

IMMIGRATION ESSAYS

By

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CAN YOU “ENFORCE” WITHOUT “FORCE”?

Decriminalizing illegal immigration would have serious consequences

For Police Issues by Julius (Jay) Wachtel. Given a belt-busting load of twenty candidates and only four hours air time, we didn't expect that the Democratic debates of June 26 and 27 would dive into crime and justice in any depth. And for the most part we weren't surprised. What's more, the “arguments” that did take place seemed so fine-tuned to avoid offending ideological sensibilities – in this case, of the “blue” persuasion – that we were unsure whether the owners of those lips knew that should their quest prove successful they would be [Constitutionally bound](#) to faithfully execute the laws that already exist.

That takes us to immigration. (We'll be referring to debate transcripts published by the *New York Times*. Click [here](#) for a transcript of the first debate and [here](#) for the second.) [Title 8, U.S.C., Sec. 1325](#), “improper entry by alien,” makes it a crime to sneak in. First offenders can draw six months in prison, and repeaters can get two years. That's essentially how the law has read [since 1950](#), when its text used the terms “misdemeanor” and “felony” to distinguish between penalties.

In all, the debaters seemed opposed to treating illegal entry as a crime. During the first round, former H.U.D. Secretary [Julián Castro](#) advanced perhaps the most extreme view. First, he called for repealing section 1325 and making immigration a strictly civil matter. While that drew nearly unanimous approval – Senator Cory Booker, Newark's former mayor, promptly interjected “I already have” – Castro cranked it up by explicitly calling for the Government to establish pathways to citizenship for potentially “millions” of otherwise law-abiding illegal immigrants already in the U.S. And as a back-handed concession to worry-warts, Castro also championed a new “Marshall plan” that would enable citizens of Central American countries to “find safety and opportunity” – meaning, of the economic kind – “at home instead of coming to the United States to seek it.”

That's a bold approach, and not everyone was sold. Instead, most of his colleagues tried to navigate around cost and ideology by specifically tailoring their remarks to families escaping violence. Among them was former Representative [Beto O'Rourke](#). Even then, he apparently felt compelled to address the expense of admitting immigrants fleeing “the deadliest countries on the face of the planet” by suggesting that potentially

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impacted communities adopt his supposedly cost-effective “family case management” approach.

Of course, laying out a welcome mat has all kinds of consequences. When it became obvious that the debaters were avoiding a key issue, [NBC moderator Savannah Guthrie](#) stepped in. Here are brief extracts from her tangles with Senator [Amy Klobuchar](#) and Representative [Tim Ryan](#):

GUTHRIE: He [Castro] wants to no longer have it be a crime to illegally cross the border. Do you support that? Do you think it should be a civil offense only? And if so, do you worry about potentially incentivizing people to come here?

KLOBUCHAR: Immigrants, they do not diminish America. They are in America and I am happy to look at his proposal but I do think you want to make sure that you have provisions in place that allow you to go after traffickers and allow you to go after people who are violating the law. What I really think we need to step back and talk about is the economic imperative here and that is that seventy of our Fortune five hundred companies are headed up by people that came from other countries....

GUTHRIE: Congressman Ryan, same question. Should it be a crime to illegally cross the border or should it be a civil offense only?

RYAN: Well I—I agree with Secretary Castro. I think there are other provisions in the law that will allow you to prosecute people for coming over here if they are dealing in drugs and other things. That is already established in the law. So there is no need to repeat it and I think it’s a bore it we are talking about this father who got killed with his daughter and the issues here....

Guthrie soon gave up trying to get a direct answer. On the next evening, NBC anchor Jose Diaz-Balart brought up decriminalization:

DIAZ-BALART: If—if you would be so kind raise your hand if you think it should be a civil offense rather than a crime to cross the border without documentation? Can we keep the hands up so we can see them?

[According to the New York Times](#), eight candidates put up their hands, while a ninth, former V.P. [Joe Biden](#), “raised a finger.” During follow-up questions, all, including Biden, focused on their humanitarian obligation to help families fleeing violence and disorder:

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BIDEN: The first thing I would do is unite families. I would surge immediately billions of dollars' worth of help to the region the immediately...second thing we have to do, the law now requires the reuniting of those families. We would reunite those families period and if not we would put those children in a circumstance where they were safe until we could find their parents....

Here's a bit of what Senator [Bernie Sanders](#) had to say:

SANDERS: ...picking up on the point that Joe made, we got a look at the root causes. And you have a situation where Honduras, among other things, is a failing state, massive corruption. You got gangs who are telling families that if a 10-year-old does not join their gang, their family is going to be killed....

And here's an extract from Representative [Eric Swalwell's](#) reply:

SWALWELL: Day one for me, families are reunited. This president, though, for immigrants, there is nothing he will not do two separate a family, cage a child, or erase their existence by weaponizing the census. And there is nothing that we cannot do in the courts and that I will not do as president to reverse that and to make sure that families always belong together....

No one ventured into dangerous turf. And they really didn't have to. Unlike his more probing colleague, Diaz-Balart didn't probe the possible effects of creating incentives. Needless to say, none of the guests volunteered.

