eduardo's younger brother Humberto.

The Border Patrol has not made public its version of what prompted the shooting. The San Diego Police Department has said that as the two agents tried to subdue Humberto, a crowd gathered on the Mexican side of the border and began throwing rocks and bottles at them.

Cole fired his .357-magnum revolver into the air twice, then fired again through the border fence, striking Humberto—who had rocks in each hand preparing to throw, the police said. Border Patrol

agents told reporters that it is not uncommon for them to be pelted with rocks along the border.

Eduardo Carrillo-Estrada and Tijuana residents who witnessed the shooting tell a somewhat different story. They say that the rock-throwing began only after young Humberto was shot.

The Mexican consul-general in San Diego, Javier Escobar, labeled the shooting a "brutal, unjustified action and a very serious violation of the Mexican border." Humberto remains in fair condition in a San Diego hospital.

Regardless of the genesis of the incident, several troubling questions cry out for answers. Among them is whether Cole believed that he was in danger of being killed or seriously wounded when he fired the shot. Another is whether he was aiming at Humberto Carrillo-Estrada or simply fired wildly into a group of people.

Life along the border is hard—for those who struggle to patrol it and for those who exist in poverty in Mexico—and sometimes the rules are blurred. But under what circumstances is the shooting of a 13-year-old justified?

The San Diego

SAN DIEGO UNION

April 26, 1985

F

A Copley Newspaper

Boy, 12, denies stoning agent, asks \$3 million

By Diane Lindquist
Staff Writer

The 12-year-old Mexican victim of a Border Patrol agent's bullet said yesterday that he was not throwing stones at an agent across the fence that separates the two countries.

"No," said Humberto Carrillo Estrada. "I was looking for one, but I didn't throw any."

In the youth's first public appearance since being wounded, he and his lawyer gave a different version of the events surrounding last Thursday's shooting than that supplied by Border Patrol and San Diego Police Department officials.

At a crowded Mercy Hospital press conference to announce the filing of a \$3 million claim against the federal government, lawyer Marco Lopez disputed Immigration and Naturalization Service reports that Border Patrol agent Edward "Ned" Cole fired at the youth in response to rocks being thrown by Mexicans on the other side of the fence.

"Witnesses at the scene say no rocks were thrown, and, in fact, it would be futile to do so as a 9-foot, wire-mesh fence separates them

from the agents," Lopez said.

Instead, he contended, a Border Patrol agent threw rocks at Humberto's older brother, Eduardo, as he chased him from San Ysidro down a barren hill inside the United States back to the international border.

Using photographs of the event from *El Heraldo* newspaper in Tijuana, Lopez recounted a version of the shooting supplied by Humberto, Eduardo and witnesses.

Humberto was playing a game with Marie, a girl of 15 or 16, in the street that parallels the border when he saw his brother being clubbed by an agent, Lopez said.

When the agent didn't heed the younger brother's pleadings to stop, the lawyer said, the boy reached for a rock.

"As he stooped down, Border Patrol (agent) Cole took a crouched position, took aim first at the girl, Marie, who hit the deck and was covered by some weeds," Lopez said.

"He then aimed at Humberto and fired four times. There were no shots in the air. The shots were

See BORDER on Page A-15



The San Diego Union/Charles St.
Humberto Carrillo Estrada joins his mother and lawyer Marco Lopez during a press conference yesterday

denies stoning agent

Continued from Page A-1

to Humberto."

The photographs showed Humberto after being hit, obviously in pain. Another photo captured him crawling and picking himself up some 20 to 30 feet from the fence that separates the two countries. The boy was on the Mexican side of the line.

Yet another photo showed Humberto being carried across the border to the U.S. side by an adult, with the girl at his side. Two unidentified Border Patrol agents were photographed leaving the scene.

Officials of the Border Patrol and the San Diego Police Department, which led the investigation of the shooting, have said that a crowd was hurling rocks at agents as Cole appeared on the scene.

They contend Cole fired two warning shots in the air and then fired a third shot that hit the boy.

Asked later about the discrepancies, Gene Smithburg, assistant chief Border Patrol agent, said: "Ours is the truth." He said the facts of the case have been reported to the investigating authorities, and the agency stands by them.

The Police Department has sent its report on the shooting to the San Diego County District Attorney's office. Spokesman Steve Casey said yesterday that a decision on whether charges would be filed still had not been made.

Lopez said the district attorney will be given the results of his investigation. He said he is seeking damages for the boy's injuries under the Federal Torts Claims Act and for violations of Humberto's civil rights. The INS has 90 days in which to respond. The Border Patrol is a part of the INS.

Lopez said he is considering further legal actions.

Humberto was wheeled into the press conference wearing standard green and white hospital pajamas and new sneakers. He had a fresh haircut and carried a drawing tablet. He walked from the chair to a table laden with television microphones and tape recorders.

Although shy and obviously unnerved by the attention, he said he was feeling better.

His doctor, Richard Virgilio, displayed an X-ray showing a bright white dot where the bullet traveled through the right side of the body. He said it entered the left side of the back and lodged near the right armpit.

"The only reason this boy is alive today is because the bullet's path was deflected by the ribs," he said.

Afterward, Humberto was released, and returned home to Tijuana's Colonia Emiliano Zapata with his brother and mother, who also were present at the news conference.

Mercy Hospital spokesman Norman Greene said the Border Patrol will be billed for the nearly \$10,000 in medical costs.

Deputy Chief Smithburg said Border Patrol officials had not considered paying the hospital bill. "We'd probably have to submit it to our regional counsel to see whether we are liable."

the statements of INS Western Regional Commissioner Harold Ezell on Wednesday that the shooting was justified.

"I'm shocked because all the facts and the statements of witnesses show that there was no justification whatsoever for the brutal behavior of agent Cole," Escobar said.

"I am alarmed also because by justifying agent Cole's action, Mr. Ezell has in fact authorized his agents to behave in a similar manner in incidents such as this one in which Humberto became the victim."

The shooting has escalated tension between the two countries.

A spokesman in Washington said the State Department considers the situation "very serious" and has sent the Mexican government a note that expresses regret that the shooting occurred.

The State Department yesterday also said it had received a communique from Mexico sent earlier in the week through diplomatic channels protesting last Thursday's shooting.

The Mexican government, which termed the shooting across the border a violation of international law, is demanding that the agent be punished and that monetary damages be paid to young Humberto.



Committee on Chicano Rights, Inc.

May 15, 1985

Estimado Ricardo:

Enclosed for your information are three documented cases which show the complicity of the San Diego District Attorney's office, the U.S. Attorney's office and the San Diego Police Department, in white washing and covering up crimes, by the U.S. Border Patrol against persons of Mexican Ancestry. This pattern of raping women, killing and wounding unarmed men while handcuffed and now, the shooting of a 12 year old child by the Border Patrol, is but the end result, of a do nothing, look the other way policy of the San Diego Judicial System.

Your office's effort to have the California State Attorney General review the San Diego District Attorney's decision not to prosecute, is to be applauded. Our organization's position on the other hand is that the issue involves serious foreign and international questions which must be resolved at the Federal and International level. For this reason we have requested that the U.S. Congress appoint a special prosecutor to investigate and prosecute Border Patrol Agent Ed Cole, and also the INS/Border Patrol's policies which have turned the U.S./Mexico border into a "WAR ZONE." If our organization can be of further assistance to your effort, or you can assist our efforts, feel free to call me at (619) 474-8195.

Sincerely,

Herman Baca
Chairman

MINUTES OF THE MAY 16TH MEETING OF THE " AD HOC COMMITTEE FOR
THE DEFENSE OF HUMBERTO CARRILLO- ESTRADA"

DATE: MAY 16, 1985
PLACE: SAN DIEGO CITY COLLEGE
TIME: 7:30 PM

- A. All interested parties signed in.
- B. Meeting was called to order at 8:00 pm.
- C. A moment of silent contemplation was taken.
- D. Intro of new assembly members and old assembly members.
- E. Reports:

1. The delegation that was sent to the Congressman Jim Bate's office stated that; a) they had gotten the attention of Bate's office, b) that it was understood that other meetings would follow, c) that they were not able to show the video interview with Humberto Carrillo- Estrada and family, d) that a tape recording of the meeting was made, e) Bate's had introduced a Bill to make it a Federal offense for Federal law enforcement officer to assault or otherwise physically injure an individual by greater force than is necessary....

D. Announcements:

- 1. The Mecha at San Diego State is seeking to get sanctuary status on its campus for refugees from war torn Central America.
- 2. Chula Vista High School Mecha and concerned students have started a information network of the works coming from this committee,
- 3. A rep from the Law and Justice Committee was at the meeting to assess the action taking place with our committee.
- 4. Al Alvarado from Jim Bate's office was their as his liason and willing to work with our committee.

E. Old Business...

- 1. That we turn up the heat locally by taking action and begin to plan the Marcha.
- 2. That we set a Date for the Marcha- which was set for June the 8th, 1985.
- 3. That we meet more than once a week to expedite the Marcha.
- 4. That the Marcha be offically recognized as joint effort of this committee and MEChA Central.
- 5. That we work to change the recruitment policies of the Border Patrol.

pg. 2

6. That the shooting be viewed as an attempted murder charge with respect to Border Patrolman Cole.

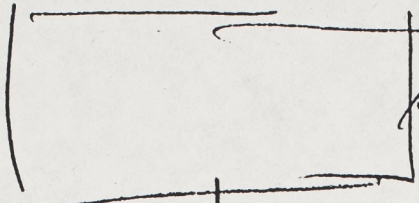
7. Union del Barrio respectfully submitted 7 Points of Unity, they were basic accepted, and opened to further development.

8. The structing of the organization configuration to carry-out the plan to march begun to be developed. (see attachment)

9. People were asked to committ to responsibilities involved in the Marcha de Junio 8.

10. Voted to meet on June 22, and 23rd for further development of the Marcha at San Diego City College.

COORD
Committee



Chair
Treasurer
Sec.

Community Chair
Mexican Liaison

- Correspondence for organization
- Letter writing
- Internal Comm/memos
- Talking Messages
- Making phone calls
- Setting appt.
- Typing
- Copying/Flyer
- Petty Cash Accounting
- Making phone calls

Staff

Security
Legal

Media

- 1) Flyer/Poster Production
- 2) Press Release

Outreach

- 1) Envelopes
- 2) Phone Tree
- 3) Leafletting + flyer
- 4) mailout

Logistics Program

1. Security
2. Site Liaison
3. Refreshments
- 4) Permits
- 5) March route
- 6) Speakers
- 7) Entertainment

Fund Raising

- 1) "Rich" Folks Donation
- 2) Organization Donations



amnesty international

INTERNATIONAL SECRETARIAT
1 Easton Street London WC1X 8DJ
United Kingdom

Our reference:

Direct line:

Mexico/USA

4 June 1985

Herman Baca
Chairman
Committee on Chicano Rights Inc.
710 E. 3rd Street
National City
CA 92050

Dear Herman Baca,

Our New York office has passed on to us your letter of 15 May together with the information you enclosed about incidents on the border with Mexico.

On first sight, it appears that unfortunately these incidents do not fall within our mandate. As you probably know, we are first and foremost a prisoner-oriented organization and work for the release of prisoners of conscience, and against torture and cruel, inhuman or degrading treatment of all detainees.

However, we would appreciate it if you would continue to keep us informed of similar incidents in case it should prove possible for us to take action on any future case.

Thank you for your cooperation.

With best wishes.

Gay Richards

Gay Richards
Americas Research (Mexico)

cc Angela Wright, USA Researcher

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Assembly California Legislature

COMMITTEE MEMBER:
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RICHARD ALATORRE
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ATWATER, BOYLE HEIGHTS, CITY TERRACE, CYPRESS PARK, EAGLE ROCK,
EAST LOS ANGELES, ECHO PARK, EL SERENO, ELYSIAN VALLEY,
GLASSELL PARK, HIGHLAND PARK, LINCOLN HEIGHTS,
MONTECITO HEIGHTS, MT. WASHINGTON, PASADENA

July 1, 1985

Mr. Herman Baca, Chairman
Committee on Chicano Rights, Inc.
1837 Highland Avenue
National City, California 92050

Dear Herman:

Thank you for your recent letter concerning my call for the State Attorney General to investigate the April 18 shooting of Humberto Carrillo Estrada by a U. S. Border Patrol Agent.

Shortly after my letter was delivered, I followed it up by speaking personally with Attorney General Van De Kamp about my request. I was encouraged by the response I received.

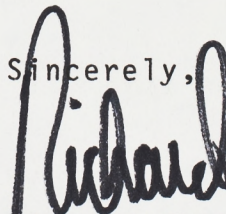
As I told the Attorney General, I have been dismayed in the past by the reluctance of local authorities to aggressively investigate and prosecute border-related incidents when the victims are Mexican nationals.

I share your outrage over the April 18 shooting. I will continue to monitor this case with interest.

Thank you again for your encouragement and support. It is appreciated.

With best wishes.

Sincerely,



RICHARD ALATORRE
Assemblyman

RA:mcc

Enclosure



Committee on Chicano Rights, Inc.

PARA PUBLICACION IMEDIATA

SAN DIEGO, CA

3 DE JULIO 1985

LA RECIENTE RACHA DE SECUESTROS, ARRESTOS, ENCARCELACION, PALIZAS, Y DISPARO DE ARMAS POR LA SIN/PATRULLA FRONTERIZA CONTRA NIÑOS DE ASCENDENCIA MEXICANA, HA SIDO EL CAUSANTE DE UNA PETICIÓN POR EL COMITÉ PRO DERECHOS CHICANOS (CCR) A LA ORGANIZACION DE ESTADOS AMERICANOS, (OSA), LA COMISION INTERAMERICANA SOBRE LOS DERECHOS HUMANOS, PARA QUE SE HAGA UNA INVESTIGACION DE ESTOS ACTOS ALEVOSOS.

