NATIONAL COMMISSION
ON LAW OBSERVANCE AND ENFORCEMENT

REPORT
ON
THE ENFORCEMENT OF THE DEPORTATION LAWS OF THE UNITED STATES

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LETTER OF TRANSMITTAL

MAY 27, 1931.

MR. PRESIDENT: I beg to transmit herewith a fifth report of the National Commission on Law Observance and Enforcement, treating of the Enforcement of the Deportation Laws of the United States. I have the honor to be,

Very truly yours,

GEO. W. WICKERSHAM,
Chairman.

To the PRESIDENT OF THE UNITED STATES.

THE ENFORCEMENT OF THE DEPORTATION LAWS

The current notion that the so-called foreign-born part of the population of the United States, including the children of foreign-born parents, is responsible for a disproportionate part of the crime committed in the country is certainly not based upon an adequate statistical foundation. It is true, however, that in some of our large cities some types of crime have appeared as a peculiar weakness of certain groups of foreign people and that in some instances, among these groups, organizations are popularly believed to have been perfected both for the systematic commission of crime and for the protection of offenders against detection and punishment. It is not strange that among people only recently admitted to our shores, there should be many who find it difficult to adjust themselves to the changed conditions under which they must live in the land of their adoption. Rural immigrants, who scatter over the United States following rural occupations, have found the adjustment easy, as have those also who have undertaken to follow among us the simpler trades and callings to the habits and art of which they were accustomed in the country from which they came. But to those who settled in our great industrial cities, the change was severe and exacting. In order to meet together the strange and difficult conditions of their new life, to provide for one another the sympathy which they did not know how to elicit from a people whose language and ways they did not understand, and to retain some sense of old racial and community membership, at least until they or their children could acquire relationships and positions in the new society, these people naturally grouped themselves into racial colonies. The process by which the foreign born are to be assimilated into American life consists of an attrition between their habits and limita-

tions and the new life around them until their nonassimilable traits are worn away and the inadequacies of their equipment are supplemented by the things which are necessary to make them fit into our highly industrialized and commercialized life.

From other studies made for this commission, the strong likelihood appears that the foreign born in the United States can be definitely exonerated from the charge that they have been responsible for a disproportionate share of the crime current in the country. These studies seem to disclose no reliable statistical basis for an opinion as to whether such an excess of criminality has or has not developed among Americans born in the United States with one or both parents foreign born. It would not be unreasonable to expect greater difficulty with this group. The foreign born naturally are less aggressive than their children born in this country, in their efforts to become Americanized, and more tenacious than their children in retaining the traditions and habits of subordination acquired in the country of their origin. The American-born children of foreign parents, associating in our public schools and in the streets of our cities with thoroughly American children, naturally want to leap all the barriers which set them apart as a distinct class and quickly resent, if they do not rebel against, the discipline and conditions of their homes, which seek to preserve in them the characteristics of foreign children as distinguished from American children. This early resentment and rebellion against parental standards and parental discipline, refreshed from time to time by group-conscious assumptions of discrimination, may well produce special difficulties and dangers for these first-generation Americans. Beyond the obvious probability of disturbance from such conditions it is not possible at present to go. Statistical data, adequate in extent and reliable in character, are simply not available.