One might think that for those, like Border Patrol agents, who must personally deal with the problem, creating incentives that generate even more illegal crossings might be the last straw. But it gets worse. *Much* worse. Should illegal immigration be decriminalized the issue of incentives would take a back seat to a more fundamental concern. As every border agent – indeed, as all cops well know – physical force is an intrinsic aspect of catching those who run away. But your blogger, who's been there a few times, knows of no legal or procedural precedent that authorizes forcefully detaining someone who is neither a criminal suspect nor dangerously mentally ill. Given current controversies, allowing, let alone *encouraging* the use of force when no crime has been committed and no one is at risk of physical harm seems a non-starter. Indeed, it would likely require a new body of law.

Bottom line: should section 1325 be repealed and illegal immigration ceases being a crime, all that Border Patrol agents will be able to do is beg for compliance. Well, good luck with that. Trump's walls would have to go up. (Good luck with that, too.) There is one possible workaround. Section 1325 includes a provision that prohibits eluding

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“examination or inspection by immigration officers.” If that aspect remains a crime, illegal entry might be compared to, say, traffic enforcement. Doing forty in a twenty-five mile an hour zone isn’t a criminal offense. But if you don’t stop for the cop, the running away *is*. (It’s not a perfect analogy, as the high speeds and dangerous maneuvers intrinsic to getting away *are* crimes. But it’s as close as we can get.)

And there’s yet another vexing issue. Even the staunchest anti-immigration types concede that most illegal immigrants aren’t criminals but are fleeing poverty and violence. [Yet as we’ve pointed out](#), good intentions can’t always make up for a lack of income, skills and education:

Imprisonment data reveals that third-generation Hispanic males are more than twice as likely to be incarcerated as non-Hispanic whites. Why is that? Many illegal immigrants are unskilled, poorly educated and reside in poverty-stricken, crime-ridden areas. This might expose their descendants to role models and behaviors that the grandchildren of legal migrants can’t begin to imagine.

America’s crime-ridden inner cities offer a uniquely poor landing spot. Yet where else would the immigrants whom the panelists are so eager to welcome go? We might be more upbeat had our President followed through [on his campaign promise](#) to invest in and revitalize our poverty-stricken urban areas. But, gee, he didn’t. So until that “New Deal” really happens (we’re not holding our breath) encouraging immigrants to flee their own troubled neighborhoods to find relief in America seems at best a false promise, and at worst, foolish.

But don’t take that from your blogger. Take it from a long-retired Fed who got (legally) dragged from South America to the U.S. when he was ten. His name – which he’s sorry to have changed – was “Julio.” Oops, that’s me! Oh, well...

Posted 7/18/10

EXTREME MEASURES (PART II)

Turning cops into immigration agents invites misconduct and corruption

By Julius Wachtel, (c) 2010

Everyone knows that they can be stopped by police for a traffic infraction. What many don't realize is that officers can detain them at length for other reasons, and with far less justification than is required for an arrest. Barring a last-minute decision by a Federal judge, Arizona cops will soon be wielding that authority in an unprecedented way.

[A.R.S. § 11-1051B](#), which takes effect July 29, 2010 provides that in any "lawful contact stop, detention or arrest made by a law enforcement official...in the enforcement of any other law or ordinance of a county, city or town or this state where *reasonable suspicion* exists that the person is an alien...unlawfully present in the United States, a reasonable attempt *shall* be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation" (emphasis added.)

There's nothing new about "reasonable suspicion." More than forty years ago, in the landmark case of [Terry v. Ohio](#), the Supreme Court authorized officers to temporarily detain persons (and, if warranted, to pat them down for weapons) if there was reasonable suspicion that they had committed a crime or were about to do so. However, officers can't simply rely on conjecture; what's needed are "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."

From hot-spot policing to anti-gun patrols, stop and frisk has become a key component of the police arsenal. Since *Terry* a series of Supreme Court ([U.S. v. Sokolow](#), 1989; [U.S. v. Arvizu](#), 2002) and circuit court decisions have continued to grant police considerable leeway in deciding when to make a stop.

As we suggested in "[Too Much of a Good Thing?](#)" the inherent subjectivity of reasonable suspicion stops make them ripe for abuse. Yet until now they've always been directed at ordinary crime and ordinary criminals, things that police know something about. So one can imagine what [Arizona POST](#) faced when it was charged with training the state's cops to take on the role of border police.

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POST's hastily-produced [90-minute instructional DVD](#) begins with excerpts from the speech delivered by Governor Jan Brewer when she signed the controversial measure:

My signature today represents my steadfast support for enforcing the law, both against illegal immigration and against racial profiling...As committed as I am to protecting our state from crime associated with illegal immigration, I am equally committed to holding law enforcement accountable should this statute ever be misused to violate an individual's rights....

Concerns that Arizona will be accused of racism suffuse the video. Hardly a minute goes by without one of its half-dozen instructors reminding viewers that they must ignore race and ethnicity when considering whether someone is illegally present in the U.S. To underline that point lawyer Beverly Ginn brings up [U.S. v. Montero-Camargo](#), a Ninth Circuit decision which held that Hispanic appearance is irrelevant in a community – in this case, El Centro – whose ethnic composition is substantially Hispanic. (Ginn leaves out the qualification. Neither does she mention that, as the justices readily conceded, Montero-Camargo contradicts the one Supreme Court case on point, [U.S. v. Brignoni-Ponce](#), which held that “Mexican appearance” can be a factor – just not the only one – in forming reasonable suspicion of illegal entry.)

As one sits through the presentations it's obvious that applying reasonable suspicion to immigration matters is far from simple. Viewers get clobbered with a voluminous list of indicators ranging from lack of ID (when having ID is required), to voluntarily making incriminating statements, to evading police, being with known illegal aliens or at a place where illegal aliens gather, riding in an overcrowded vehicle, traveling in tandem, providing false, misleading or nonsensical information, difficulty communicating in English, nervousness, and so on.