EN UNA CONFERENCIA DE PRENSA DURANTE EL PIQUETE ANTE LAS OFICINAS DE LA CORTE FEDERAL, HERMAN BACA, DIRIGENTE DE LA CCR, DENUNCIO, "QUE LA ADMINISTRACION REAGAN HA DADO RIENDA SUELTA A LA SIN/PATRULLA FRONTERIZA PARA ASI ATERRORIZAR AL PUEBLO MEXICANO DE ESTADOS UNIDOS CON ESPECIALIDAD A LO LARGO DE LA FRONTERA MEXICO/USA." EN SU CARTA A LA OSA, BACA ACUSO A LA PATRULLA FRONTERIZA DE MALTRATO DE NIÑOS Y LES HIZO LOS SIGIENTES CARGOS:

- 1.) DE ARRESTAR A NIÑOS SIN TOMAR EN CUENTA LA EDAD Y LUGAR DE NACIMIENTO
- 2.) DE RETENER A NIÑOS EN CENTROS DE DETENCION Y DEPORTANDOLCS SIN PROCESO LEGAL
- 3.) DE INTIMIDAR Y ARRESTAR A NIÑOS Y ADOLECENTES, EN LAS CALLES POR NO TRAER ACTAS DE NACIMIENTO U OTRA DOCUMENTACION DE CIUDADANIA
- 4.) DE DISPARAR, HERIR (EL NIÑO ESTRADA) SECUESTROS (JOVEN DE 14 ANOS DE CALEXICO) Y ARRESTAR A NIÑOS (CARLOS AHUMADA, 12 ANOS.)

5.) DE NO TENER UN PROCESO HUMANITARIO PARA PONER EN LIBERTAD A LOS NIÑOS Y DE AVISAR A LOS PADRES Y FAMILIARES DE ESTOS.

ADEMAS DECLARO BACA QUE LOS ULTIMOS INCIDENTES NO SON MAS QUE LO QUE SE VE EN LA SUPERFICIE..... NO QUEDA MAS QUE PREGUNTARSE, "CUANTOS NIÑOS DESAPARECIDOS ESTARAN EN CARCELES DE LA SIN/PATRULLA FRONTERIZA, O HAN SIDO DEPORTADOS A MEXICO U OTROS PAISES."

Y TAMBIEN PREGUNTO, "QUE MADRE DE NIÑOS MEXICANO/LATINO, PUEDE SENTIRSE TRANQUILLA HOY EN DIA AL MANDAR A SUS HIJOS A LA ESCUELA, LA TIENDA, O CAMPO DE JUEGO, SABIENDO QUE LA PATRULLA FRONTERIZA PUEDE INTIMIDAR, ARRESTAR, Y DEPORTAR A SUS HIJOS SIMPLEMENTE POR SU TEZ MORENA?"

"SERA AHORA LA POLIZA DE LA ADMINISTRACION REAGAN DE REQUERIR QUE CADA NIÑO DE ASCENDENCIA MEXICANA PORTE SU ACTA DE NACIMIENTO PARA DEAMBULAR SIN TEMOR POR LAS CALLES DE ESTE PAIZ?"

"ESTA PRACTICA BARBARA E INHUMANA SEGUN BACA SEÑALA UN CAMBIO DE POLIZA POR EL PROCURADOR GENERAL EDWIN MEESE, HECHO COMO REPRESALIA CONTRA LA COMUNIDAD CHICANO/LATINA POR NUESTRA OPOSICION A LA PROPUESTA LEY RACISTA SIMPSON MAZZOLI."

PARA CONCLUIR BACA AÑADIÓ QUE, "EL CASO YA NO SE TRATA DE QUE SI LA PATRULLA FRONTERIZA ENFORSARÁ LAS LEYES DE INMIGRACION SINO...QUE SI, LA SOCIEDAD AMERICANA PERMITIRA A LA ADMINISTRACION REAGAN SEQUIR FINANCIANDO Y AUTORIZANDO A UNA FUERZA ARMADA DE PSYCOPATAS PARA HACER GUERRA CONTRA NIÑOS INOCENTES."

Manifestación de Niños en la Corte de S. Diego

EL HERALDO
7/4/85

Protestan por las Violaciones de la ley Cometida por la Border Patrol

SAN DIEGO, Cal., Julio 3 (INFORMEX).- La severa persecución en contra de mexicanos, que incluso ha causado arrestos, lesiones, encarcelamientos y deportaciones en perjuicio de niños, es producto de una represalia del Procurador General Edward Meese contra la comunidad mexicana, porque se rechazó la propuesta de la Ley Simpson-Mazzoli, denunció hoy Herman Baca.

El presidente del Comité pro Derechos de los Chicanos en California, con un grupo de 30 niños, realizó hoy una manifestación frente a la Corte Federal en San Diego, y anunció que ha enviado una carta a la Organización de Estados Americanos (OEA), denunciando la violación de derechos humanos que comete la administración de Ronald Reagan contra niños "peor que si estuviéramos en época de guerra".

El líder chicano les expresó a los niños que este día debían recordarlo toda su vida, porque con su actitud estaban defendiendo a muchos otros menores que están en las cárceles de la Patrulla Fronteriza, que son vejados, maltratados y golpeados solo por tener piel morena.

Baca, que llevaba un zapato tenis en la mano, reveló que últimamente los agentes de la Patrulla Fronteriza están arrestando a menores de ascendencia latina, intimidándolos y exigiéndoles documentos que los identifiquen como residentes legales. "lo que parece increíble".

Afuera de la corte federal ante la mirada de decenas de personas mientras los niños caminaban en una trayectoria oval sobre la banqueta llevando sus pancartas. Baca señaló que la administración de Ronald Reagan a través de la Patrulla Fronteriza busca "aterrorizar" la comunidad mexicana a lo largo de la frontera.

En la carta que Herman Baca envió a la OEA, señaló que arrestan niños sin tomar en cuenta su edad y lugar de nacimiento, retienen niños en centros de detención, hay deportación ilegal, intimidación y arrestan a niños en las calles por no traer actas de nacimiento u otra identificación de ciudadanía.

"Disipan, hieren, secuestran, como sucedió con Humberto Carrillo Estrada, Carlos Ahumada y otro niño de Caléxico.

También los acusa de no tener un procedimiento humanitario para poner en libertad a los jovencitos y de nunca avisar oportunamente a los padres y familiares de estos.

Recalcó que la comunidad mexicana en San Diego, está sumamente preocupada, porque ahora temen enviar a sus hijos a la escuela, a la tienda o a los campos de juego.

Finalmente, expuso que los niños desaparecidos en el sur de Estados Unidos pudieron haber sido deportados por la Patrulla Fronteriza sin que nadie tenga conocimiento de los hechos.

HERALDO
DE SAN CALIFORNIA

AGREDIO A UN MENOR

Rechazan Pruebas Contra el Oficial E. D. Cole

La Procuradora General de Justicia de California, rechazó las pruebas que el Ministerio Público de este Estado presentó en relación al atentado que sufrió el menor Humberto Carrillo Estrada, por Edward D. Cole elemento de la Patrulla Fronteriza, por considerar que son insuficientes para poder ejercer justicia.

Lo anterior fué revelado por Javier Escobar y Córdoba, Cónsul de México en Estados Unidos al ser entrevistado por EL HERALDO, en relación a las investigaciones que se vienen realizando para de-

Pasa a la Pag. A-6 Col. 4

EL HERALDO

Rechazan... Viene de la Pag. A-1

terminar la culpabilidad del elemento de la Patrulla Fronteriza.

Informó que de acuerdo a los datos proporcionados por la Procuraduría General de Justicia de California, las pruebas que se presentaron resultado de la investigación, no fueron suficientes para poder ejercer una acción legal, por lo que se decidió reiniciarla para obtener los datos necesarios que determinen la responsabilidad de Edward D. Cole.

Señaló que de ninguna forma se han suspendido las investigaciones, de lo contrario el Consulado Mexicano se ha avocado al seguimiento de las actividades que viene realizando la Procuraduría General de la República de California, para que se pueda ejercer justicia en contra de quien resulte responsable de este atentado en contra de Humberto Carrillo Estrada.



ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. 20006 U.S.A.

July 22, 1985

Dear Mr. Baca:

I wish to acknowledge receipt of your recent letter of July 4, with regard to the situation of child abuse in the United States.

I regret to inform you that the Commission is unable to process your communication as presented because it does not fulfill the requirements established in Article 37 of our Regulations. Under that Article the Commission must verify whether the internal legal procedures and remedies of the State concerned have been duly applied and exhausted. This means that the complainant must allege in his communication that he has done everything possible to seek a remedy within the law of the State in question and provide whatever documentation he may have which would show that he has, in fact, exhausted the legal remedies and procedures available to him, including the appellate process.

Examples of such documentation would be a copy of the final judgment or sentence of a court of law or a copy of a writ of habeas corpus and the court's response. If the victim or the person who is bringing the petition in his behalf, becomes aware that his recourse to domestic remedy has been arbitrarily hindered or the final domestic decision has been unjustly delayed, he should forward all the pertinent details and any available documentation.

The receipt of the information requested above will enable us to process your communication according to our Regulations.

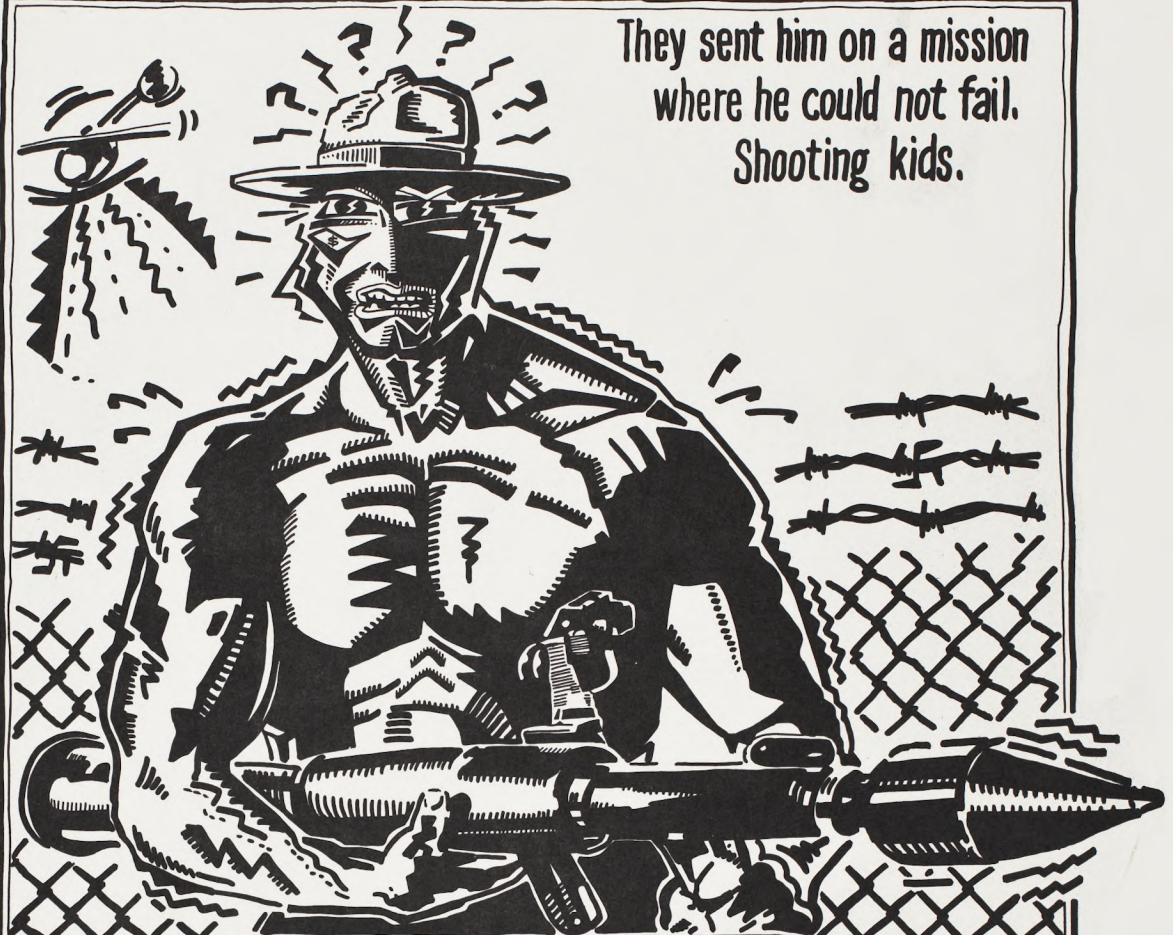
Sincerely yours,

Edmundo Vargas Carreño
Executive Secretary

Mr. Hernan Baca
Chairman, Committee on Chicano
Rights, Inc.
710 E. 3rd Street
National City, California 92050

BORDER PATROL

They sent him on a mission
where he could not fail.
Shooting kids.



DUMBO

No 9-year old, no 10-year old, no 12-year old can stop him.

DAVID AVALOS, © 85



EDUARDO CARRILLO, 12

SHOT IN THE BACK BY A
BORDER PATROL AGENT.

APRIL, 1985



CARLOS AHUMADA, 12

SURROUNDED BY FOUR
AGENTS, ARRESTED AND
IMPRISONED FOR FOUR DAYS.

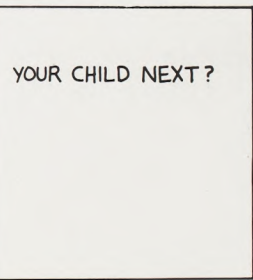
JUNE, 1985



SYLVIA ALVARADO, 10

JAILED BY THE BORDER PATROL
FOR 7 WEEKS WITHOUT
BEING CHARGED WITH A CRIME.

1980



YOUR CHILD NEXT?

SECTION I

"SHOOTING OF 12 YEAR OLD HUMBERTO CARRILLO ESTRADA"

The government, the American popular press, television and Editorial commentators would ask the Mexican people, who are those most affected, to forget or ignore their 140 year history vis-a-vis the INS-Border Patrol. They would ask us to set aside our historical past and have faith in the good intentions and good will of the INS. We find this an absurdity.