How far these difficult readjustments and surviving racial habits and tendencies are either themselves causes of crime or constitute conditions unfavorable to law observance is properly a branch of the general subject of the causes of crime, for the study of which a special subcommittee of the commission has been constituted. But this commission discovers afresh, each time a special study is presented to it, the interrelation of the branches into which it has divided its general inquiry and the difficulty of commenting, separately, upon reports which sometimes touch at a tangent and at other times interlock with other subjects, for the study of which other groups of experts are collecting material, and which in the main are in the province of the subcommittees of the commission itself. For this reason extended comment at this point is withheld upon any effect which the enforcement of the deportation laws of the United States may have as a causative factor in the general crime situation. It is obvious, however, both that the spirit of these foreign groups would naturally be apprehensive of the administration of a body of law aimed particularly at members of the group, and suspicious of an administrative enforcement of that law, nonjudicial in character, or at least surrounded by few of the safeguards which in every country characterize the judicial determination of personal and property rights of great and sometimes tragic importance. This apprehension is constant, for no foreign-born resident of the United States, whether he has been naturalized or not, can ever be sure that he will not suddenly be made the subject of an administrative process, carried on without his knowledge by telegraph between an inspector in the field and a bureau in Washington, which will find some irregularity in his entry or in his conduct, break the personal and property ties which he has established in the United States, and return him to the country from which he came, where he will not be welcome and where he has already found the conditions of life too hard to endure. Every claim by an alien, except the high prerogative claim of citizenship, may be thus adversely determined by a nonjudicial administrative process, and, in the absence of an established appellate procedure, the protection of a habeas corpus proceeding is only rarely available through the employment of competent counsel. This situation prolongs and deepens the immigrant's sense of insecurity and delays his mental and moral stabilization in the country which he is seeking to adopt.

With this report there is transmitted a study of the enforcement laws of the United States made by Mr. Reuben

Oppenheimer at the request of the Committee on Criminal Justice and the Foreign Born. Mr. Oppenheimer is a graduate of Johns Hopkins University, Harvard Law School, and is a member of the Baltimore bar. In addition to an active practice of his profession since 1921, he has been engaged in legal and sociological research of various kinds, dealing primarily with juvenile courts, juvenile delinquents, and the legal aspects of the family, and has published in law reviews and elsewhere, in conjunction with Mr. Bernard Flexner, of the New York bar, and others, the results of these researches.

Under the auspices of the legal research committee of the Commonwealth fund, Dr. William C. Van Vleck has in the course of preparation a report on administrative control of aliens. This report has not yet been published, but Mr. Oppenheimer has been permitted to examine it, and to the extent that the two studies cover the same ground, Mr. Oppenheimer finds Doctor Van Vleck and himself, in the main, in agreement as to their findings of fact and conclusions.

A more restricted study, Deportation of Aliens to Europe, by Jane Perry Clark, of Columbia University, has also been substantially completed. Mr. Oppenheimer has seen Miss Clark's material. To the extent that the two investigations cover the same field, the findings of Miss Clark are in agreement with those of Mr. Oppenheimer.

Deportation laws are, of course, necessary. No other penalty than deportation will protect the United States from being inundated by defective, diseased, delinquent, and incorrigible persons. No other penalty will adequately discourage border jumpers or stowaways or the industry of smuggling undesirable aliens at our borders. The United States has a policy with regard to the admission of aliens, and those who by fraud make illegal entries, or by subsequent conduct attempt to defeat that policy, should be deported. For roughly 100 years we welcomed aliens without much discrimination. The immigrants who came in great numbers were scattered and, as it were, sown into the vast areas of undeveloped agricultural lands of the country, and they neither faced nor presented the problem which arose