How many factors will do? Well, viewers must figure that out for themselves. So here's a question. In two weeks, when the law is scheduled to take effect, will cops be sufficiently “trained” and “experienced” to form reasonable suspicion of illegal presence in the way that the Supreme Court intended?

Originally the bill authorized police to detain likely immigration violators on sight. Yet, having declared an illegal alien emergency and devised a jaw-dropping remedy, legislators apparently had second thoughts. What if their newly-empowered brigadoons run amok? That led them to insert a precondition: yes, suspected immigration violations must be investigated, but only within the context of a lawful detention for an extraneous, non-immigration reason; for example, while writing a ticket for a traffic infraction. One can well imagine all the pretextual stops and dishonest reporting *that* will encourage.

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Arizona's law is an ideal platform for other forms of misconduct. To be sure, police can threaten to arrest for many reasons, but even in traffic cases the legal process doesn't end with the cops. Illegal immigrants are caught in a different vise. Letting cops get mixed up in immigration matters will let the unscrupulous few take advantage to line their pockets or worse, with little chance of detection.

Knowing that every police car is a potential deportation machine must be a chilling prospect for victims and witnesses. It's one of the reasons why [Phoenix police chief Jack Harris](#) and [Tucson police chief Roberto Villasenor](#) came out strongly against the law. Naturally, their opposition will make officers think twice before enforcing the measure. That portends serious conflicts down the road, as politicians tug one way and cops another. (Villasenor appears in the POST video, apparently to reassure skeptical officers that whatever happens, the world won't come to an end.)

In our [earlier post](#) we agreed that Arizona needs better border enforcement. Yet transforming street cops into immigration police is a step into the Twilight Zone. ICE doesn't cruise city streets. Their patrols stick close to the border, where on-sight violations (think overloaded, speeding vans) are obvious and concerns about racial profiling seldom arise. Immigration agents work in teams, concentrating on workplace violations and immigrant smuggling rings. And still they get in trouble. One can only wonder what will happen should legions of cops step into the fray.

Posted 4/26/10

EXTREME MEASURES

Angry over Federal dithering, Arizona enacts its own immigration laws

By Julius Wachtel, (c) 2010

Sooner or later it was bound to happen. Frustrated by the Fed's laissez-faire attitude about the effects of illegal immigration, the Grand Canyon State struck out on its own. Less than a month after the [murder](#) of a goodhearted Arizona rancher (police followed the suspect's tracks to the border) Governor Jan Brewer [signed into law](#) a comprehensive [measure](#) that turns illegal aliens into state outlaws and encourages local police to seek them out and hand them over to the Feds.

Key provisions include the following:

- When practical, law enforcement officers who reasonably suspect that someone is an illegal alien must try to determine their immigration status.
- Illegal aliens convicted of violating state or local laws including misdemeanors must be turned over to U.S. immigration officers, even if they were only fined.
- Illegal aliens and non-citizens over 18 not carrying a valid immigration card law are considered "trespassers." Those in possession of drugs or a weapon are guilty of a felony; otherwise, a first offense is a misdemeanor, and a subsequent offense is a felony.
- Illegal aliens are prohibited from applying for a job, soliciting work or working either as an employee or independent contractor. Violations are misdemeanors. (Arizona law already prohibits employers from knowingly hiring illegal aliens.)
- Knowingly transporting or harboring illegal aliens or inducing them to come to Arizona is a misdemeanor; if ten or more illegal aliens are involved it's a felony.
- Private citizens are empowered to sue and collect damages from political subdivisions that restrict the "full enforcement" of Federal immigration laws.

According to the [Department of Homeland Security](#) Arizona has 460,000 illegal immigrants, the seventh most in the nation. As a proportion of the [population](#) their

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number lags only behind California, and then by a whisker (6.9 percent versus 7.0 percent.)

SCAAP, the [State Criminal Alien Assistance Program](#), reimburses States and localities for part of the cost of confining illegal immigrants who are convicted of a felony or two misdemeanors and held for at least four days. (Illegal immigrants convicted of ordinary crimes are commonly called “criminal aliens.”) [The GAO reported](#) that in 2003 Arizona prisons housed 4,200 criminal aliens, costing state taxpayers \$50 million. SCAAP reimbursed \$7 million. Arizona placed fifth in numbers of incarcerated criminal aliens, behind California (30,200), Texas (11,200), New York (5,700) and Florida (5,200). But when adjusted for state [population](#), Arizona’s share was second to California’s.

In 2003 the Maricopa County (Phoenix) jail system housed 4,300 criminal aliens, costing state taxpayers \$15 million. Its reimbursement? \$1 million. Only four jails, two in California, one in Texas and one in New York City held more. Adjusting for [county](#) and [city](#) size, Maricopa was in third place, just behind the California counties.

Another [GAO report](#) examined the backgrounds of 55,322 criminal aliens who were incarcerated for any offense in Federal and State prisons and county jails in December 2003. Eighty percent came from three states: California (58 percent), Texas (14 percent) and Arizona (eight percent.)

Arizona is one of the nation’s principal gateways for illegal entry, regularly placing first in border arrests and second only to Texas, a state with a population four times its size, in [immigration prosecutions](#). It’s also a primary entry point for illegal drugs, with [Federal drug prosecutions in Arizona](#) increasing more than twofold during 2008-2010. And as we pointed out in [a prior post](#), the state’s gun dealers are a major source of firearms for the Mexican cartels.