They would ask us to ignore the fact that the predecessor "Texas Rangers" of the INS-Border Patrol was created after the war of 1848 as a private army to hunt down, persecute and control the Mexicans living in the borderlands.

They would ask us to forget the lynchings, murders, shootings, and massive abuse of our ancestors by the murderous "Texas Rangers". This murderous group became "legalized" and became the Border Patrol in 1924.

They would ask us to forget the denial of our Civil and Constitutional rights by the Border Patrol and the INS who broke down doors to

that he had a "sixth sense" that he was illegal". . . never mind the niceties of due process or our Constitution and Civil Rights.

They would ask us to forget that the highest legal department of the land, the United States Department of Justice has never once found a Border Patrolman guilty of murder even though executions have been documented.

This is a part of our history. . . a history that must never be forgotten or we are doomed to have it repeated.

We can say with certainty, that no Jewish person would have believed or trusted a Nazi German to give him Amnesty after their historical encounter during World War II. By the same token, we find it impossible to become part of the process that betrays our people into the hands of the oppressor. . . the INS-Border Patrol.

(Footnote: It is interesting to note that in the first three days, the undocumented has demonstrated his fears by failing to appear for Amnesty. This is the biggest indictment of all.)



Committee on Chicano Rights, Inc.

April 16, 1986

Michael Scoba
Marshall's Office
220 W. Broadway Avenue
San Diego, CA 92101

Mr. Scoba

Enclosed is a statement of an incident which occurred in National City, on April 15, 1986. This incident which took place in a city where over 50% of the population is of Mexican ancestry, raises numerous questions in regards to violations of rights, your policies, and the expenditures of tax monies.

Because of this incident in National City, The Committee on Chicano Rights is now demanding an investigation from you, appropriate discipline of Marshall Clark, and a clarification of the following issues:

1. Is it your policy to enforce Federal Immigration laws, and if so, under what authority?
2. Under what line item of the Marshall's departmental budget did Marshal Clark expend taxpayers monies to stop, detain, and arrest Mexicans for the U.S. Border Patrol?
3. If your office is enforcing immigration laws as per Marshall Aguilar's statement, that "we enforce all laws", how many European "Illegal Aliens" have your men stopped, detain and arrested for the U.S. Border Patrol, and furthermore, is your office also enforcing Federal tax, custom, and espionage laws?

In concluding let me state that our organization will await your response to this matter, and based on your response will take what ever appropriate action is necessary to insure that our community's right are not violated.

Awaiting your response,

Herman Baca
Herman Baca, Chairman

C.C. Board of Supervisors
Media



Committee on Chicano Rights, Inc.

APRIL 16, 1986

STATEMENT OF FACT

ON APRIL 15, 1986 AT APPROXIMATELY 10:30 A.M., THE COMMITTEE ON CHICANO RIGHTS RECEIVED A COMPLAINT THAT A SAN DIEGO COUNTY MARSHALL WAS HOLDING AND DETAINING MEXICAN LOOKING INDIVIDUALS AT THE CORNER OF PALM AND DIVISION IN NATIONAL CITY, TO VERIFY SAID COMPLAINT, I IMMEDIATELY DROVE TO THE SCENE (PALM AND DIVISION) WHERE I PERSONALLY WITNESSED THE FOLLOWING INCIDENT: A MARSHALL WHO IDENTIFIED HIMSELF AS OFFICER CLARK, CAR #946 WAS ARRESTING 5 MEXICAN LOOKING INDIVIDUALS. TWO WERE IN HIS CAR AND THE OTHER THREE HE HAD KNEELING ON THE GROUND. MARSHALL CLARK REQUESTED AFTER NOTICING THAT I WAS TAKING NOTES OF THE INCIDENT WHAT I WANTED. TO WHICH I REPLIED, : "WHAT ARE YOU DOING?" TO WHICH HE STATED, "I AM HOLDING THESE ILLEGAL ALIENS" FOR THE U.S. BORDER PATROL," I QUESTIONED HIM BY ASKING HIM IF HE WAS AN IMMIGRATION OFFICER TO WHICH HE STATED "NO." I THEN IMMEDIATELY COMMUNICATED WITH YOUR SAN DIEGO OFFICE WHERE I TALKED TO A SECRETARY (TRUJILLO) WHO STATED "YES" AFTER I POSED THE QUESTION, THAT IF IT WAS THE MARSHALL'S OFFICE POLICY TO ENFORCE FEDERAL IMMIGRATION LAWS. MS. TRUJILLO THEN INSTRUCTED ME TO COMMUNICATE WITH THE SOUTHERN DIVISION OFFICE TO GET FURTHER CLARIFICATION. I SPOKE TO AN OFFICER AGUILAR WHO STATED AFTER I POSED THE SAME QUESTION, THAT "WE ARE EMPOWERED TO ENFORCE ALL LAWS", I CONCLUDED BY STATING THAT I WOULD TAKE THIS UP WITH YOUR OFFICE.

HERMAN BACA,
CHAIRMAN - CCR

Herman Baca

1837 Highland Avenue, National City, CA 92050 (619) 474-8195



CCR

Committee on Chicano Rights, Inc

SAN DIEGO FOR IMMEDIATE PRESS RELEASE JULY 31, 1987
FEDERAL CIVILIAN REVIEW BOARD"

THE COMMITTEE ON CHICANO RIGHTS (CCR) TODAY LABELED THE AWARD OF \$579,000 BY A FEDERAL JUDGE TO 14 YEAR OLD HUMBERTO CARRILLO ESTRADA (WHO WAS SHOT IN THE BACK BY A U.S. BORDER PATROL AGENT IN 1985) AS "AN INDICTMENT AGAINST THE INS/BORDER PATROL, STATE ATTORNEY VAN DE KAMP, U. S. ATTORNEY PETER NUNEZ, S.D. DISTRICT ATTORNEY ED MILLER & S.D CHIEF OF POLICE BILL KOLENDER WHO WERE ACCUSED OF WHITEWASHING THE WHOLE AFFAIR".

ACCORDING TO CCR CHAIRMAN HERMAN BACA, "THE SHOOTING OF A CHILD, WHICH CAN ONLY BE LABELED AS AN INTERNATIONAL DISGRACE, AND THE SUBSEQUENT SUPERFICIAL INVESTIGATIONS BY LOCAL, STATE AND FEDERAL OFFICIALS PROVES THAT THE ENTIRE CHECKS AND BALANCES OF THE U.S. JUDICIAL SYSTEM ALONG THE US/MEXICO BORDER HAS BROKEN DOWN FOR PERSONS OF MEXICAN ANCESTRY!!!

"IT IS FOR THIS REASON" STATED BACA "THAT OUR ORGANIZATION IS CALLING ON THE U. S. CONGRESS TO APPOINT A CIVILIAN REVIEW BOARD ALONG THE U.S./MEXICO BORDER TO MONITOR AND INVESTIGATE COMPLAINTS AGAINST THE INS/BORDER PATROL."

THE CCR IN THEIR LETTER TO HOUSE SPEAKER JIM WRIGHT STATED "THAT DUE TO THE 'RACIST HYSTERIA' AT THE U.S./MEXICO BORDER THAT IT IS IMPOSSIBLE FOR EITHER LOCAL, STATE OR FEDERAL OFFICIALS TO CONDUCT THOROUGH AND IMPARTIAL INVESTIGATIONS OF CRIMES COMMITTED BY BORDER PATROL AGENTS AGAINST PERSONS OF MEXICAN ANCESTRY!! BACA CONCLUDED "THAT WE ARE URGING CONGRESS TO INTIATE IMMEDIATE ACTION TO CREATE AN INDEPENDENT CIVILIAN REVIEW BOARD TO MONITOR, INVESTIGATE AND RECCOMMEND PROSECUTION FOR ILLEGAL AND UNLAWFUL ACTS COMMITTED BY AGENTS OF THE INS/BORDER PATROL AGAINST PERSONS OF MEXICAN ANCESTRY"

FOR FURTHER INFORMATION
CALL HERMAN BACA
(619) 474-8195



Committee on Chicano Rights, Inc.

April 26, 1985

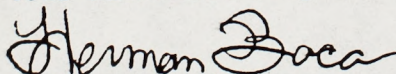
Mr. Thomas "Tip" O'Neil
Speaker of the House
2231 Rayburn House Office Bldg.
Washington, D.C. 20515

The committee on Chicano Rights is formally requesting that the United States Congress immediately appoint a special prosecutor/ investigator to investigate and prosecute U.S. Border Patrol Agent Edward Cole for the shooting of 12 year old Humberto Carrillo Estrada. The shooting on April 18, 1985 took place at the U.S./Mexico International Border while young Estrada was standing on the Mexican side of the Border, and has prompted Mexico to file a formal protest with the United States. According to published reports, young Estrada was shot by Agent Cole in the back through the fence which separates both countries. Agent Cole then left the scene, leaving the child to bleed to death. Details of the incident are enclosed.

We believe that the appointment of a special prosecutor is necessary because of the following reasons:

- a) The dismal record of both the San Diego District Attorney and the U.S. Attorney General in investigating and prosecuting similar cases in the past. Previous investigations and prosecutions have resulted in white washes and outright cover-ups.
- b) The shooting which involves a federal agent and the shooting of an individual in another country has serious foreign and international implications and is obviously a matter that a local district attorney has no jurisdiction over or no business involving himself with.
- c) The U.S. Attorney on the other hand, has abdicated his and the U.S. Department of Justice responsibility by failing to enforce the policy prohibiting border patrol agents from shooting into another country, or prosecuting the Agent for use of deadly force in violation of his own 1979 policy.

Your immediate response is immediately requested on this matter.


Herman Baca-Chairman

1837 Highland Avenue, National City, CA 92050 (619) 474-8195

\$500,000: Wounded Teen Wins Judgment

Continued from Page 1

believed is incredible. Hence, the court cannot find his belief is reasonable."

That determination directly contradicts the findings of an investigation conducted by Dist. Atty. Edwin Miller.

In a May, 1985, letter, Miller said he declined to bring criminal charges against Cole because "the evidence is uncontroverted that similar rock-throwing incidents have in the past resulted in serious injury to federal officers in the same general area. The history of injury was known to Agent Cole

"As a result, we have no ability in the case to prove beyond a reasonable doubt that Cole's apprehension was unreasonable."

Keep, too, remarked about the history of rock throwing: "The court felt great concern hearing testimony about the frequency with which Border Patrol agents are the victims of rock-throwing incidents.

"Certainly, under some conditions, such 'rocking' can be extremely dangerous and may justify the use of deadly force. This simply is not such a case."

Keep ordered the U.S. government to pay Carrillo \$500,000 for suffering and pain, along with an additional \$74,000 for past and anticipated medical expenses.

After he was shot, Humberto was taken by Life Flight helicopter to Mercy Hospital in San Diego, where the bullet was removed and he recuperated for a week. He later underwent a second operation at the Issstecali Hospital in Tijuana.

Stress Condition Noted

Keep noted in her opinion that Carrillo suffers pain from chronic post-traumatic stress disorder, and has become "withdrawn, depressed, melancholy and tearful." The judge said the boy was forced to switch schools because of hazing from classmates, and she cited testimony in the trial that it would take Carrillo three years of intensive psychological counseling to overcome the stress disorder.

Lopez, reached by telephone Thursday, reacted to the judgment with satisfaction.

"We think justice has been meted out," said Lopez, who had originally asked for \$3 million on behalf of the boy. "I have not yet talked to my client, but I'm pretty certain he'll be happy with it."

A spokesman for Miller said the prosecutor's office had no immediate comment but would examine Keep's ruling today.

According to Lopez, Cole was transferred after the shooting to the Border Patrol office in Buffalo.

Telephone calls to a Border Patrol spokesman were unreturned Thursday night.

FOR IMMEDIATE PRESS RELEASE

DECEMBER 11, 1986

NATIONAL CITY, CA.

THE COMMITTEE ON CHICANO RIGHTS, (CCR) ANNOUNCED TODAY THAT THEY HAVE CALLED ON THE U.S. CONGRESS TO REMOVE THE IMMIGRATION AND NATURALIZATION SERVICE (INS)/ BORDER PATROL FROM CONTROL OF THE RECENTLY ENACTED AMNESTY PROGRAM, AND TO CREATE AND EMPOWER A NEW AGENCY TO ADMINISTER THE \$600 MILLION "AMNESTY" PROVISIONS OF THE SIMPSON-RODINO IMMIGRATION LEGISLATION.

IN A LETTER SENT TO CONGRESSMAN JIM WRIGHT (D-TEXAS), SPEAKER OF THE HOUSE OF REPRESENTATIVES, CCR CHAIRMAN HERMAN BACA CHARGED THAT UNLESS THE INS/BORDER PATROL IS REMOVED FROM ADMINISTERING OF THE AMNESTY PROGRAM, " THE LEGALIZATION PROVISION OF THE SIMPSON-RODINO IMMIGRATION LAW IS CONDEMNED TO BECOME YET ANOTHER FAILED ATTEMPT TO RESOLVE THE U.S.- MEXICO IMMIGRATION ISSUE."

CONTRARY TO THE CURRENT PUBLIC RELATIONS CAMPAIGN BEING ORCHESTRATED BY THE INS IN AN EFFORT TO CONVINCING THE U.S. PUBLIC THAT IT CAN BE TRUSTED, BACA CHARGED, "THAT BECAUSE OF THE SORDID HISTORY OF RACISM AND THE INHERENT ADMINISTRATIVE INCOMPETENCY OF THE INS, THIS AGENCY WILL NOT ADMINISTER THE AMNESTY PROGRAM IN A FAIR, JUST AND HUMANE MANNER TO PERSONS OF MEXICAN ANCESTRY."