when our own population began to become urban and intensely industrial. It was not, therefore, until 1882 that need was felt for a general immigration law and not until 1917 that what may be called the present policy of the country on that subject was adopted. At the outset the whole matter was naturally intrusted to an immigration service which, operating at the ports of entry, excluded undesirables. Gradually it began to appear that illegal entries were being made at other places and that the machinery for preventing the entry of ineligibles *in limine* had to be enlarged. Prohibition of entry had to be supplemented by detection and deportation of fraudulent entrants and developed ineligibles. For two reasons the remedy was sought in a mere enlargement of the administrative task of the Bureau of Immigration. First, because it seemed natural to intrust to those whose task it was to prevent illegal entries the additional task of discovering those who escaped their net and, second, because the last 50 years has been characterized by a tendency to use administrative processes rather than judicial processes, wherever it was possible, to avoid delay and to secure simplification of procedure. As a consequence, as Mr. Oppenheimer points out, the deportation laws of the United States are administratively enforced and the agents of the Bureau of Immigration of the Department of Labor, operating in the interior of the United States, each have the whole duty of enforcing these laws in their districts. This makes of such an agent a detective, a prosecutor, and a judge—three functions which we have found it safe, in no other phase of life, to intrust to any one individual. Mr. Oppenheimer's examination of the subject leads him to believe that the spirit of the bureau and its agents has for the most part been fair, but he points out striking instances of oppression, unfairness, and hardship which are certainly to be expected in the enforcement of a law which leaves little or no discretion, even to the head of the bureau, and is operated by agents scattered over the country, subject to a centralized control, which, with the slightest relaxation of official vigilance, will become illusory. This control is by a central bureau which bases its judgments upon the reports of the

officers who have discovered the prospective deportee, subjected him to examination, formed a judgment adverse to him, and reported, for confirmation and authority to act, that judgment, with such part of the record as the prosecutor judge deems necessary to secure affirmance of the opinion which it has engendered in him.

Mr. Oppenheimer's report develops historically and procedurally the growth of the administrative enforcement of the deportation law, points out suggested remedies for the sporadic evils which have developed, and safeguards against other evils which are inherently likely under a system so centralized and administered. Happily his investigation discovered nothing worse than the kind of unfairness to the suspected deportee which occasionally results where men untrained in the law become too zealous as prosecutors to remain judicial as judges. Plainly there should intervene in this process a judicial body independent of the department charged with the administrative features of the enforcement of the law. Such a court or commission thus would be wholly disassociated from the discovery and prosecution of deportees. To such a court appeals should be easily prosecuted. It should hear, in open court and in the presence of the accused, all the evidence upon which the final judgment is to be predicated. In the end a public record should be made of each case.

As Mr. Oppenheimer points out, such private and confidential matters as develop in these inquiries could be adequately protected in the public record by substituting numbers or letters for the names of the persons involved in the proceedings.

It should not be forgotten that although the administration of this law annually results in the deportation of approximately 15,000 persons, the investigating activities of the department annually question the right of approximately 100,000 persons to remain in the United States. Of course, the number of foreign born in the United States, as to whom the possibility of such a question constantly exists, is vastly greater, and for their reassurance open and easily intelligible processes, administered with convincing justice, are essential.

To the extent that these laws affect foreign-born persons who have been accorded the right of citizenship, the Government gives them, what it owes to every citizen, a just determination of their rights by the common processes of judicial action. To the extent that these laws affect foreign-born persons who have not yet been made citizens, it is especially important that fairness should not only be exercised but be made manifest. But the law makes no distinction between naturalized and unnaturalized persons in its guaranty of the great fundamental rights which are here under consideration. The Bills of Rights of the United States and of the States extend their guaranties to "persons," thus making them rights of men and not privileges of citizenship. A naturalized citizen has acquired substantive rights as a citizen by virtue of his naturalization, but the most temporary resident of the United States, owing allegiance to another government, is, while he is on our soil, given the equal protection of our laws, and it is not consistent with the spirit of our institutions or the express language of our bills of rights to deny the substance of these guaranties to resident aliens, either directly or indirectly, by adopting processes for their assurance which in effect diminish their efficacy to classes of persons not classified by the Constitution itself. Even a person accused of a fraudulent entry in violation of our laws is entitled to have the facts fairly determined as to the truth of the charge. These considerations are emphasized by the fact that in many deportation cases, even when the judgment is just and necessary, the hardships are extreme both upon those who are deported and their families who are permitted to remain, and in the opinion of this commission the limited discretion which Mr. Oppenheimer recommends to be given, to permit in cases of exceptional hardship a relaxation of the rigid requirement of the present statutes, would be consistent with the dignity of a great and humane Nation. The instances calling for the exercise of discretionary relaxation would be too few to constitute a real infraction of the policy of the country which it is, of course, of great importance to maintain.