The consequences are obvious. Human, drug and gun trafficking tear at the social fabric, attracting unscrupulous characters, consuming prodigious criminal justice resources and setting the stage for other crimes. According to the [Arizona Republic](#), Phoenix experienced an astounding 368 kidnappings for ransom in 2008, much of it ostensibly related to drug and cartel activity. What’s more, although its police chief touts the city as “one of America’s safest large cities,” [a 2008 survey](#) of cities over 75,000 population ranked Phoenix 302 out of 393. It was well behind Los Angeles, which placed 240th. (higher numbers are worse). Phoenix’s problems are no surprise to your blogger, who as an ATF agent in Arizona during the seventies got to experience the troubled city first-hand.

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Crunched by a tight economy, with a [2008 median household income](#) two percent below the national mean, Arizona has struggled for decades to deal with the social and economic consequences of being on the border. But to many observers its current response seems an overreaction. Concerns that the law will drain scarce police resources, cause racial profiling and discourage crime victims from coming forward led the Arizona Police Chiefs Association [to strongly oppose the measure](#). On the other hand many lower-ranking police officers, including presidents of police associations in Phoenix and Glendale favor it, in part because it would give officers more tools for combating crime.

It's no surprise that [political views](#) about Arizona's stern approach mirror Party affiliations. Senator John McCain (R-Ariz.) is for while President Obama, who warned that the Arizona bill would "undermine basic notions of fairness," is against. Interestingly, his Secretary of Homeland Security, Janet Napolitano, a Democrat, [repeatedly vetoed](#) similar legislation when she was Arizona governor, in part because it would "overwhelm" police. Yet in 2005 she declared a "state of emergency" at the border, then sent the National Guard to help secure it.

Within a couple of years, though, the Feds decided that physical barriers and a much-ballyhooed ["virtual" fence](#) were preferable to a heavy human presence. But only last month Secretary Napolitano [called a halt](#) to the multi-billion dollar project because of questions about its effectiveness. Arizona's senators have since proposed that the money be spent on – you guessed it – troops and additional border agents. Meanwhile the Department of Justice is getting set to challenge Arizona's new immigrant-unfriendly laws in Federal Court.

That, in a nutshell, is America's border "policy." If you're confused, join the crowd!

Posted 5/16/17

IDEOLOGY TRUMPS REASON

Clashing belief systems challenge criminal justice policymaking

By Julius (Jay) Wachtel. Ideologies – collections of ideas, values and beliefs – are the sociopolitical glue that binds people into a common cause. Of course, there are consequences. Disputes between clashing ideologies have convulsed nations into war. At home, two competing ideologies – liberalism and conservatism – continue their long-running struggle for supremacy. Naturally, each camp trenchantly advances its own vision of justice, including how, when and to whom criminal sanctions should apply.

That split is reflected in the memberships of the [American Society of Criminology \(ASC\)](#) and the [Academy of Criminal Justice Sciences \(ACJS\)](#). With its roots in sociology, ASC has typically attracted so-called “progressive” scholars. In contrast, ACJS, which originated in a field once known as “police science,” enjoys a more practical orientation, and features a website that gives a prominent nod to practitioners. Still, both organizations publish respected scholarly journals and share substantial common ground. Indeed, the disciplines they cover enjoy a lot of overlap, and many academics belong to both groups.

This amity might soon be tested. Days ago the ASC executive board [released an extraordinary statement](#). Its four main points, rendered in boldface, directly challenge the Trump administration’s criminal justice agenda:

- Immigrants do not commit the majority of crime in the United States.
- The proposed travel ban is not empirically justified and targets the wrong countries.
- The U.S. is not in the midst of a national crime wave.
- The U.S. government plays an important role in police reform.

Each statement is followed with a discussion that includes notes to data and scholarship. If that’s too subtle a reminder of the Society’s empirical cred’s (and by implication, the Trump administration’s unscientific approach) one of the closing paragraphs makes the point succinctly:

Recent Presidential executive orders and other administrative decisions are at odds with established evidence in criminology and criminal justice. Crime-control policies should be built on science, and elected officials at all levels of

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government have a responsibility to endorse public policies that are evidence-based and that promote fairness, equality, and justice.

Incidentally, even that dig is footnoted, in this instance to a journal article that challenges the usefulness of deportations in reducing violent crime.

That's not to imply that footnotes are bad. What's disturbing about the discussions is that they seem tailored to support a particular ideological agenda. We'll have more to say about that later. For now let's tackle ASC's views on immigration policy. Here is an abridged version of its position:

Immigrants do not commit the majority of crime in the United States. First, a century's worth of findings on immigration and crime in the U.S. show that immigrant concentration decreases crime at the neighborhood and city levels – also known as the revitalization thesis. That immigration is a protective factor against crime also holds true for individuals; immigrants as a whole are far less likely to commit crimes than non-immigrants.

Indeed, as we skimmed the literature we found considerable support for the notion that immigration [can revitalize neighborhoods](#). Data also consistently indicates that foreign-born immigrants are substantially less likely than native-born persons to break the law. Interestingly, research in Chicago suggests that this effect may weaken over time. Compared to the third generation (parents and children all born in the U.S.), first-generation, foreign-born immigrants were 45 percent less likely to commit an act of violence. For members of the second generation the advantage was reduced to 22 percent.