AS PROOF BACA CITED THE INS' NINE YEAR BACKLOG OF VISA APPLICATIONS. "HOW CAN CONGRESS ENTRUST AN AGENCY WHICH HAS NOT EVEN COMPLETED THE PAPERWORK ON VISA APPLICATIONS MADE IN 1977, WITH PROCESSING THE HUNDREDS OF THOUSANDS AND POSSIBLY MILLIONS OF AMNESTY REQUESTS DURING THE NEXT 18 MONTHS",

ALSO IN HIS LETTER, BACA STATED THAT "IMMIGRANTS AND UNDOCUMENTED WORKERS WOULD NOT BE WILLING TO TRUST THE INS/BORDER PATROL, AND WOULD NOT COME FORTH BECAUSE OF THE DECADES-LONG HISTORY OF INS/BORDER PATROL RACISM, DECEPTION AND MISTREATMENT."

BACA CITED THE FOLLOWING CASES TO SUPPORT HIS ASSERTION:

- A) 1942-1964- Bracero Program (See Enclosure)
- B) 1950-1955- "Operation Wetback", a military-like campaign that resulted in the deportation of over 4 million persons (including U.S. citizens) of Mexican Ancestry.
- C) 1966-1981- "Silva-Letter"-case brought about by unlawful administrative actions by the INS, this example

of agency deception resulted in the defacto deportation of possibly as many as 250,000 U.S. citizen children.

- D) 1986- Current INS/BORDER PATROL insistence that despite the Simpson-Rodino Law, deportations must continue "as usual" and spokesmen who refer to the undocumented as "Wetbacks" and claim that "if we catch 'em, we should be able to skin'em and fry'em" suggest no reason to believe that the old dog that is the INS is capable of learning new tricks.

IN CONCLUDING, BACA STATED THAT SINCE NO RULES OR REGULATIONS HAVE BEEN ISSUED BY INS THAT THE CCR WILL CONTINUE TO INFORM THOSE AFFECTED BY THE AMNESTY PROVISIONS THAT.....

1. THEY NOT SIGN THE VOLUNTARY DEPARTURE FORMS.
2. NOT TO PRESENT THEMSELVES TO THE INS SERVICE.
3. NOT TO PAY ONE CENT TO NOTARY PUBLICS, ATTORNEY'S OR OTHERS WHO ARE ACCEPTING APPLICATIONS FOR AMNESTY.

FOR MORE INFORMATION, PLEASE CALL THE CCR AT 474-8195
HERMAN BACA, CHAIRMAN, COMMITTEE ON CHICANO RIGHTS

SECTION II

"APPEALS TO U.S. ATTORNEY GENERAL"



Committee on Chicano Rights, Inc

FOR IMMEDIATE PRESS RELEASE

7-31-80

CCR QUESTIONS LIMITED GRAND JURY INVESTIGATION OF INS/BORDER PATROL

San Diego Ca.....Herman Baca, chairman of the Committee on Chicano Rights, today, at a press conference questioned why San Diego's U.S. Attorney, M.J. Lorenz, in concert with the Federal Grand Jury has limited the recent investigations of wrong-doings by the INS, Border Patrol. U.S. Attorney Lorenz was charged with dereliction of duty for failing to protect the human and constitutional rights of persons of Mexican ancestry. According to Baca, the recent investigation has led to only three indictments despite the fact that over twelve months ago the U.S. Attorney was Handed a 150-page packet documenting;

- (1) Death of two children at the International Border at San Ysidro;
- (2) Killing and wounding of two individuals while handcuffed;
- (3) Shooting of an individual by a Border Patrolman from a helicopter;
- (4) Shooting of individuals while detained;
- (5) Deportation of a United States citizen;
- (6) Beatings of assaults of individuals by Border Patrol, Immigration and U.S. Custom;
- (7) Cavity checks by Border Patrol at the San Onofre Inland check point;
- (8) Illigal detentions of U.S. Citizens and Legal Resident Aliens;
- (9) Unlawful breaking and entering into homes, churches, school, and

1837 Highland Avenue, National City, CA 92050 (714) 474-8195

- (10) Harassment at public gathering places by Border Patrol, Immigration Service and Customs Service.

" The failure to investigate these more serious cases appears to be a continuation of a 10 year practice of cover-up", Baca charged.

This cover-up along with the escalating violence and human degradation that has recently claimed the lives of three innocent Mexican Nationals here in San Diego and thirteen Salvadoreans in Arizona and resulted in the torture of three Mexican Nationals in Arizona (Hannigan case) are a manifestation of the U.S. Government's lack of a humane, coherent and rational immigration policy. These cases represent the tip of the iceberg of unreported, uninvestigated and common occurrences.

According to Baca, the Carter Administration, the U.S. Dept. of Justice, the Senate and House Judiciary Committee, must all be held responsible for this policy which is creating a climate of lawlessness and human degradation at the Border. In concluding Baca stated that this policy if continued unabated will ultimately cause a serious international incident affecting crucial relations between the U.S./Mexico and Latin America and can only lead to a Miami or Chattanooga type disturbance in Chicano communities thru-out the U.S.

Baca Assails Lack of Border Prosecutions

Calls U.S. Atty. Derelict for Not Pursuing Cases

By ROBERT MONTEMAYOR
Times Staff Writer

The head of the Committee on Chicano Rights Thursday accused the U.S. attorney's office in San Diego of limiting investigations of federal agencies that deal with the Mexican border and of not pursuing "more serious cases of border violence."

Herman Baca, chairman of the group, singled out U.S. Atty. M. James Lorenz with an accusation of "dereliction of duty" for failing to develop any criminal cases from a 150-page packet produced by the committee that alleged numerous incidents of wrongdoing by the U.S. Border Patrol, U.S. Customs and the Immigration and Naturalization Service.

Baca said the packet, which outlines 10 cases, was given to Lorenz a year ago — as well as to the U.S. Justice Department's Civil Rights Division. But "all they've come up with have been three indictments, and those weren't as serious as the ones we pointed out in the packet," he said.

Lorenz called Baca's charges "incredible" and denied that the packet ever was referred to the U.S. attorney's office in San Diego.

"It was submitted to the Civil Rights Division (of the Justice Department) and there were inquiries by the FBI into some of the cases," Lorenz said. "I am familiar with most of the allegations — and they were not

brought to our attention by Baca — but with most of them it was not a matter of failure to prosecute but a lack of evidence."

Lorenz did say that one of the cases, which involved the shooting of two handcuffed illegal aliens by a border patrolman last year, still is being probed by the Civil Rights Division. One of the aliens died in the incident.

"I can only say that the allegations he's made are inaccurate and lack credibility," Lorenz said.

Baca, nonetheless, claims Lorenz's office could have investigated and brought charges against border agents "for something more than just slapping a few guys around with a glove."

Last week, two Border Patrol agents at the Interstate 5 traffic checkpoint south of San Clemente were indicted on charges of assaulting suspected illegal aliens. A third agent was charged with lying about the matter to a federal grand jury.

The indictments, the result of a three-month probe by Justice Department internal investigators, charged among other things that a metal flashlight or lead-weighted "sap gloves" were used in several assaults on two undercover federal agents posing as illegal aliens.

"We've documented much more serious crimes here," Baca said, placing his hand on a stack of the 150-page packets handed to reporters at a press conference Thursday.

"The failure to investigate these more serious cases appears to be a continuation of a 10-year practice of cover-ups by the Border Patrol, Customs, the INS and the U.S. attorney's office," Baca said.

"This cover-up, along with the escalating violence and human degradation . . . are a manifestation of the U.S. government's lack of humane, coherent and rational immigration policy," Baca said. "These cases represent the tip of the iceberg of thousands of unreported, uninvestigated and common occurrences."

Lorenz said Baca, who also plans to ask for an independent investigation of the three illegal aliens found shot to death last week near the border, "always talks about all these allegations, but he has never taken the time to come in and talk or examine the factual information."

Los Angeles Times

San
Diego
County

LOCAL NEWS
EDITORIAL PAGES

CC PART II †

FRIDAY, AUGUST 1, 1980



El Heraldillo de Baja California

Humberto Carillo-Estrada is led away after being shot at border.

BORDER

Continued from Page 1

ther. However, one Border Patrol official, who asked that his name not be used, said Cole sufficiently impressed his supervisors that they assigned him to work as an "in-service training officer" about a year ago.

According to San Diego Police Lt. Paul Ybarrondo, Cole and Border Patrol Agent Patrick Lonergan, 31, were driving along a dirt road that runs parallel to the international border Thursday afternoon when they spotted Humberto's 15-year-old brother, Eduardo, on U.S. soil. When Eduardo saw the agents, he ran toward the border and they gave chase. He was collared just as he reached the chain-link fence separating the two countries, Ybarrondo said.

As the agents tried to restrain Eduardo, a small crowd gathered on the other side of the fence and began throwing rocks and bottles, Ybarrondo said. Cole then drew his Border Patrol-issued .357 magnum revolver, fired two warning shots into the air, and then fired a third round through the fence into the crowd, which dispersed, Ybarrondo said.

The bullet struck Humberto, who, Ybarrondo said, was clutching rocks in each of his hands and was preparing to throw them at the agents.

Neither Cole nor his partner was injured.

A Mexican man, identified by witnesses as Francisco Corona-Cardenas, 28, picked up Humberto and carried him through a hole in the fence, demanding that the wounded boy be given medical attention. A Life Flight helicopter was summoned and the boy was flown to Mercy Hospital.

Although Corona-Cardenas technically violated immigration law by carrying the wounded youth into the United States, he was allowed to return to Tijuana.

Border Patrol policy stipulates that an agent may use lethal force only in defending his life, the life of another agent or in the defense of "an innocent third party."

"I doubt that anyone's life was in danger in this situation," Escobar said.

Ybarrondo said that the older brother, Eduardo, was detained and later released.

However, the boys' mother, Maria Elena Estrada, 36, said late Friday that Eduardo had yet to be returned to Tijuana. A Mercy Hospital employee on Friday afternoon took the mother to the Border Patrol facility in San Ysidro to talk with Eduardo.

The distraught mother of six, who washes and irons clothes for a living, said Humberto told her that Eduardo had been playing catch on the U.S. side of the fence with boys

standing on the other side when they were confronted by at least two Border Patrol officers. According to the account Humberto gave to his mother, Eduardo tried to scurry under the fence into Mexico when he was grabbed by a patrolman.

"The man started hitting Eduardo with a nightstick and Humberto picked up a rock to throw at the man so he would let his brother go. Then another man fired his pistol at him," she said.

After speaking with Eduardo, Estrada gave Mercy Hospital officials a similar account of the incident, according to spokesman Norman Greene.

He said that Humberto was lucky to be alive. "If it hadn't been for the ribs, the bullet would've gone through the heart," Greene said.

Greene said that a Life Flight helicopter responded to the shooting and landed on the Mexican side of the fence to pick up the wounded youth.

Greene's account of the helicopter's landing differed from Life Flight records. According to a Life Flight dispatcher, the helicopter actually landed just inside U.S. territory.

Escobar, the consul general, said witnesses told his office that the shooting occurred after the older Carillo-Estrada boy had illegally hopped the border fence to buy a hamburger in the nearby San Diego neighborhood of San Ysidro.

Escobar said witnesses reported that when the agents apprehended Eduardo, they began hitting him. The boy's brother and an unidentified 16-year-old girl who were on the other side of the fence screamed, demanding that the agents stop, Escobar said.

"People started to gather and then some rocks were thrown over the fence," Escobar said. "That's when the agent fired. There was no excuse for what he did."

Although U.S. officials and Escobar said that the youth was shot while standing on the Mexico side of the border fence, reports in the Tijuana press included accounts by some witnesses who said that Humberto was on U.S. soil when he was shot by Cole, and managed to crawl through the border fence into Mexico before he collapsed.

Border Patrol agents interviewed Friday said privately that they empathized with Cole. They said rock throwing incidents along the border are common.

"It's a living nightmare down there," one agent said in describing the border.

"It's one of those places where you put in eight hours, get drunk, sleep, and go back to it again," another said.

Times staff writers Michael A. Fairley and Louis Sabagun contributed to this story.

U.S. Agent Fired Into Mexico, Wounding Boy

By DAVID FREED
and H. G. REZA,
Times Staff Writers

L.A. Times
4/20/85

SAN DIEGO—A U.S. Border Patrol agent attempting to apprehend a fleeing Mexican youth fired a pistol shot across the international border, wounding the youth's 13-year-old brother, who was among several Mexicans allegedly throwing rocks at the agent and his partner, authorities said Friday.

After the shooting Thursday afternoon, officials had said that the boy was shot while in the United States, after an altercation behind a bus station at the border.

Mexican Consul General Javier Escobar denounced the shooting Friday as "a brutal, unjustified action and a very serious violation of the Mexican border." He said he will write to the U.S. attorney's office here demanding an investigation of the incident, which occurred one-quarter mile east of the San Ysidro port of entry.

The wounded boy, Humberto Carillo-Estrada of Tijuana, was reported in serious condition Friday at Mercy Hospital in San Diego. He was shot in the back. The bullet entered below his left shoulder blade, broke a rib and lodged under the skin near his right armpit.

The youth was shot by Agent Edward D. (Ned) Cole, 34. Gene Smithburg, assistant chief patrol agent of the Border Patrol's San Ysidro sector, said Cole would remain on duty pending a report by the San Diego Police Department, which is investigating the shooting.

Border Patrol administrators refused to discuss the shooting fur-

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Officials' Scenario of Shooting Disputed

Tijuana Residents Deny Objects Were Thrown Before Agent Fired at Boy

By LOUIS SAHAGUN, *Times Staff Writer*

TIJUANA—Residents who witnessed the shooting Thursday of a 13-year-old Mexican boy by a U.S. Border Patrol agent on the U.S. side of the border, say the agent fired four shots, not three, as reported by San Diego officials.

What's more, the wounded boy's brother, who had just been collared by the Border Patrol when the incident occurred, denied that rocks and bottles were thrown at Border Patrol agents by an angry crowd until after the shots had been fired.

Humberto Carrillo-Estrada was shot by Agent Edward D. (Ned) Cole, who had been trying to apprehend the boy's 15-year-old brother, Eduardo, on the U.S. side of the border. The chase ended at the border fence, about a quarter-mile east of the port of entry here, where Cole fired into a crowd that officials said had been throwing rocks and bottles at the agent.