The commission adopts the conclusions and recommendations which constitute Chapter IV of Mr. Oppenheimer's report.

GEORGE W. WICKERSHAM, *Chairman.*
NEWTON D. BAKER,
ADA L. COMSTOCK,
WILLIAM I. GRUBB,
WILLIAM S. KENYON,
MONTE M. LEMANN,
FRANK J. LOESCH,
PAUL J. MCCORMICK,
ROSCOE POUND.

MAY 27, 1931.

STATEMENT OF HENRY W. ANDERSON

I concur generally in the statement of principles and in the observations contained in the report of the commission as to the defects in the present system for the deportation of aliens. I regret that I am unable to concur in all of the conclusions and recommendations adopted by the commission from Chapter IV of Mr. Oppenheimer's report.

In section 1, clauses (*a*) and (*b*) of Chapter IV, Mr. Oppenheimer states as conclusions from his study that "the apprehension and examination of supposed aliens are often characterized by methods unconstitutional, tyrannic, and oppressive," and that there is strong reason to believe that in many cases persons are deported "when further development of facts or proper construction of law" would have shown their right to remain. While he is careful to say that the defects and abuses inherent in the system are not primarily the fault of the agency in charge of deportation, yet I am constrained to feel that these conclusions constitute a severe indictment of those charged with the administration of the law. The provisions of the Federal Constitution for the protection of the rights of every person, citizen or alien, are a part of the supreme law of the land, binding upon all officers of the Government. No officer or agency of government is authorized under any system to disregard these constitutional limitations or to administer the law in a "tyrannic and oppressive" manner. It is equally true that it is the duty of those charged with the administration of laws affecting the most sacred personal rights applicable generally to persons who are not familiar with our language or institutions to see that the facts are fully developed and that the law is properly applied. The conclusions stated are in effect findings that the officers administering the law are often guilty of lawless invasion or disregard of the fundamental rights of the persons concerned. This is a serious charge, for nothing can be more destructive of respect for or confidence in government than the lawless administration of the law.

With due regard to the apparent thoroughness of Mr. Oppenheimer's inquiry and the weight to be given to his conclusions, I am not prepared as a member of this commission to adopt, and enunciate as my own, findings of such a sweeping character affecting the conduct of those engaged in the administration of the law without first having made a personal examination of the actual records and other evidence upon which those findings are based. This can not now be done.

In these circumstances I am constrained to feel that these findings should be transmitted as those of Mr. Oppenheimer, based upon his study of the subject and examination of the evidence. As such they can not fail to challenge the attention of those in authority, and should induce a thorough inquiry. If such conditions exist appropriate measures should be taken to prevent, as far as possible, conduct so highly prejudicial both to personal rights and the orderly administration of the law.

I agree with the conclusions in section 2, clauses (*a*) to (*f*), inclusive, of Chapter IV of Mr. Oppenheimer's report as to the defects inherent in the present system. It requires no argument to demonstrate that as to matters involving vital personal rights and liberties the powers and duties of detection, prosecution, adjudication, and execution of judgment should not all be vested in one administrative agency of

the Government. It is disturbing to be told that the principles and practices of the Inquisition and the star chamber have gained a foothold in our system of government. If these principles and practices are admitted as to aliens, it is only a question of time when they will be applied as to citizens. They have no place in our American system.

It is equally obvious that in the administration of laws of this character discretion should be vested in some officer or agency of government to grant such relief as may be required by justice and the ordinary considerations of humanity against peculiar hardships which may arise in individual cases, of which examples are given by Mr. Oppenheimer in his report.