So what about that third generation? Table 4 in [Undocumented Immigration and Rates of Crime and Imprisonment: Popular Myths and Empirical Realities](#) (Rubén G. Rumbaut, August 2008) reports percent ever-arrested and percent ever-incarcerated for a sample of nearly three-thousand Southern California males, ages 20-39, of known race, ethnicity and generation (condensed version below).

Ethnicity	Gen 1.5 - foreign born, arrived pre-teen		Gen 2 - U.S. born, at least one parent foreign-born		Gen 3 - U.S. born, both parents U.S. born	
	Arrested	Incarc	Arrested	Incarc	Arrested	Incarc
Mexican	22.3	11.9	29.8	20.4	39.6	26.6
White, non-Hispanic					29.4	18.1
Black, non-Hispanic					40.4	27.3

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While relatively low at the start, arrest and incarceration of Hispanics (and most other ethnic groups – see full table) increases dramatically by the third generation. By then between-group differences closely align with the U.S. imprisonment rate (“[Prisoners in 2010](#),” Table 14.) Whites are least likely and blacks are most likely to be incarcerated, while Hispanics fall between.

Ethnicity	2010 imprisonment rate per 100,000 pop.	
	Male	Female
Hispanic	1258	77
White	459	47
Black	3074	133

This phenomenon, which muddles neat, pro-immigrant conclusions, is no secret in the literature. Of course, to paint a truly illuminating picture would require parsing newcomers by their legal status. Inasmuch as legal immigrants are likely better educated, higher-income and have more job and educational prospects, we suspect that their descendants may also be more law-abiding. Instead, the ASC simply cherry-picked what data supported their views.

Let’s tackle another of the ASC’s targets: the Administration’s focus on violent crime. Here’s an extract from the Executive Board’s comments:

...rates of violent and property crime have been declining in the U.S. for at least a quarter century. Many criminologists have referred to this post-1990s period as “the great crime decline.” It is true that some cities experienced large increases in homicide in 2015, but this is not indicative of a national pattern as homicide rates overall remain significantly below 1990s peaks.

Once again, the ASC’s account misleads. “[Is Crime Up or Down? Well, it Depends](#)” conveys the obvious: whether crime has gone up or down depends on *when* we compare. Nationally, violence has been dropping since the eighties. But it’s still far higher than in 1960. It’s also important to consider *where* one sits. ASC conceded that “some cities experienced large increases in homicide in 2015.” But why leave out 2016? According to [data compiled by FiveThirtyEight](#) lots of hard-hit places got hit again. Killings in Cleveland increased by 20.6 percent; in Oakland, by 22.4 percent. For sheer numbers it’s hard to top Chicago, [which suffered an appalling 747 homicides in 2016](#), a 17.6 percent increase from the merely deplorable 495 murders in 2015. (By the way, it’s logged 213 so far this year.) And don’t even think about comparing America’s numbers to, say, Canada or Great Britain!

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Bottom line: many communities continue suffering from what any reasonable “empirical” person would consider a grotesque level of violence. Regardless of one’s ideological leanings, the numbers alone abundantly justify a vigorous response. For a prestigious criminological association to shrug it off by suggesting that things were once worse (they were once better, too) is, well, appalling. Perhaps one of the ASC’s luminaries might volunteer to move into an impacted neighborhood in, say, Chicago, place a calculator (and flak vest) by their bedside and let us know how it goes.

Bundling notions about complex topical areas such as immigration, violent crime and police use of force into a neat package is what ideologies do. Legal and illegal immigration can (does not!) yield different benefits and costs in the short term and the long. Surges in violence are (are not!) of legitimate concern in many cities. Reducing the use of force may (does not!) require changing a lot more than cops. To succeed at this one must sweep confounding data aside. What supports one’s position is good: what doesn’t is ignored. Incidentally, that’s called “confirmation bias.” We recently touched on that well-known phenomenon [here](#). That it apparently infects the ASC is disheartening.

Our concerns also extend to the Trumpists. Impulsively conceived, poorly designed travel bans, [moves to banish oversight of forensics](#), a return to the draconian drug sentencing policies of the past (click [here](#) and [here](#)), and the championing of aggressive police practices such as “[stop and frisk](#)” and “[broken windows](#)”, whose thoughtless use we’ve repeatedly criticized (click [here](#) and [here](#)) suggest they’re determined to occupy the opposite ideological bench. You know, the one to the (far) right of the ASC.

Meanwhile, as our polarized combatants settle in at their iPhones and greedily snatch at confirmatory morsels while fastidiously ignoring everything else, those who bear the consequences of their decisions are left to wonder: in this brave new data-driven, empirically-based world, is that really all there is?

Posted 8/23/17

SANCTUARY CITIES, SANCTUARY STATES (PART I)

What happens when communities turn their backs on immigration enforcement?

By Julius (Jay) Wachtel. By now the term “sanctuary city” has become such a familiar part of the lexicon that defining it might seem superfluous. But for the record let’s recap what it means to the Feds. According to a [May 2016 memorandum](#) from the Department of Justice the label applies to jurisdictions that, due to law, regulation or policy, either refuse to accept detainers from ICE or don’t promptly inform ICE of aliens they arrest or intend to release.

Memoranda do not carry the force of law. A 1996 Federal law, [8 USC 1373](#), stipulates that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” In plain language, neither Hizzoner the Mayor nor any other official can legally order police to keep quiet about the arrest (or simply the whereabouts) of an illegal immigrant.