Humberto, who was shot once in the back, was taken to Mercy Hospital in San Diego, where his condition was upgraded Saturday from serious to fair, said hospital spokesman Norman Greene. The

boy was also moved from an intensive care unit to a "pediatric special care unit," Greene added.

Humberto's mother, Maria, 36, was with the boy at the hospital Saturday, along with Eduardo, who was released from detention at the U.S. Border Patrol Station at San Ysidro earlier in the day, Greene said.

On Friday, San Diego Police Department officials said Cole fired two warning shots in the air and one shot at the crowd. Border Patrol officials have refused to comment pending the results of an investigation.

But some residents of this poverty-stricken community of tiny wooden shacks and crumbling stucco homes say he fired at them twice.

"Here are the bullet holes," said Francisco Corona Cardenas, 28, Saturday pointing at two of several depressions circled with white chalk on a red cement wall facing the fence that separates the two countries.

"There is the blood," added Cardenas, who picked up Humberto

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SHOOTING: Residents Dispute Report on Border Incident

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and carried him through a hole in the fence screaming at Border Patrol agents to give the wounded boy medical assistance.

Contacted at Mercy Hospital, Eduardo Carrillo-Estrada, said, "I was there, he fired two shots in the air and two at the people, one of which hit my brother."

"Our investigation did not reach the same conclusion," said San Diego Police Department spokesman Bill Robinson. He added that "it is difficult to determine bullet holes in cement."

Eduardo also said the crowd did not begin throwing rocks and bottles at Border Patrol agents until "after the accident." Police officials contend that Cole fired his Border Patrol-issued .357 magnum under a hail of objects thrown by an angry crowd.

Meanwhile, the U.S. Immigration and Naturalization Service said Saturday it was taking "a hard look" at the incident, which was under investigation.

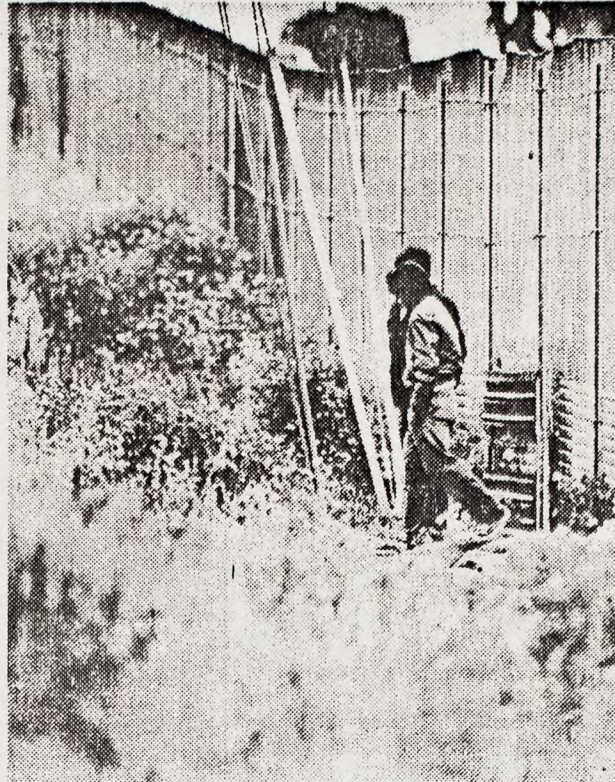
Greg Leo, director of congressional and public affairs for the agency, said "we do not have a response," to the statement by Mexican Consulate General Javier Escobar that the shooting was "a very serious violation of the Mexican Border."

Despite the discrepancies one thing is clear, the rhythm of life here has changed dramatically. Horrified by what they saw and heard Thursday afternoon, many parents are now keeping their children indoors or within sight at all times.

Nonetheless, every few minutes a man or a woman could be seen casually strolling through a hole in the fence and over the hill, presumably in search of work in the United States.



A chalk circle and an arrow point out what Francisco Corona Cardenas says are holes from two of the bullets fired by a U.S. Border Patrol



PHILLIP DAVIES

agent Thursday. At right, two boys cross into the United States near the spot where 13-year-old Humberto Carrillo-Estrada was shot

rabbits and throw them over the fence for the poor people who live here."

"Once they gave my oldest child

a dollar," recalled Rosa Grejel, 34, who rents a small home in the neighborhood for \$20 a month.

"Now I tell my children not to even

look at them."

Grejel also said some of the agents who work in the area have earned nicknames by young men

Before Thursday, children regularly climbed over the fence or through its many gaping holes to play games or catch lizards on a steep, barren hill on the U.S. side, local residents said.

"I don't let them play over there anymore," said Martha Sanchez, 36, a mother of eight, whose home lies just south of the mountain. "I'm afraid they (Border Patrol agents) will kill them."

"When I see pollos (illegals) on the hill and Border Patrol cars nearby," she added, standing on the porch of the home from which Mexican music blared on the radio, "I shut the door and windows because I'm afraid they'll start shooting."

Yet Sanchez, among others, also said it was not unusual for Border Patrol agents to wave hello at children who crossed the line to play on the mountainside and even say "adios" when they returned home.

One man added that "sometimes they (Border Patrol agents) shoot

Wounded boy's kin ask why

By Diane Lindquist
Staff Writer

Eduardo Carrillo Estrada, 15½, extended his arms straight forward and clasped his hands around an imaginary gun.

Seated in Mercy Hospital's intensive care waiting room last night, he was reliving the incident Thursday in which his 13-year-old brother, Humberto, standing on Mexican soil across the border fence, was wounded by a U.S. Border Patrol agent.

"I'm really angry that they fired on a child," he said without emotion. "How could they do that? He's only a kid. He was only trying to protect me."

Only moments before, Eduardo had been reunited with his mother, Marielena. With one son in serious condition and another missing, she had spent a sometimes frantic, sometimes frightening day.

She had been taken from Mercy Hospital, where Humberto is in an intensive care unit, through rush-hour traffic to the San Ysidro border station to be united with Eduardo. But when she arrived, agents told her they did not know where her son was.

After 45 minutes of waiting and calls being made, she was told he had been taken to the hospital.

Mother and son were reunited in the waiting room. They hugged each other and cried. Then the slight youth, dressed in brown knit shirt and cords, a gold crucifix around his neck, recounted his story.

Eduardo, who lives in a Tijuana neighborhood next to the border fence near the San Ysidro port of entry, said he helps sell flowers along the border and is well-known by many of the agents. They often have allowed him to cross over to the United States to visit the Jack in the Box restaurant in San Ysidro.

Even though he didn't have permission Thursday, he walked across, bought a hamburger and watched some television at a place specializing in tacos.

About 3:30 p.m., as he was returning home, he spotted a Border Patrol car.

"I got scared and I ran," he said.

He took off running toward the fence as an officer got out of the car

Kin: Boy's older brother voices anger

Continued from B-1

and chased him. A helicopter hovered slightly above him, the youth said, but he ducked and kept on going.

"There was a little slope where I intended to run under the fence but the immigration officers were there."

He said he skirted them by running behind another vehicle and then making a dash to jump over the fence.

"I was hanging on to the fence, but one of the immigration officers grabbed my foot and pulled me down and started hitting me. . . .

"I glanced up and saw my brother playing. He saw me being hit and yelled, 'Don't hit him. Don't hit him.' He shook the fence and continued to plead. 'Leave him alone. You've already got him.'"

The 15-year-old said he was being held to the ground when he saw his brother and the girl with whom he had been playing reach for rocks. Just then, he said, another agent drove up, took out a gun and shot twice in the air.

"The girl also was picking up a rock. He pointed the gun at her," the youth said, holding his arms out as if he were the agent with the weapon. "She fell to the ground and tried to hide."

Moving his arms to the right, he said, "Then he turned the gun on my brother and fired two shots, but only one hit him."

In the chaos following, he said, the agent took off. His brother lay on the ground begging his playmate to get help. She ran and brought an adult, who told the remaining Border Patrol agents they must help the boy.

The girl came across the fence to help Humberto, the brother said, and was placed with him in the van.

Another youth also crossed to the U.S. side. He had seen the incident, Eduardo said, and wanted the agents to take him, too.

The boy and the girl are being held as material witnesses. Eduardo did not require medical treatment.

Yesterday as the mother searched for her son at the San Ysidro border station, the boy, being escorted from one building to another, saw her and said, "Don't worry. I saw the whole thing. I'm going to tell what I saw."

Humberto was taken by ambulance to Mercy Hospital, where he remained in serious condition last night. A hospital spokesman said the bullet entered under his arm, hit a rib and ricocheted, just missing the heart.

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4/22/85

* Police Probe of Boy's Shooting by Border Patrol Ready for D.A.

LA
TIMES
4/23/85

By TOM GREELEY, *Times Staff Writer*

San Diego police on Monday completed their investigation into the shooting of a 13-year-old boy in Mexico by a Border Patrol agent on the U.S. side of the border, and today will send to the district attorney's office a report recommending whether the agent should be prosecuted.

A police investigator declined to speculate on whether charges would be filed against Edward D. (Ned) Cole, 34, the agent who shot Humberto Carrillo-Estrada through the border fence Thursday.

Cole remains on duty performing strictly office work pending completion of the investigation, Gene Smithburg, assistant chief patrol agent for the local Border Patrol station, said Monday.

The Border Patrol is also investigating the shooting, Smithburg said. He refused to comment further.

Mexican Consul General Javier Escobar has threatened a stern reaction or legal action from his government over the incident, including a demand for an investigation by the U.S. attorney's office.

"We haven't heard from them yet," said Peter Bowie, chief assistant U.S. attorney in San Diego. "There's no question the remedies they could seek are broad, and the way we handle it will depend on their actions. . . ."

"It would not be surprising if the family sought monetary damages from the Border Patrol."

Escobar could not be reached for comment Monday.

Mariano Lopez, a Los Angeles attorney who has represented the United Farm Workers and myriad Latino causes, has been retained by Humberto's mother, Lopez's office confirmed Monday. Lopez was not available for comment.

Humberto, who was struck in the side of the chest by the bullet fired by Cole into a

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SHOOTING: D.A. Gets Report on Border Incident

Continued from Page 1

large group of people, was listed in good condition at Mercy Hospital and reported to be recovering quickly from his wounds. Officials there have allowed Humberto's mother to stay in a room at the hospital free of charge until the boy is released.

The San Diego Police Department's homicide division conducted the investigation because a law enforcement officer was involved in the shooting, although there was not a fatality. "They always get these kind of sensitive cases because of their expertise," said police spokesman Lt. Dave Spisak.

"It's come along very nicely," the homicide division's Lt. Paul Ybarrondo said Monday of the investigation. "We've completed our interviews, and the transcript will be to the district attorney by tomorrow. Then it's up to them to decide on charges."

Ybarrondo said San Diego police have spoken with Humberto, his 15-year-old brother, Eduardo, and other witnesses from both sides of the border. "I'm not going to draw any conclusions from the information we relayed to them, or as to whether there might be any charg-

es filed," Ybarrondo said.

San Diego police say the incident occurred after Border Patrol agents spotted Eduardo on U.S. soil. Eduardo ran toward the border, and when the agents caught him just as he reached the fence, a small crowd on the other side began throwing rocks and bottles, police said.

Cole fired two warning shots before firing a third round through the fence, hitting Humberto in the back, police said.

Humberto was then carried into the United States by a Mexican citizen and flown by Life Flight helicopter to Mercy Hospital.

Strong reaction to the shooting has been registered by local Latino groups. Herman Baca, president of the San Diego Committee on Chicano Rights, said Monday the shooting of Humberto was "a manifestation of the terrorism employed by the Border Patrol against persons of Mexican ancestry."

Baca also criticized the Police Department's role in the investigation. "It's like having a husband investigate his own wife—there's no objectivity there," he said. "An outside, independent group should be looking into this."

Mexico Asks U.S. to Punish Border Agent in Shooting

By DENNIS CUSHMAN,
Times Staff Writer

The Mexican government Tuesday called for the punishment of the U.S. Border Patrol agent who shot a 12-year-old Mexican national through the border fence at San Ysidro, Mexico's consul general here reported.

"The minister of foreign affairs in Mexico has instructed its ambassador in Washington, D.C., to request that the U.S. Department of State assure that the offending Border Patrol officer be punished to the fullest extent of the law," said Consul General Javier Escobar, reading from a statement.

"These instructions include also a request that the minor, Humberto Carrillo-Estrada, be compensated for the damages suffered."

State Department officials in Washington said they could not comment on the Mexican government's request because they had not yet received any communication on the subject from Mexican officials.

According to San Diego police officials, Border Patrol Agent Edward D. (Ned) Cole shot the boy during an altercation involving the youth's 15-year-old brother, Eduardo, in an area along the border.

Officials said Eduardo was caught by Border Patrol agents as he attempted to climb the border fence into Mexico near the San Ysidro port of entry after being spotted and pursued by agents. As the agents attempted to subdue Eduardo, a group of people assembled on the Mexican side of the fence and began throwing bottles and rocks, police said.

Cole reportedly fired two warning shots into the air, then fired at least one shot through the fence, hitting the boy.

San Diego Police Homicide Lt. Paul Ybarrondo said the boy "had a rock in each hand" when the shooting occurred. San Diego homicide officers regularly investigate any shooting by a peace officer, whether or not the incident results in a fatality.

According to Assistant Chief Border Patrol Agent Gene Smithburg, "Our shooting policy is that we use our weapons for self-defense, defense of a fellow officer and the defense of an innocent third party from death or grave bodily harm." Smithburg added that the policy does not specify whether an officer may or may not

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fire his weapon across the border.

Humberto was listed in very good condition at Mercy Hospital on Tuesday, where he is recovering from a single gunshot wound to the side of the chest. Mercy Hospital spokesman Norman Greene said Humberto may be released from the hospital by the end of the week.

Meanwhile, Deputy Dist. Atty.

Steve Casey said late Tuesday that his office had received a detailed report on the incident compiled by the San Diego Police Department.

Casey said it will be "a couple of days to a week" before the district attorney's office decides whether to file a complaint against Cole, who is performing office work pending the conclusion of the investigation.