I am not prepared, however, to adopt the recommendation contained in section 3, clauses (*d*), (*e*), and (*f*) of Chapter IV, for the creation of a board of alien appeals to exercise judicial functions in connection with the deportation of aliens. In my view the creation of special tribunals of the character proposed should be avoided wherever it is possible to do so. They tend to produce complexity and confusion in government, with constantly increasing organization and expense; to destroy that simplicity of organization and direct responsibility which is essential to effective administration either in private or public affairs.

Independent administrative tribunals may be and sometimes are necessary as agencies for the efficient exercise of the regulatory powers of government, but the trial of offenses against the law is a judicial function, and such trials should be conducted in the courts, where proper protection of personal rights may be afforded and the aid of counsel in every stage of the proceedings may be insured.

The fact that the number of cases is large is no adequate reason for denying to a person accused of violating the law the right of a trial in the courts under the protection of recognized judicial procedure. The proper administration of justice to citizen and alien, to rich and poor, is one of the first and most important duties of government. If the present courts are inadequate for the prompt and orderly administration of justice, others should be created.

Neither considerations of convenience nor economy should weigh against the proper administration of justice to any person within the jurisdiction of the United States.

I see no reason why the execution of the administrative features of the law, including investigation, detection, prosecution, and the enforcement of orders of deportation, should not be vested in the Department of Labor as at present, while trials of offenses against the law, which is a judicial function, should be conducted in the courts of the United States. If a charge justifying or requiring deportation under the statute is sustained, an order of deportation should be entered by the court, to be executed by the Department of Labor, with discretion vested in the President to relieve against peculiar hardships in special cases.

I regret that the time and resources of the commission did not permit of a thorough study of our immigration laws and their enforcement. The statistics given in Chapters I and II of Mr. Oppenheimer's report, estimating the large number of aliens unlawfully in the United States and showing the number of deportations from the United States, the number of aliens in our penal institutions, and the classes of deportees, naturally suggests the inquiry as to why these people are here at all. Apparently a small proportion only of the aliens who are in the United States in violation of our policies and laws are found and deported. We certainly have the right to demand that these laws be respected and to see that they are enforced. It is hoped that this study, although confined to the enforcement of the deportation laws, may lead to a thorough inquiry into the entire system, and result in such changes in the law or in the system of administration as will tend to render methods of prevention or control more effective and methods of deportation more humane.

While I am compelled, for the reasons stated, to differ from some of the conclusions and recommendations of Mr. Oppenheimer which are adopted by the commission, I can not too strongly emphasize my appreciation of the importance and apparent thoroughness of his study and report.

HENRY W. ANDERSON.

MAY 27, 1931.

STATEMENT OF KENNETH MACKINTOSH

A careful reading of Mr. Oppenheimer's report leaves me with the impression that from a necessarily incomplete study of a relatively small portion of the deportation cases, instances of abuse have received overemphasis and inferences of abuse have been indulged in where a full knowledge of all the facts would justify the result obtained. I do not believe that these laws are being so negligently or abusively administered as this report seems to indicate. To believe otherwise I would require more clear, cogent, and convincing evidence than has been so far offered. The justifiable presumption that a high department of government is honestly and humanely performing its important duty should not be overcome by the showing of deviation from the procedure in the trial of criminal causes to which lawyers are accustomed.

I feel that the difference between a judicial and an administrative function has not been kept as clearly in mind as it should have been in making an appraisement of the operation of deportation. The process of removal of aliens is not a prosecution for crime where the defendant must be accorded all the protections guaranteed under our system of criminal justice, but it is only the withdrawal of a privilege because of its having been abused, and in such an administrative proceeding it is not necessary to make use of all the technical machinery available in a criminal prosecution. This does not relieve the Government, of course, from an obligation of fairness and just dealing, but that obligation is not neglected merely because all the formalities of a criminal investigation, hearing, and trial are not strictly observed. I can not concur in a rather general indictment of a purely administrative branch of the Government based in large measure upon the failure to follow usual judicial procedure. It seems to me that such criticism takes too

legalistic a view of the nature of the problem. For that reason I look with apprehension upon the suggestion of creating what, according to experience, will be an elaborate judicial department for the consideration of these deportation matters. The result will be another large governmental body with its usual concomitants of expense, delay, growth of technicalities, and opportunities for the frustration of the [illegible] and salutary purpose of exclusion of undesirables.