Of course, that doesn’t require that ICE be tipped off. Yet until recently such notifications were routine. Indeed, many police and sheriff’s departments used to have ICE train and deputize their officers under [section 287-g](#) of the Immigration and Nationality Act so they could enforce Federal immigration laws on the street. At one point the number of participating agencies [exceeded seventy](#).

In time, a growing political divide and instances of excessive anti-immigrant zeal (see, for example, [the saga of former Sheriff Joe Arpaio](#)) led many communities to abandon the program. In 2016 ICE dropped the street enforcement aspect and now restricts cross-designated officers to making immigration checks only of persons [detained for other crimes](#) in local jails. After a recent drive ICE [proudly reported](#) that the number of jurisdictions participating in this modified program stands at sixty. However, nearly all are Sheriff’s offices in the South, with a large chunk in Texas.

At present neither Los Angeles, nor New York, Chicago or virtually any other city of size except Las Vegas participates in the 287-g program. In Blue America objections to immigration enforcement run so deep that many communities have taken affirmative steps to frustrate the Feds. Some don’t let ICE officers review jail records to gather information about arrestees (what jurisdictions participating in the 287-g program do

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with their own cops.) Others don't inform ICE, or only do so selectively, when [national criminal warrants checks](#) reveal that an arrestee was previously deported or has an active criminal or civil warrant for an immigration offense. And many either ignore [detainers](#) (written requests that specific, named arrestees be held for up to 48 hours beyond their release time) or fail to provide timely notice about the impending release of persons wanted by ICE.

Why the resistance? Here's how Montgomery County, Maryland police chief [Tom Manger](#), president of the Major Cities Chiefs Association, [explained it to Congress in 2015](#):

To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers – we need the full cooperation of victims and witness. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.

Although Chief Manger's agency does not participate in 287-g, it routinely informs ICE of all arrests so that the Feds can, if they wish, follow up. But Chief Manger refuses to accept so-called "civil" detainers, such as those issued when illegal immigrants fail to appear at an ICE hearing, because they are not based on probable cause that a crime was committed. (In contrast, re-entry after formal deportation is a Federal crime, and in Montgomery County such detainers are honored when accompanied by an arrest warrant.) Chief Manger's position has been adopted as the [official policy](#) of his influential group.

[Maps](#) compiled by the [Center for Immigration Studies](#) and ICE Weekly Declined Detainer Reports (WDDR's) indicate that most law enforcement agencies outside the South and Northwest ignore civil detainers. Section III of the WDDR's identifies the agencies by name. (ICE [recently pulled WDDR's from the Internet](#). The three most recent are archived [here](#), [here](#) and [here](#).) For example, during the [January 28-February 3](#) reporting period, Chief Manger's Montgomery County domain released a person charged with assault because the detainer was only supported by a civil warrant.

According to ICE, many localities impose much stiffer conditions. Baltimore, whose 2015 violence rate was [eight times worse](#) than Montgomery County's, supposedly refuses to honor *all* detainers ([WDDR p. 8](#)). (In defense, [its chief insists](#) they comply

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with “criminal arrest” warrants, however Baltimore might define them.) As crime-ridden metropolitan areas go, Baltimore’s approach is hardly unique:

- Newark ([p. 31](#)) and New York City ([p. 32](#)) reportedly refuse all detainees
- Boston ([p. 25](#)) and Los Angeles County ([p. 13](#)) only honor those accompanied by criminal arrest warrants
- Chicago ([p. 32](#)) requires either a criminal arrest warrant, identification as a “known gang member,” a felony conviction, or active felony charges
- Philadelphia PD ([p. 23](#)) refuses to honor detainees or notify ICE of impending releases unless “the alien has a prior conviction for a first or second degree felony offense involving violence and the detainee is accompanied by a judicial arrest warrant”
- Washington, D.C. ([p. 32](#)) requires a “written agreement from ICE reimbursing costs in honoring detainee” *and* that an immigrant was either released from prison within the past five years or convicted within the past ten years, in both cases of homicide or another “dangerous” or violent crime.

What were the criminal backgrounds of those named in ICE detainees? A hand tally of [206 detainees](#) declined between January 28 and February 3, 2017 reveals that twenty-six of the named immigrants had been convicted of domestic violence. Twenty-three others had convictions for DUI, fourteen for assault, eight for burglary, robbery or arson, seven for a drug offense, six for a sex crime, four for resisting or weapons offenses, and four for forgery or fraud. Dozens more had been charged with but not convicted of crimes, including twenty for assault, seventeen for burglary and robbery, sixteen for sex crimes, eleven for domestic violence, and one each for kidnapping and murder.

ICE can, of course, track down subjects itself. However, serving civil and criminal process in the field carries risks for both officers and immigrants. But why should the Feds even bother? After all, as we reported in “[Ideology Trumps Reason](#),” research demonstrates that, overall, immigrants are substantially more law-abiding than ordinary folks.

But there’s a catch. Unlike ethnicity, immigration *status* isn’t systematically captured by criminal history repositories. So whether *illegal* immigrants are more likely to commit crimes than those legally in the U.S. is unknown. (One might think so after

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reviewing the above list, but these examples may not fairly represent illegal immigrants in general.) Still, the list of troubling anecdotes keeps growing. In December 2016 [Denver ignored a detainee](#) and let go a known gang member who had been jailed for multiple offenses, including weapons, auto theft and eluding police. Within two months Ever Valles, 19 was back in jail after he and an associate allegedly committed a brutal robbery-murder. Criminal misconduct by illegal immigrants [has even caught the attention](#) of the liberally-inclined *New York Times*. (For a running compendium in an anti-illegal immigration website click [here](#).)