Times Staff Writer Don Shannon in Washington contributed to this story.

LA Times
4/24/85

Border force necessary, say officials

By Diane Lindquist
Staff Writer

4/25/85

Border Patrol officials yesterday defended the use of force in recent border incidents, including the shooting through the fence of a 12-year-old Mexican boy, saying "our borders are dangerously out of control."

Harold Ezell, Western regional commissioner for the Immigration and Naturalization Service, told a press conference at the agency's San Ysidro headquarters that assaults against Border Patrol agents are increasing significantly.

"The situation is of grave and mounting concern to us," he said.

Although he was reluctant to discuss the investigation into last week's wounding of 12-year-old Humberto Carrillo Estrada by agent Edward D. "Ned" Cole, Ezell said the shooting was justified.

"The INS and the Border Patrol are standing behind and endorsing what agent Cole did and had to do," he said. "We are supporting agent Cole all the way."

Cole has been involved in "several" previous incidents involving assaults, said Deputy Chief Mike Williams, who would not elaborate be-

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Border: Officials say more force necessary to control assaults

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cause of the ongoing investigation.

Ezell said he is "extremely sorry and sincerely regrets" that Carrillo Estrada was hurt, but he stopped short of giving an apology.

He said the youth and others were throwing rocks over the 9-foot border fence as an agent was subduing the boy's older brother, Eduardo Carrillo Estrada. The brother had tried to scale the fence to return to his home in a section of Tijuana just east of the San Ysidro crossing gate.

"I'm talking about not little pebbles," Ezell said. "I'm talking about stones, pieces of concrete, things that can cause severe and permanent damage, if not take a person's life."

The Mexican government on Tuesday demanded that the agent who shot Carrillo Estrada be punished

and the boy be compensated for his injuries.

Ezell noted that assaults at the border have escalated, with 56 in the last year and 25 in the past three months. Besides the incident involving Carrillo Estrada, he said, two other recent cases have been particularly disturbing to INS officials.

On the night of April 17, he said, four Tijuana police officers entered U.S. territory and threatened to kill members of the joint Border Patrol-San Diego Police Department task force on border crime.

"The third situation that has brought it to a head as far as we're concerned is what happened (Tuesday) night," he said, referring to an exchange of gunfire behind the San Ysidro Jack-in-the-Box restaurant in which two robbery suspects were

wounded.

Since the Border Crimes Task Force was formed in January 1984, there have been seven shootings involving bandits, officials said. Two members of the detail have been injured.

A total of 491 victims of bandits have been interviewed, they said, and 81 suspects have been arrested.

"It is a situation that has got to be brought under control," said Chief Patrol Agent Alan Eliason.

He said department guidelines allow an agent to use a weapon when he believes his life is in danger, when the life of another agent is threatened or to protect the life of another person.

However, Eliason said, "We do not intend to shoot at every individual who throws a rock at us."

One remedy to the situation, officials say, is greater cooperation with Mexican law enforcement agencies.

Although Tijuana police officials have said that, as a result of the recent incidents, U.S. officers can no longer expect a free exchange of information between them, the INS officials said joint meetings are being held.

"We need desperately, more than any time in our existence, to have aggressive cooperation on the part of the Mexican authorities," Ezell said. "It is our opinion that something can be done on the Mexican side of that border to not only reduce the influx of illegal aliens, but to help thwart some of the banditry that is coming this way."

He would like Mexican law enforcement officials to establish a

border crimes unit that would capture bandits who prey on undocumented aliens crossing the border and that would keep people away from the fence.

"If they weren't loitering on that border all the time, these kinds of things wouldn't happen," Ezell said.

An additional 239 agents soon to be assigned to the local sector also will help control the situation, he said, as would legislation prohibiting U.S. employers from hiring undocumented aliens.

"Until it becomes illegal to hire an illegal alien... this country cannot control its borders," he said.

Many of the aliens charged by Border Patrol agents in assaults are represented by Federal Defenders, Inc. of San Diego. Chief trial attorney Mario Conte agrees that the number of such incidents is increasing.

"I don't think that after somebody engages in a high-speed case, which granted is a dangerous thing to do, I don't think that person once they're caught deserves to get beaten," he said. "But we see it a lot."

Conte said he has seen undocumented aliens beaten up after pushing or swearing at a Border Patrol agent or trying to escape.

INS Official Defends Across-the-Border Shooting of Boy, 12

By BARRY M. HORSTMAN, *Times Staff Writer*

A Border Patrol agent who last week shot a 12-year-old Tijuana boy while agents were attempting to arrest the boy's brother "did his job the way he had to," a top Immigration and Naturalization Service official said Wednesday.

During a news conference at which he also lamented the recent increase in violence along the border, Harold Ezell, the INS' western regional commissioner, vigorously defended the actions of Border Patrol Agent Edward D. (Ned) Cole. Last Thursday, Cole shot Humberto Carrillo-Estrada through the border fence near the San Ysidro port of entry during an altercation involving the boy's 15-year-old brother, Eduardo.

"We are extremely sorry and sincerely regret that the boy was hurt," Ezell said. "But . . . the Immigration and Naturalization Service, as well as the Border Patrol . . . are standing behind and fully endorsing what agent Cole did and had to do.

"We support agent Cole all the way. As far as we are personally concerned . . . agent Cole did what he had to do."

The San Diego Police Department has forwarded a report on the shooting to the San Diego County district attorney's office. Steve Casey, the district attorney's spokesman, said Wednesday that a decision on whether any changes will be filed against Cole may be made by the end of this week.

The across-the-border shooting angered Mexican officials, and the Mexican government has demand-

ed that Cole "be punished to the full extent of the law," according to a statement released by Mexican Consul General Javier Escobar.

Humberto was listed in good condition at Mercy Hospital late Wednesday and may be released by the end of the week, hospital officials said. The boy's mother has retained Mariano Lopez, a Los Angeles attorney who has represented the United Farm Workers and myriad Latino causes.

In the wake of the shooting, one of the major questions raised has been whether Cole was justified in using his weapon.

According to police officials, Eduardo was caught by Border Patrol agents as he attempted to climb the border fence into Mexico after being spotted and pursued by agents. As the agents attempted to subdue Eduardo, a small unruly crowd on the Mexican side of the fence began throwing rocks and bottles, police said. Cole reportedly fired two warning shots into the air, and then fired at least one shot through the fence, wounding Humberto. However, some witnesses said later that the rocks and bottles were not thrown until after the shooting.

At the news conference, both Ezell and Alan Eliason, the chief patrol agent of the San Diego Border Patrol sector, argued that Cole's actions were justifiable because the rocks being thrown could have severely injured or even killed the agents.

"We do not intend to shoot

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everybody that throws a rock at us," Eliason said. "But there are circumstances, there are times when the events are such that that is the last chance, the last measure we have left." Border Patrol policy specifies that agents should use their weapons only when they believe their life or that of their partner or someone else is in danger, Eliason said.

"There are judgments made by officers," Eliason said. "We simply cannot write a set of rules to dictate every circumstance an officer is going to face."

Eliason also pointed out that another Border Patrol agent last month received a three-inch cut that required stitches when he was struck by a rock thrown by a fleeing alien.

"A rock can make a cut, a rock can make a concussion, a rock can kill," Eliason said.

As evidence of what he termed the "growing violence along our border," Ezell noted that two other "particularly disturbing" incidents have occurred near the border during the past week.

On Tuesday night, two suspected robbers were shot about 8:30 p.m. by members of the Border Crime Prevention Unit after the officers said they saw them and a third man rob two others at gunpoint in the hills about one-quarter mile east of the San Ysidro crossing—close to the site where Humberto was wounded last week.

When the officers approached the suspects and identified themselves in Spanish, one man, identified by police as Enrique Quintero, 23, of Tijuana, drew a .38-caliber revolver from his waistband, police spokesman Rick Carlson said. All three officers fired their weapons, striking Quintero in the mouth and rib cage and grazing another suspect, identified as 19-year-old Jose Luis Garcia Reyes of Veracruz, in the side.

Quintero was hospitalized overnight at Mercy Hospital and was released Wednesday, while Garcia was treated at the scene Tuesday night. The third suspect, identified as Gregorio Castenada Gonzales, 21, of Tijuana, was uninjured. All three have been booked in County Jail on suspicion of assault with a deadly weapon and robbery, Carlson said.

The other incident cited by Ezell was one in which four Tijuana police officers were accused of threatening border task force officers who apprehended them last week about 40 yards inside the U.S. border. The Mexican officers, who were arrested and released the next day, have claimed that they were following bandits when they crossed the border.

Saying that "the fence is the line," Eliason said the Mexican officers had no authority to cross the border, and added that only the "utmost restraint" by the U.S. officers prevented the incident from escalating into a shootout.

Calling the local border region "an arena of assaults," Eliason also pointed out that assaults against Border Patrol agents have increased recently. Last year, there were 56 assaults against border agents, while 25 assaults have already been reported this year.

Ezell called on Mexican law enforcement authorities for "greater cooperative efforts" to help stem the flow of illegal aliens across the border. Eliason, meanwhile, noted that 239 local agents are scheduled to be added to the 525-member Border Patrol force over the next year.

Officer Not Charged in Shooting at Border

D.A.'s Decision Not to Prosecute Brings Waves of Protest From Latino Community

By MARIA L. La GANGA, *Times Staff Writer*

A U.S. Border Patrol agent who shot and wounded a 12-year-old Mexican boy through the border fence during an alleged rock-throwing incident will not be prosecuted, the San Diego County district attorney said Wednesday.

Dist. Atty. Edwin Miller's decision not to prosecute brought a wave of protest from the San Diego Latino community and the demand by one state legislator that the California attorney general investigate the shooting.

"The determination is that there is no prosecutable case," said Steve Casey, a spokesman for Miller. "But this is not a judgment that this is a 'good' shooting, nor does he (Miller) endorse it."

On April 18, Humberto Carrillo-Estrada was shot by Agent Edward D. (Ned) Cole, who had been trying to apprehend the boy's 15-year-old brother, Eduardo, on the U.S. side of the international border. The chase ended at the border fence, about a quarter of a mile east of the San Ysidro port of entry. There, Cole fired at Humberto, who was in a crowd that officials said had been throwing rocks and bottles at Cole and two other agents.

At the time of the shooting, San Diego police officials said Cole fired two warning shots into the air, then fired at least one shot through the fence, hitting Humberto. The district attorney's report released Wednesday said Cole told police he fired no warning shots but fired three shots at the boy, hitting him once in the back.

Miller's report also contradicts public statements by the boy that he never threw any rocks. The report says that Humberto admitted throwing rocks. San Diego Police Homicide Lt. Paul Ybarrondo said at the

time that the boy had a rock in each hand when the shooting occurred.

On Wednesday, Miller released a five-page letter he sent to William Kolender, San Diego chief of police, outlining why no charges would be pressed against Cole. According to the letter, the federal government has no jurisdiction to prosecute the shooting case. Although the shot was fired in the United States, Humberto was in Mexico when the bullet hit him in the back. The boy was then carried across the border and treated at Mercy Hospital.

The letter also said that the state could only prosecute Cole in a very limited way under very strict circumstances.

"Under federal law, if the person involved in an incident of this sort is an inhabitant of the United States—which includes all people who are physically within the United States—the most serious offense you could charge a federal officer with is a misdemeanor," Miller said in an interview.

"But in this instance—which is essentially not only a federal matter, but an international matter where the person (victim) is outside of the boundaries of the United States—there is no federal statute that applies at all," he said.

As a result, the case is dropped back into the district attorney's jurisdiction, with one major restriction. "The only area that is possible for investigation is under California law regarding (the use of) deadly force," Miller said.

California law states that people may use as much force as they think is necessary if they feel that their lives are in danger or that they are in danger of great bodily harm.

Please see SHOOTING, Page 2

LA Times
4/21/85

SHOOTING: INS Officer Not Charged

Continued from Page 1

According to the letter, the crowd on the Mexican side of the border was hurling a fusillade of rocks "the size of small boulders and capable of causing serious injury" over the top of a nine-foot fence at the officers who were trying to arrest Eduardo.

"In the process of making a lawful arrest, these agents were assaulted by a group of persons and were fearful of great bodily injury or death as expressed by Agent Cole," the letter said. "It is well settled in California law that an assault by rocks can constitute assault with a deadly weapon . . .

"Indeed, even had the incident been tragic and the victim had died as a result of the officer's shot, California law would present him with a complete defense. Consequently, we decline to prosecute."

Ever since the April 18 incident, the Immigration and Naturalization Service has contended that Cole was merely carrying out his duty as a federal agent when he shot the boy.

"This decision (not to prosecute) supports our previous statement that Agent Cole's actions were justified to protect his fellow agents from grave bodily harm during a rock and bottle attack from the Mexican side of the border," said John Belluardo, director of congressional and public affairs for the INS western region.

Cole was placed on office duty immediately after the shooting, Belluardo said, but he will return to

the field once an office replacement for him is found.

"Now that the D.A.'s office has made its determination, the INS Office of Professional Responsibility will review the matter as it does in similar cases," he said. The Office of Professional Responsibility is the INS internal affairs unit, and it will decide if an INS investigation is necessary. Belluardo said he did not know when that decision will be made.

On April 23, the Mexican government demanded that Cole be punished for the shooting. Mexican Consul General Javier Escobar could not be reached for comment Wednesday afternoon.

A State Department official late Wednesday said that the D.A.'s investigation had no bearing on a response to the Mexican government. He said the State Department is awaiting the internal investigation by the INS.

Marco Lopez, Humberto's attorney, said Wednesday that Miller has "totally abused his discretionary powers as district attorney" by not filing charges against Cole.

"In this particular case, given the facts of it, I think there are elements sufficient to charge Mr. Cole with at least four crimes: attempted murder, assault with a deadly weapon, battery and assault," Lopez said.

Lopez filed a \$3-million claim with the INS last Thursday. If that claim is denied, he said, he will file suit against the INS on Humberto's behalf. "A civil case is being prepared now," he said.