That there are mistakes made under the present system is apparent, but they can be avoided by more careful handling of present machinery. That there are hardships in some cases is not the fault of the administration but of the law itself which in its rigidity does not allow the exercise of an ameliorating discretion in those cases where family relationships would be distressingly disturbed by a strict adherence to the letter of the law.

With more care on the part of the enforcing personnel and the legislative grant of some discretion in hard cases, my belief is that the situation can be adequately taken care of.

KENNETH MACKINTOSH.

MAY 27, 1931.

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THE ADMINISTRATION OF THE DEPORTATION LAWS OF THE UNITED STATES

REPORT TO

THE NATIONAL COMMISSION
ON LAW OBSERVANCE AND ENFORCEMENT

By REUBEN OPPENHEIMER
OF THE BALTIMORE BAR

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THE ADMINISTRATION OF THE DEPORTATION LAWS OF THE UNITED STATES

Chapter I

GENERAL CONSIDERATIONS AND METHOD OF INQUIRY

I

SCOPE OF THE REPORT

This report is concerned with the processes of the law in the expulsion of aliens unlawfully in this country. Under the Federal statutes, these processes, involving a number of varied and difficult functions, are carried out by a single executive branch of the United States Government, the Department of Labor.

The report does not deal with the exclusion of aliens at the time they present themselves for admission, nor does it deal, except incidentally, with the substantive laws which determine what aliens are to be deported. The processes of expulsion are generally referred to as "warrant proceedings"; this is a study of the methods by which these warrant proceedings are conducted and their results.

II

EXTENT OF THE PROBLEM

During the past 10 years over 90,000 aliens have been deported from this country under warrant proceedings, and, in addition, during the past 6 years for which records have been kept, over 95,000 aliens subject to deportation have been permitted to depart voluntarily without warrant proceedings having been consummated.

Deportations under warrant proceedings for the last 10 years are as follows:

Year ended June 30—	Number of aliens deported	Year ended June 30—	Number of aliens deported
1921	4,517	1927	11,662
1922	4,345	1928	11,625
1923	3,661	1929	12,908
1924	6,409	1930	16,631
1925	9,495		
1926	10,904	Total	92,157

The number of cases investigated in connection with warrant proceedings each year is very much larger than the number of actual deportations. At the present time, over 100,000 suspects are being investigated by the Department of Labor annually. The number of investigations for the past three years, each ended June 30, are as follows:

	1928	1929	1930
Warrant cases investigated in connection with warrant proceedings:			
In penal institutions	10,286	10,158	14,047
In hospitals and almshouses	2,818	2,851	2,813
At large	67,273	99,713	98,536
Total	80,377	112,722	115,396
Total investigations in connection with warrant proceedings for the fiscal years 1928, 1929, and 1930			308,495

According to the census of 1920, the number of foreign-born persons of all ages at that time resident in the United States and not naturalized was in excess of 7,000,000. The number of aliens unlawfully in the United States has been variously estimated, the estimates running from 400,000 to 3,000,000.

The investigations by the agents of the Department of Labor necessarily involve a large number both of aliens lawfully here and of United States citizens.

III

CONSIDERATIONS INVOLVED

The execution of the deportation laws involves considerations fundamental to the people of the United States and to its institutions.