There's another important "if." As our table in "[Ideology Trumps Reason](#)" suggests, legal status aside, the advantage of being foreign-born doesn't necessarily carry over to subsequent generations. Imprisonment data reveals that third-generation Hispanic males are more than twice as likely to be incarcerated as non-Hispanic whites. Why is that? Many illegal immigrants are unskilled, poorly educated and reside in poverty-stricken, crime-ridden areas. This might expose their descendants to role models and behaviors that the grandchildren of legal migrants can't begin to imagine.

It's clear that competing ideologies and selectively interpreted "facts" have complicated the relationship between police and the Feds. During his career as an ATF agent your blogger worked closely with local police and detectives, and he suspects that most ICE officers and street cops still get along. Even so, policies have consequences. While it seems petty and self-defeating to kick out law-abiding, hard-working persons, refusing to honor detainees can obviously imperil the law-abiding.

On the other hand, concerns that police involvement in immigration matters can erode trust with the Hispanic community are not easily dismissed. A somewhat dated study provides ammunition for both sides of the debate. In 2008 Prince William County, Maryland mandated that police "investigate the citizenship or immigration status of all persons who are arrested for a violation of a state law or county ordinance." Two years later university scholars and the Police Executive Research Forum produced a [detailed report](#) assessing the policy's effects. As one might expect, illegal immigration decreased. So did aggravated assault, hit-and-run accidents and some forms of public disorder. However, "a palpable chill" fell over relations between Hispanics and police. Fortunately, in time the wound mostly healed, and within two years goodwill was largely (but not completely) restored.

So was the policy a good idea? Here is what the study's authors think: "Despite our mixed findings, the current version of the policy, which mandates immigration checks only for arrestees, appears to be a reasonable way of targeting illegal immigrants who

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commit criminal violations. There is fairly broad agreement on this as a goal for law enforcement.”

Whatever the “facts,” both sides remain dug in. LAPD Chief Charlie Beck, whose agency typically refuses to honor detainers, [concedes that illegal immigrants](#) who have been convicted of violent felonies should be deported once they’ve done their time. But he’s in favor of granting illegal immigrants driver licenses and insists that helping ICE deport them “is not our job, nor will I make it our job.” Angrily rejecting such views, [Attorney General Jeff Sessions recently announced](#) that DOJ will withhold “Byrne” grants unless jurisdictions “comply with federal law, allow federal immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities.”

Take that, L.A., New York, Chicago...

Well, that’s enough for now. In Part II we’ll discuss the possible consequences of the Federal-state split in marijuana enforcement. And as always, stay tuned!

Posted 1/14/19

WHEN WALLS COLLIDE

Ideological quarrels drown out straight talk about border security



For Police Issues by Julius (Jay) Wachtel. Before moving on, try to identify the authors of these quotes. Click on the links to check your answers. If you're right, you get bragging rights! And if not, don't fret. You'll be in great company.

"I voted numerous times when I was a senator to spend money to build a barrier to try to prevent illegal immigrants from coming in. And I do think you have to control your borders." ([article](#) [video](#))

"We simply cannot allow people to pour into the United States undetected, undocumented, unchecked, and circumventing the line of people who are waiting patiently, diligently, and lawfully to become immigrants in this country." ([article](#) [video](#))

Were you surprised? So was your blogger. Yet when it comes to immigration and its control, the tenor of these times is decidedly different. On January 20, 2017, President Trump issued [Executive Order 13767](#), directing the Department of Homeland Security (DHS) to "take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border, using appropriate materials and technology to most effectively achieve complete operational control of the southern border."

Two years later, having run smack dab into another wall (a Democratic House), the President's "five-billion dollar" dream remains unfunded, hobbling the Government and leaving reasoned discussion about border security for another day. But like our hero Sergeant Joe Friday, Police Issues is all about the facts. So, what are they?

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According to [historical U.S. Border Patrol data](#) there has been a decades-long increase in illegal crossing along the southwest border. In 1960 arrests totaled 21,022. After a protracted climb, apprehensions peaked at 1,615,844 in 1986 and at 1,643,679 in 2000. Counts have since dropped to the levels of the early 70s, with 303,916 apprehensions in 2017 and [396,579 in 2018](#).

Arrests, of course, represent only a fraction of unauthorized entries. [A comprehensive February 2017 report](#) by Congress' General Accounting Office (this essay's main data source) estimates that during FY 2013-2015 (October 1, 2012 - September 30, 2015) more than one million persons illegally entered the U.S. through the southwest border.

Physical security has not been ignored. A 1996 law ordered the installation of fencing in areas highly impacted by illegal entry, including a "triple-layer fence" near San Diego. Subsequent amendments upped the game so that by 2015 miles of fencing along the southwest border had increased more than five-fold. Its quality was also enhanced, with pedestrian (left photo) and vehicle barriers (right photo) transitioning to a hardy



“bollard” style made up of closely spaced, large-diameter vertical posts. Our nearly 2,000 mile long southwest border (696 miles land and 1295 miles of river) is now secured by 354 miles of primary pedestrian fencing, 82 percent (290 miles) of bollard design, and by 300 miles of primary vehicle fencing (225 miles of a more impervious, modern design.)