Assemblyman Richard Alatorre (D-Los Angeles) told the Associated Press Wednesday that "I will probably tomorrow request that the state attorney general open up an investigation into the shooting of the young man. I can't prejudge what information the district attorney was working with, but I think it at least warranted a full investigation."

Herman Baca, chairman of the Committee on Chicano Rights, a San Diego activist group, called the decision not to press charges

SHOOTING: INS Officer Not Charged

Continued from Page 2

against Cole "another whitewash, a cover-up by Ed Miller."

"This, in our opinion, supports our contention that the Border Patrol has a license to beat, rape, shoot and murder children, women and men of Mexican ancestry with impunity," Baca said in an interview. "The shooting of a 12-year-old child is but the latest incident of violence against persons of Mexican ancestry resulting from the militarization of the U.S.-Mexican border as a policy to resolve the immigration issue."

Leaders of two other local Latino organizations railed against Miller's decision in a press conference Wednesday evening, calling it "yet another in a series of injustices perpetrated against Chicanos."

During the press conference, Jess Haro, chairman of the Chicano Federation, and Roberto Martinez, chairman for the Coalition for Law and Justice, demanded that the San Diego County Grand Jury investigate the shooting. They also said they would call for an independent counsel to assist the district attorney in further investigations "to alleviate any appearance of conflict of interest."

The two also said they would petition Rep. Jim Bates (D-San Diego) to work toward legislation that would make it illegal for any police officer to shoot across an international border.

"It is ridiculous that you can say someone can shoot a 12-year-old boy and there's nothing we can do about it. It's as if they're saying it's open season on Mexicans," Haro said from the Chicano Federation's headquarters. "It is a serious act when anyone can fire a gun across an international border, injuring a boy, and nothing is done about it. It justifies lawlessness."

"The truth is that Officer Cole shot to kill with a .357 magnum. Undocumented people don't pose a threat to anyone, let alone armed men with helicopters."

State will study border shooting



S. A. U. 7007
5/3/85

By Daniel C. Carson
and Ed Jahn
Staff Writers

The state Department of Justice yesterday announced it will review the San Diego County district attorney's decision not to prosecute a U.S. Border Patrol agent who fired across the border and wounded a 12-year-old Mexican boy.

The decision follows a written request from Assemblyman Richard Alatorre, D-Los Angeles, for a state criminal investigation of the agent because "local authorities often seem to have difficulty in building cases against alleged assailants when they involve Mexican citizens at the border."

Steve Casey, a spokesman for District Attorney Edwin Miller, said, "We're more than happy to cooperate with the attorney general."

But in reply to Alatorre's letter, Casey said, "Any suggestion that a determination as to the prosecutability of the case is made, or has been made in this office ever at any time, on the basis of the ethnicity of the victims is both untrue and insulting."

The harsh exchange of words between the assemblyman and the district attorney's office stems from the April 18 shooting of 12-year-old Hum-

See BORDER on Page A-6

Border: State to review shooting of Mexican youth

Continued from Page A-1

berto Carrillo Estrada by Border Patrol agent Edward D. "Ned" Cole.

According to Miller, Cole shot Humberto while the youth was standing on the Mexican side of the border and reportedly throwing rocks at agents trying to apprehend his brother, Eduardo, who was trying to get back to the Mexican side.

Miller said his decision was based on the narrow restrictions of state law. Under those limits, he said, it was clear that Cole feared for the safety of his fellow officers who were being bombarded by a "fusillade of rocks, bricks and bottles."

Official accounts of the shooting are disputed by the boy and his family, who have filed a \$3 million claim against the federal government. While Miller's letter says Humberto admitted throwing rocks at the agent, Humberto has denied it.

In his letter dated yesterday to Attorney General John Van de Kamp, Alatorre said, "In the interest of justice I am calling on you to initiate a state criminal investigation, of an April 18 incident in which a 12-year-

old Mexican boy was shot in the back by a U.S. Border Patrol agent who fired across the international border."

"According to witnesses," Alatorre said, "Humberto Carrillo Estrada, a Mexican national who was standing on the Mexican side of the border, was shot while protesting the beating of his brother by a Border Patrol agent on the U.S. side.

"The Immigration and Naturalization Service contends that the agent fired in response to rock-throwing by Mexican citizens at the border. However, eyewitnesses at the scene state that no rocks were thrown and that Agent Edward 'Ned' Cole crouched down in a firing position, took careful aim, and fired his weapon at least three times at the 12-year-old."

"The San Diego District Attorney refused on Wednesday to file charges against the agent," the letter said. "Local authorities often seem to have difficulty in building cases against alleged assailants when they involve Mexican citizens at the border."

Concluded Alatorre: "The only recourse for those who wish to see jus-

tice served is if the California attorney general initiates a state investigation and — if the evidence warrants action — pursues criminal investigation."

Sigrid Bathen, spokeswoman for Van de Kamp's office, said, "We're looking at the allegations. We have requested the (police) reports and will review their reports and decide how to proceed."

Asked if it was unusual to review a district attorney's decision not to prosecute a law enforcement officer, Bathen said, "We normally do not become involved in local investigations unless requested to do so by local authorities, or in this case, a legislator."

Bathen said there was no indication how long the review would take.

Casey said the reports were already being forwarded to the Department of Justice. "It's entirely proper for the attorney general to ask to review a matter handled by the DA," said Casey. "We work with them on a regular basis."

Casey also defended the district attorney's handling of the case.

"A difficulty is that this case has

understandably aroused a great deal of emotion, and unfortunately aroused a great deal of rhetoric," he said. "Our task is to analyze the facts as produced for us in the course of a police investigation, to analyze the state law which covers such situations, and to apply that law to the facts as we understand them.

"Those facts are at substantial variance with those expressed in the assemblyman's letter," added Casey. "(Alatorre says) eyewitnesses reported that no rock-throwing occurred until after the shot. It may well be that some persons did in fact say that. But when you look at statements of all ... it becomes clear that is not the case."

Meanwhile, the Border Patrol continued its investigation into the shooting, which is expected to be completed within 10 days.

Cole remained assigned to office work but will return to field duty as soon as an office replacement can be found, according to Assistant Chief Patrol Agent Gene Smithburg.

"He's taking it very well and feels the shooting was justified in protecting other agents from great bodily

harm," Smithburg said.

He said he has received scores of telephone calls regarding Cole, all of them positive. "We don't see any changes in his job when he gets back into the field," he said.

Cole declined to be interviewed.

The review is being conducted by the Immigration and Naturalization Service's Office of Professional Responsibility. Ralph Paige, the office's assistant regional director, said he could not comment on the Cole case. But he said the office refers its information to the regional office in San Pedro, where a decision on Cole's actions would be made.

The FBI has decided not to conduct an investigation "relative to the possible assault on a federal officer," according to Gary Laturno, the local bureau's legal adviser and media relations officer.

Laturno added that the U.S. attorney's office has decided there does not appear to be reason to investigate a possible violation of the boy's civil rights.

In Washington, Rep. Jim Bates, D-San Diego, whose district encompasses the area along the border, said he

will introduce legislation Monday to correct the "lack of federal statutes dealing with the actions of Border Patrol agents."

On Wednesday, District Attorney Miller noted that the case involving federal agents and an international border, was left up to local prosecutors. He said federal prosecutors would have had no recourse but to prosecute the case as a misdemeanor civil rights violation.

"What is needed is a federal statute that covers not just civil rights misdemeanors, which is the only statute available now if the (victim) were in the country," he said. "What is needed is a felony statute that comes under federal jurisdiction."

Miller called the present situation "a vacuum that needs attention by Congress."

Bates also said he has met with Rep. Romano L. Mazzoli, D-Ky., chairman of the House Judiciary Committee's subcommittee on immigration, to discuss the possibility of a congressional hearing into the shooting and legislation regarding federal officials accused of crimes.

State investigates shooting of boy by border patrol agent

Asks for copies of related documents

By Joe Tash
Staff Writer

The state Attorney General's office has asked for documents relating to the shooting of a 12-year-old Tijuana boy by a U.S. Border Patrol agent three weeks ago.

Steve White, spokesman for Attorney General John Van de Kamp, this week confirmed the state's interest in the case.

"We've requested the district attorney's records and we are reviewing them," White said.

San Diego District Attorney Edwin Miller had decided earlier not to prosecute Border Patrol Agent Edward Cole in the across-the-border shooting of Humberto Carrillo-Estrada, a decision that angered South Bay Latino leaders.

Miller said Cole acted reasonably in firing at Humberto, because he perceived "a potentially deadly assault" upon fellow agents who were attempting to arrest Humberto's brother Eduardo.

The threat came in the form of rocks and bottles, thrown by members of a crowd across the border fence from where the agents had apprehended Eduardo.

According to police, agents chased Eduardo to the border fence, which he tried to climb. After agents pulled him down, the crowd began throwing rocks and bottles.

In a five-page letter to San Diego police Chief William Kolender, Miller said "Humberto himself admitted to throwing rocks."

The version of the shooting related in Miller's letter was substantially different from details released by the San Diego Police Department after its investigation.

Police had said Cole fired two

warning shots into the air before firing one shot at Humberto.

"Cole fired three times at the youth, striking him once across the shoulder," Miller stated in the letter.

"This is a truly unfortunate case, and was saved only by the intervention of providence from becoming tragic," said Miller.

Gene Smithburg, assistant chief Border Patrol agent in the San Diego sector, said Miller's decision shows Cole "was legally justified" in the shooting.

Smithburg said Cole has been on office duty awaiting Miller's decision, and will return to field duty just as soon as a replacement can be found for him.

Although Smithburg said Cole won't be disciplined for the shooting, the Immigration and Naturalization Service's Office of Professional Responsibility "will look at the incident."

But Herman Baca, a National City printer and chairman of the Committee for Chicano Rights, wrote a letter last week to U.S. House Speaker Thomas P. (Tip) O'Neill, asking for the appointment of a special prosecutor by Congress.

Baca thinks another investigation of the shooting is necessary because neither Miller nor U.S. Attorney Peter Nunez can "carry out a thorough and impartial investigation or a vigorous prosecu-

tion" of Cole.

"This is another whitewash and cover-up of Border Patrol brutality," Baca said.

Baca cited another incident in 1979, when a Border Patrol agent was implicated in the shooting of two illegal aliens who were handcuffed together.

Steve Casey, spokesman for the district attorney, said Miller declined to prosecute that case when then U.S. Attorney Michael Walsh said he would have the case removed to federal court and act as defense counsel for the agent if Miller filed charges.

Casey said allegations by Baca and others that Miller is reluctant to prosecute crimes against Latinos are completely unfounded.

Javier Escobar y Cordova, Mexican Consul General in San Diego, said he didn't agree with Miller's decision.

"I was astonished at that decision. I believe there is enough evidence that the agent acted irresponsibly and brutally," he said.

"We (the Mexican Government) certainly don't agree with the District Attorney that these children jeopardized the lives of the Border Patrol agents," Escobar y Cordova said.

Baca said he expects a reply shortly from Washington to the letter he sent last week.

SECTION III

"SHOOTING DEATH AND WOUNDING OF TWO UNARMED MEN BY
BORDER PATROL WHILE HAND CUFFED"

SECTION IV

"RAPE OF MARTHA ELENA PARRA LOPEZ BY BORDER PATROLMAN"

AFFIDAVIT

I, Martha Elena Parra Lopez, residing at Circunbalecion #7, Fraccionamiento Los Alamos, Tijuana, B. Calif., Mexico; under oath to tell the true affirm and declare the following:

That on May 31, 1972, on or about 6:30 p.m. I was detained by an officer of the San Ysidro Border Patrol at 320 Sandstone Ct., Chula Vista, Calif., the officer asked me for documentation in which I stated to him that I had no papers at all. After questioning me and my companions, we were transported to the San Ysidro Border Patrol Office. Immediately after we arrived, the Border Patrol officer asked the following: He asked me if I was married, in which I answered yes, he said he thinks I have many admirors because I am good-looking, but expressing himself in obscene words. He asked me if I have children, he took my weight and height, he looked at me to see if I had any needle mark on my face or arms, he made me sign a paper and gave it to me and I was conducted to the other room where my companions were. After interrogating me, he proceeded to interrogate my two companions, then we were transported to the international border, once we were there, the officer insisted to my two companions to leave with the flow pedestrain traffic in which they stated to him that all three of us will leave or all three of us will stay. Very disturbed he told my companions to get back into the patrol car and continued in another direction without letting us get out of the patrol car at the border. We continued on the road for about 15 or 20 minutes until we reached the high mesa which is located in Brown Field, he traveled all the way to the fence where the division of Mexico and the United States is outlined. He insisted to my two companions that they immediately jump the wire fence into Mexico in which my companions refused to do so, I wanted also to go with them but he grabbed me by the arm and threw me in the front seat of the patrol car and he told my companions they better get going because he will do something to them and to me, in other words he (threaten) us. So they left. Once he had me on the front seat of the patrol car, he went back a few feet and then he order me to take my brassiere and panties off, I told him no and he insisted. He then got his flash-light and asked me again "take your brassiere off, I want to see if they are real and also take your panties off so that I can see if you have concealed money or documents". After a long struggle with this officer until my strenght was out, he stripped me completely and violated me, he made a statement and said "I hope you do not have any disease", he then told me to get dress and to get out of the patrol car and go to my country. I want to state that due to the sexual abuse rape, I started to bleed very badly, I called Mrs. Vera Leon the next morning and described what had heppened to me and she immediately contacted Mr. Albert R. Garcia.

I herewith affirm and declare that the foregoing is a true and correct statement of fact.

Martha Elena Parra Lopez
 Martha Elena Parra Lopez

SUBSCRIBED AND SWORN TO BEFORE ME
 This 7th day of June, 19 72
 At San Ysidro, California

Albert R. Garcia



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, SAN DIEGO 92101

May 4, 1973

Albert R. Garcia
Ad Hoc Committee on
Border Brutalities
323-1/2 E. San Ysidro Blvd.
San Ysidro, California 92073

Robert R. Lopez
San Diego Human Relations Agency
3730 Fifth Avenue
San Diego, California 92103

Re: MARTHA LOPEZ

Gentlemen:

After reviewing all the evidence available to the San Diego County District Attorney's Office, we have concluded that the evidence supports their decision not to initiate criminal proceedings in this matter.