1

Enforcement of Immigration Laws

The policy of the Congress of the United States for some years has been drastically to restrict and regulate immigration into this country. It is not pertinent to consider the changing economic and social conditions which have made advisable this reversal of policy from the time when immigration was encouraged and fostered. It is sufficient to point out the fact of the present attitude of Congress and the executive officers of the Government and the overwhelming public opinion behind these policies. Restriction of immigration, with all the complicated and expensive machinery which our quota laws have necessitated, can not be effective without corresponding activity on the part of the United States Government for the expulsion of aliens who have entered this country or are remaining here in violation of our laws. No law can be made effective by preventive measures alone; there must be retribution for those who elude the preventive processes.

2

Ridding Country of Undesirable Aliens

It is a necessary attribute of sovereignty that a country should have the right to expel residents who are not citizens and who are members of the criminal or other undesirable classes. The necessity for the practical application of this right is obvious. The prevalence of crime and disregard for law in this country is one of the reasons for the creation of this commission. There are serious problems enough in our own body of citizens both with respect to disregard for law and with respect to the general social organization; it is patent that these problems should not be aggravated by the continued residence in our midst of such aliens as are members of classes dangerous to the community.

3

Fairness to Excluded Aliens

Fairness to the aliens whom we exclude from this country demands that we should take proper steps to see that other aliens who do not abide by our immigration laws can not continue to reside here. It is manifestly unjust to the aliens who abide by our decision of exclusion that other aliens who have entered illegally or who have overstayed the period for which they were admitted should be allowed immunity.

4

Protection of American Workmen

The problem becomes particularly acute in times of depression and economic hardship, when unemployment is great. The presence of aliens unlawfully here often results in actual deprivation to American workers and their families.

5

Seriousness of Deportation

On the other hand, the processes of deportation may involve the most important of human rights. There is an obvious difference between turning back an alien when he applies for admission at one of our boundaries and deporting him after he has been in this country for some time. In cases of exclusion, the inconvenience to the alien is generally inconsiderable. In most cases he has not been absent from his home long enough for readjustment to have become difficult. In the case of deportation, however, often the roots of the alien's existence have been uptorn from his native land and he has formed attachments of the most permanent nature in this country.

The seriousness of the deportation process with respect to aliens has always been recognized. James Madison, in his report on the Virginia resolutions, in speaking of the alien act of 1798, described deportation as—

> the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a country where he may have formed the most tender connections; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys under the laws, a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for; and where he may have nearly completed his probationary title to citizenship. (4 Elliott Debates on the Federal Constitution, p. 555.)

In one of the first cases before the Supreme Court involving deportation proceedings (Fong Yue Ting *v.* U. S., 149 U. S. 698), Justice Brewer described the process as one where the alien is "forcibly taken away from home, and family, and friends, and business, and property, and sent across the ocean to a distant land * * *." In another case the Supreme Court has referred to the deportation process as involving "the fundamental rights of men * * * regardless of their origin or race." (Kwock Jan Fat *v.* White, 253 U. S. 454, 464.) In the case of Ng Fung Ho *v.* White (259 U. S. 276) the court pointed out that deportation "* * * may result also in loss of both property and life; or of all that makes life worth living."

6

Protection of Constitutional Rights

Apart from the results of deportation, the rights given by the Federal laws to the administrative agency are tremendous in scope. The very investigations to see whether suspected persons are subject to deportation, by their nature, involve possible interference of the gravest kind with the rights of personal liberty. Unlawful searches and seizures may be perpetrated; rights of lawful assembly and free speech may be infringed. These investigations are not public, and they often involve American citizens. It is as important to American institutions that fundamental principles of justice and fairness be observed in the administration of the laws as it is that aliens unlawfully here should be deported.

7

International Relations

The deportation of an alien is the close of a chapter, but the story is not ended. His return will have reverberations in the country to which he is sent back, among relatives and friends and members of the community. America can no longer be the promised land for so many of the people of Europe, but if we value the good will of other nations, the aliens we deport must have no just ground for complaint that hospitality has been transmuted into injustice.

8

Principles of Humanity

Deportation often involves not only aliens but also American wives, husbands, and children. Separation of families by deportation of the head member may in itself result in making those who remain public charges. Necessity for enforcement of the law can not preclude considerations of humanity.