During FY 2007-2015 \$2.3 billion was spent to improve and extend barriers. Routine maintenance came in at about \$450 million. With average costs of \$6.5 million per mile for primary pedestrian fencing and \$1.8 million per mile for primary vehicular barriers, the enhancements didn't come cheap. For example, replacing 14.1 miles of legacy pedestrian fencing with bollard-style in Tucson and Yuma cost \$68 million, or \$4.9 million per mile. Other recent projects include \$13.4 million to replace 1.4 miles of

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pedestrian fencing in New Mexico and \$45 million for a similar 7.5 mile project in Naco, Arizona.

What was the payoff? According to Customs and Border Protection (CBP), an agency of the Department of Homeland Security (DHS), bollard-style fencing is pricey but superior, keeping illegal immigrants from gaining ready access to populated areas and forcing the more determined to travel to remote, unguarded locations where they cannot quickly blend in. CBP recorded nine-thousand-plus breaches of pedestrian fencing during 2010-2015, with legacy barriers suffering nearly six times as many incursions per mile (82 v. 14) as their bollard counterparts. In Nogales, bollard fencing reportedly reduced assaults on agents by 81 percent, while bollard-style vehicle barriers slashed “drive-throughs” in Tucson by 73 percent. Many “degraded” sections of pedestrian and vehicle fencing remain to be addressed.

Even the most modern barriers, though, aren’t foolproof. Bollard fences can be climbed and, as illustrated by the photograph at the top, forcibly breached. That’s where the President’s obsession comes in. A solid, sturdy wall that prevents drive-overs and drive-throughs, is of sufficient height to discourage climbing and rock-throwing, and has a foundation that obstructs ready tunneling, would be by far the most effective. Still, even those who disagree with Speaker Pelosi ([she said a wall would be “immoral”](#)) might find its prison-like ambience off-putting. And the cost of building a continuous wall, and doing it right, would be astronomical. Five billion seems just a down payment.

But we’re ahead of ourselves. If Congress’ number-crunchers have anything to say about it, the wall’s prospects are dim for another reason. You see, the document we’ve been filching from is entitled “SOUTHWEST BORDER SECURITY: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps.” Before passing judgment, the GAO’s nitpickers are demanding the facts, just like Sergeant Joe. Here’s an extract from their ultimately disparaging assessment:

CBP has not developed metrics that systematically use these, among other data it collects, to assess the contributions of border fencing to its mission. For example, CBP could potentially use these data to determine the extent to which border fencing diverts illegal entrants into more rural and remote environments, and border fencing’s impact, if any, on apprehension rates over time. Developing metrics to assess the contributions of fencing to border security operations could better position CBP to make resource allocation decisions with the best information available to inform competing mission priorities and investments.

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Bottom line: tell us how many illegal border-crossings your proposals would prevent, and we'll decide if it's worth it.

A copy of Homeland Security's response appears on pp. 67-68 of the [GAO report](#). Echoing its antagonist's often impenetrable verse, DHS promises to supply appropriate "metrics" by March 31, 2018. Well, that date came and went. Then in July 2018 the GAO issued [a second report](#). It's entitled "SOUTHWEST BORDER SECURITY: CBP Is Evaluating Designs and Locations for Border Barriers but Is Proceeding Without Key Information." Its assessment focused on a request to expend \$1.6 *billion* in the 2019 fiscal year to build 65 miles of wall in Rio Grande Valley (page 11.) However, in GAO's not-so-humble opinion, the "metrics" still didn't – no pun intended – measure up:

DHS plans to spend billions of dollars developing and deploying new barriers along the southwest border. However, by proceeding without key information on cost, acquisition baselines, and the contributions of previous barrier and technology deployments, DHS faces an increased risk that the Border Wall System Program will cost more than projected, take longer than planned, or not fully perform as expected. Without assessing costs when prioritizing locations for future barriers, CBP does not have complete information to determine whether it is using its limited resources in the most cost-effective manner and does not have important cost information that would help it develop future budget requests.

These comments might seem perfectly reasonable, but in the context of law enforcement – that, after all, is what CBP does – our nation's auditors are asking for an awful lot. Measurement is simple and arguably accurate when variables are readily quantifiable; say, profit and loss in business, crimes committed and cleared by arrest in everyday policing. But demanding that DHS produce a cost-benefit analysis for each border-hardening proposal would require it to attach numbers – *accurate* numbers, not just guesses – to the illegal crossings and, even more importantly, other crimes the expenditures would prevent. That seems a bit much. After all, had proof of such effects been a condition for funding ATF, your blogger wouldn't have a retired special agent's badge to display on his bookshelf.

So why the obstinacy? While GAO enjoys a reputation for impartiality, its employees may not appreciate the President's "my way or the highway" approach. (Incidentally, GAO's report about the costs of [the President's excursions to Mar-a-Lago](#) are yet to be made public. One can only hope they will reflect the same tenacity and attention to detail that characterizes the agency's more mundane work.)

Of course, Congress gets the final say. GAO is only there to inform. In this case, though, their joint efforts have aligned in a way, intentionally or not, that can only

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frustrate the President's ambitions. From that perspective his perhaps regrettable tantrums make perfect sense. Meanwhile, the nation still pines for a comprehensive, truly objective assessment of what (and how much) ought to be done to safeguard its borders. Alas, in this ideologically fraught, hopelessly divided climate, that prospect seems no more likely than building the wall.