While the evidence does reveal that an act of sexual intercourse did occur on May 31, 1972, between Mrs. Lopez and a member of the United States Border Patrol, the evidence also reveals that the Border Patrol officer did not use such threats or force that would cause his act to fall within the proscription of California Penal Code section 261.

Accordingly, the District Attorney's Office acted within its discretion in deciding not to file any criminal charges.

In such a situation, there is no reason for our office to intervene in this matter. While it is the responsibility of the District Attorney to prosecute violations of State law which occur within his county, whether or not a particular matter warrants criminal prosecution is a question committed to

Albert R. Garcia
Robert R. Lopez

May 4, 1973

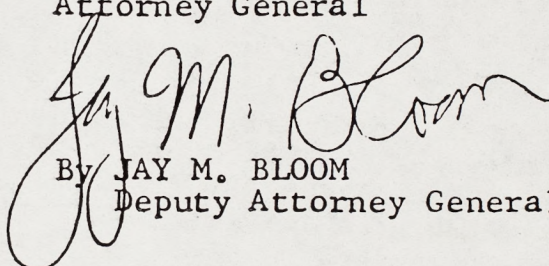
his discretion. See Taliaferro v. Locke, 182 Cal. App. 2d 752, 755-757; Taliaferro v. City of San Pablo, 187 Cal. App. 2d 153, 154; Ascherman v. Bales, 273 Cal. App. 2d 707, 708. Thus, the fact you may disagree with his decision not to prosecute affords neither reason nor basis for intervention by our office.

Moreover, it may be of interest to you, that we have been informed that the Federal Government is investigating this matter and has presented evidence regarding this case to a Federal Grand Jury. Thus, your further inquiries in this matter might better be directed toward Federal authorities. This is especially true since the conduct of the Border Patrolman in this case did not violate any State laws, but may have violated Federal laws.

Finally, we feel we should inform you that, to the best of our knowledge, the Border Patrolman involved in this case has been relieved of his position by the Federal authorities.

Very truly yours,

EVELLE J. YOUNGER
Attorney General



By JAY M. BLOOM
Deputy Attorney General

JMB:jg

cc: John Hewicker, DA
- Ken Morales



SAN DIEGO HUMAN RELATIONS AGENCY

3730 FIFTH AVENUE • SAN DIEGO, CALIF. 92103 • PHONE (714) 299-2840

December 18, 1972

Mr. Edwin L. Miller, Jr.
District Attorney
San Diego County
220 West Broadway
San Diego, California 92101

Dear Mr. Miller:

On May 31, 1972, Kenneth W. Cocke, a United States Border Patrol Officer allegedly raped a 26 year old female Mexican National, Martha Elena Parra Lopez, while in the process of deporting her back into Mexico. (See copy of attached affidavit.)

Mr. Phil Saenz of the San Diego County District Attorney's Office conducted a preliminary investigation in which it was determined that the alleged crime took place within San Diego City Limits. It was therefore decided that the agency with primary jurisdiction handle it and thus, the San Diego Police Department conducted an investigation.

The matter was then referred to the District Attorney's Office who referred the matter to the Federal Bureau of Investigation. Apparently the F.B.I. did not feel it had jurisdiction in the matter and returned it. The District Attorney then referred the matter to the United States Attorney's Office here in San Diego.

Witnesses testified before a Federal Grand Jury and the case was presented to the Department of Justice, Civil Rights Division for consideration. To our knowledge this matter is still pending and has been since July, 1972.

The Human Relations Agency is concerned that apparently a woman, regardless of her nationality, has no legal recourse against forcible rape in San Diego County.

Mr. Edwin L. Miller, Jr.

December 18, 1972

Page 2

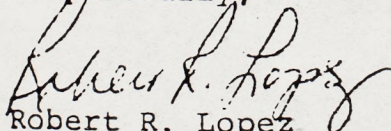
We are sure you will agree, that a San Diego woman visiting Mexico, Canada, or any other country should have legal protection against such a heinous offense-- especially from government officials of the country. A Mexican National should have that same protection in our country irrespective of the legality of her entry.

Furthermore, Mr. Kenneth Cocke should have the opportunity to clear his name if indeed he is innocent. In any event, this Agency feels strongly that legal action by the District Attorney is called for and must be pursued immediately. This case has been bounced back and forth between Federal and local jurisdictions and has already experienced far too much delay. Inasmuch as rape is not a federal offense, unless committed on a Federal reservation, this matter clearly falls into the jurisdiction of the District Attorney in accordance with California's Penal Code, Title IX, Section 261.

The San Diego Human Relations Agency hopes that you agree with its assessment of the case, and that your office will take prompt legal action. This is a top priority item with our Agency, and if we do not hear from you soon, we intend to pursue it through other channels.

Thanking you in advance for your cooperation.

Respectfully,


Robert R. Lopez
Chairman

RRL:jb

cc: Ken Morales, State Attorney General's Office
Harry Steward, United States Attorney
United States Civil Rights Commission
Evelle J. Younger, California State Attorney General

Border patrol case August 27-1932

Delay irks Roybal in rape prosecution

Congressman Edward Roybal (D-Los Angeles) said this week that he has an "altitude of disgust" at the way San Diego's district attorney has failed to act in the prosecution of a border agent who allegedly raped a Mexican alien May 31.

Roybal took an interest in the rape case shortly after he headed a congressional investigation into allegations of brutality and illegal body searches by U.S. Customs officials at San Ysidro and other points of entry along the Mexican border.

THE RAPE of a 26-year-old Mexican woman, illegally in the United States, reportedly occurred while the victim was in the custody of the border patrolman.

The U.S. attorney is investigating the incident to determine if a violation of civil rights occurred, and attorneys for the Mexican woman have filed a damage suit against the border agent for \$365,000. However, no criminal charges have been made.

"The district attorney does not seem to recognize the fact that a crime was committed in his own area," Roybal told a Star-News reporter Friday. "He should carefully investigate the situation to find out if it warrants an indictment or exonerate the border patrolman."

Roybal made the remarks in response to a statement by Howard Frank, attorney for the border patrolman, accusing the congressman of using the case as a campaign tactic.

CALLING Roybal "a politician in trouble in his own area," Frank criticized him for trying to coerce the district attorney into "bringing charges against an innocent man."

"Roybal's done nothing for the people he represents, so he's making this into a campaign issue," Frank contended. "He ought to mind his own business."

The representative scoffed at Frank's statement. "I don't get votes in Chula Vista or San Diego," Roybal remarked. "It's not a campaign gimmick."

He said his interest stemmed from a concern that every American citizen should have — "that justice is not made possible by the district attorney."

Roybal asserted that a determination must be made in the case.

IN AN EARLIER interview, the congressman revealed that the border patrolman had made a statement saying that he had had intercourse with the girl, but that she had submitted willingly to the act.

Roybal referred to the statement this week. "He must be guilty of something, even if the girl consented," the congressman charged. "He committed the act in a United States uniform, using a United States vehicle" and on U.S. government time."

The border agent "must have violated some rule," Roybal insisted, "even if the U.S. Immigration Department permits employees that kind of conduct."

Frank said the district attorney and the U.S. attorney (involved in the federal Grand Jury investigation) would make the best decision concerning the prosecution of his client on criminal charges.

THE BORDER patrolman's attorney maintained that the "time lapse" indicates the evidence (against his client) isn't what people like Roybal would like people to believe it is.

Frank admitted that his client had been suspended from duty for 30 days when the investigation began in June, but he explained that Civil Service regulations provide procedures for temporary suspensions up to 30 days if complaints are brought against employees.

The suspension "in no way indicates guilt or innocence," the attorney emphasized. He said he had no knowledge of any statement made by the border agent which revealed that he had had intimate relations with the girl while he was on duty.

FRED HETTER, attorney for the Mexican woman, cited a man by the name of Kenneth Cock last week in a civil suit for damages, but Frank said his client had not been served, and he would not reveal the border patrolman's name.

However, a clerk in Frank's office told a Star-News reporter this week that Hetter had misspelled the name — that it was actually spelled "Cocke."

John Porter, clerk for Hetter, Turn to back page, this section.

DA's rape case delay disgusts congressman

(Continued from Page A-1)

admitted that the suit may need to be amended, but on Friday Frank reported that his client had not been served.

The border agent's attorney had received an earlier version of the damage suit that did not identify the border officer by name, but Frank said his client had not authorized him to accept service.

The defense attorney revealed that he has requested an injunction postponing the U.S. Immigration Department's administrative hearing under Judge Gordon Thompson until Sept. 5.

The injunction prevents immigration officials from revealing the border patrolman's name and enjoins the department from determining whether the agent should be retained.

FRANK EXPLAINED that he wants to protect his client from a "certain connotation which attaches itself to anyone whose name is mentioned in a criminal investigation."

The border patrolman's rights to privacy are "more important than the rights of someone who might feel like filing a law suit," the attorney asserted. He added that the woman may file a lawsuit one year from now, and it will be just as effective.

Although the agent's name would be used in the lawsuit, connection with a civil suit is a "far less severe action" than a criminal case, Frank explained. "And it will be clear to everybody that two prosecuting agencies came to the conclusion that he was innocent."

However, the attorney also admitted that the prosecutors may decide to drop the case if they cannot gather enough evidence to win a conviction.

Friday, July 31, 1987

Tijuana Youth Shot by Agent Gets \$500,000

By RALPH FRAMMOLINO,
Times Staff Writer

A Tijuana youth who was shot in the back by a Border Patrol agent in 1985 for allegedly throwing rocks through a fence at the border was awarded \$500,000 in damages Thursday by a federal judge, who ruled the agent's explanation for the shooting was "incredible."

Agent Edward C. Cole shot Humberto Carrillo-Estrada, now 14, who was standing on the Mexican side of the fence while two other agents attempted to arrest Humberto's older brother on the U.S. side. Cole said he shot the younger boy because he was about to heave a softball-sized rock through a hole in the fence at another agent.

The shooting caused an international furor, raising the ire of Latino organizations and straining relations between the two nations. Investigations by the San Diego County district attorney's office cleared Cole of any criminal wrongdoing, based on Cole's version of the events.

Second D.A. Inquiry Wanted

But Carrillo's attorney, Marco E. Lopez of Los Angeles, called Thursday for authorities to open a second investigation into possible criminal charges against Cole "based on the judge's finding that Cole's version of the incident was not credible."

Carrillo and his mother sued the government for damages in federal court in San Diego. The trial, which ran for seven days this month, turned on whether the shooting was justified because Cole had a reasonable belief that one of his partners was going to be injured.

On Thursday, U.S. District Judge Judith N. Keep ruled that Cole's version of what happened during the afternoon of April 18, 1985, didn't square with the facts. She also said the shooting was unlawful.

Though Cole didn't testify in the case, two of his statements submitted as evidence said he fired three shots at Carrillo because the boy was holding a rock in an upright hand, poised to smash another border agent on the head through a hole in the chain-link fence.

One of the .38-caliber bullets fired by Cole struck Carrillo in the left side, entering his body below the shoulder, breaking a bone in his back and three ribs, then lodging in his right shoulder.

Agent's Version Not Supported

Keep, however, noted that testimony from three other agents, along with the physical evidence in the case, failed to support Cole's version. She said there was no proof that Carrillo was about to throw a rock, and evidence showed there was no hole in the fence where Carrillo's older brother was scuffling with police.

The closest hole in the fence was 48 feet to the east of where the agents had arrested Carrillo's brother.

Cole's partner was "not in danger of having his head smashed by a rock, as a one-inch by one-inch wire mesh fence separated him from Humberto," Keep wrote. "Further, no eyewitness saw plaintiff [Carrillo] in this position, although they did see plaintiff throwing rocks.

"Hence, the court cannot find this shooting was a lawful use of force in defense of another. Cole's version of the facts is contrary to the evidence. What he says he

Please see \$500,000, Page 3

\$500,000: Wounded Teen Wins Judgment

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believed is incredible. Hence, the court cannot find his belief is reasonable."

That determination directly contradicts the findings of an investigation conducted by Dist. Atty. Edwin Miller.

In a May, 1985, letter, Miller said he declined to bring criminal charges against Cole because "the evidence is uncontroverted that similar rock-throwing incidents have in the past resulted in serious injury to federal officers in the same general area. The history of injury was known to Agent Cole

"As a result, we have no ability in the case to prove beyond a reasonable doubt that Cole's apprehension was unreasonable."

Keep, too, remarked about the history of rock throwing: "The court felt great concern hearing testimony about the frequency with which Border Patrol agents are the victims of rock-throwing incidents.

"Certainly, under some conditions, such 'rocking' can be extremely dangerous and may justify the use of deadly force. This simply is not such a case."

Keep ordered the U.S. government to pay Carrillo \$500,000 for suffering and pain, along with an additional \$74,000 for past and anticipated medical expenses.

After he was shot, Humberto was taken by Life Flight helicopter to Mercy Hospital in San Diego, where the bullet was removed and he recuperated for a week. He later underwent a second operation at the Issstecali Hospital in Tijuana.

Stress Condition Noted

Keep noted in her opinion that Carrillo suffers pain from chronic post-traumatic stress disorder, and has become "withdrawn, depressed, melancholy and tearful." The judge said the boy was forced to switch schools because of hazing from classmates, and she cited testimony in the trial that it would take Carrillo three years of intensive psychological counseling to overcome the stress disorder.

Lopez, reached by telephone Thursday, reacted to the judgment with satisfaction.

"We think justice has been meted out," said Lopez, who had originally asked for \$3 million on behalf of the boy. "I have not yet talked to my client, but I'm pretty certain he'll be happy with it."

A spokesman for Miller said the prosecutor's office had no immediate comment but would examine Keep's ruling today.

According to Lopez, Cole was transferred after the shooting to the Border Patrol office in Buffalo.

Telephone calls to a Border Patrol spokesman were unreturned Thursday night.