9

Respect for Law

Thousands of our immigrant population who are not subject to deportation learn of our Government and our institutions at first hand only by the contact that they or their friends have with immigration officials. As Mr. Reginald Heber Smith says in Justice and the Poor, the immigrant "comes to this country, often from lands of injustice and oppression, with high hopes, expecting to receive fair play and square dealing. It is essential that he be assimilated and taught respect for our institutions. Because of the strangeness of all his surroundings, his ignorance of our language and our customs, often because of his simple faith

in the America of which he has heard, he becomes an easy prey. When he finds himself wronged or betrayed keen disappointment is added to the sense of injustice. Through bitter disillusionment he becomes easily subject to the influences of sedition and disorder."

IV

MATERIALS USED

1. *Reports and statistics of the Department of Labor.*—This material includes the annual reports of the Commissioner General of Immigration, together with past and present rules of the department and statistical information on a number of subjects not included in the annual reports. The offices of the Secretary of Labor and the Commissioner General of Immigration have extended every possible cooperation for the collection of the material used in making this report.

2. *Reports of warrant proceedings.*—The reports of the proceedings of the Department of Labor in connection with warrant cases are contained in files arranged chronologically; each file contains all the information upon which the warrant of deportation is issued or refused. A large number of these reports have been read. For the basis of detailed study, the fiscal year beginning July 1, 1928, and ending June 30, 1929, was taken. This year was selected as the most recent in which the material was apt to be complete; in the subsequent year a number of the cases were necessarily still open. Detailed examination of the files for this fiscal year was made by taking every twentieth case in chronological order for a portion of the year and for the remainder every fiftieth case. Full abstracts of each case so studied were made. As a result of this process, abstracts were made of 453 cases involving 496 persons. To test the representativeness of these 453 cases, the nationalities of the aliens deported as a result of these cases were compared on a percentage basis with similar figures of the Commissioner General of Immigration for the entire year. The results are as follows:

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Comparative distribution, by race or people, of aliens deported from the United States during year ended June 30, 1929, in the total number deported and in the cases studied

Race or people	Per cent of all 12,908 deportations [1]	Per cent of deportations in 453 cases studied
African (black)	1.9	3.4
Armenian	.1	0
Bohemian and Moravian (Czech)	.4	1.5
Bulgarian, Serbian, and Montenegrin	1.1	.9
Chinese	.9	.3
Croatian and Slovenian	.7	.6
Cuban	.2	.6
Dalmatian, Bosnian, and Herzegovinian	.1	0
Dutch and Flemish	1.8	3.1
East Indian	.3	.6
English	7.3	6.5
Finnish	.6	.3
French	5.8	3.4
German	5.6	4.9
Greek	1.2	.9
Hebrew	1.2	1.8
Irish	4.4	5.2
Italian (North)	1	.9
Italian (South)	3.6	1.5
Japanese	.9	.6
Korean	(2)	0
Lithuanian	.2	0
Magyar	.8	1.5
Mexican	41.9	43.4
Pacific Islander	(2)	0
Polish	1.8	1.2
Portuguese	.5	.3
Rumanian	.7	.6
Russian	.6	1.8
Ruthenian (Russniak)	.4	.6
Scandinavian (Norwegian, Danes, and Swedes)	3.9	4.3
Scotch	3	4
Slovak	1.5	0
Spanish	2.1	2.5
Spanish American	1.4	1.2
Syrian	.4	0
Turkish	.1	0
Welsh	.3	.3
West Indian (except Cuban)	.1	0
Other peoples	1.2	.9

[1] U. S. Department of Labor: Annual Report of the Commissioner General of Immigration, 1929 (U. S. Government Printing Office, Washington, 1929). Table 105, p. 223.
[2] Less than one-tenth of 1 per cent.

Other tests were made and substantiate the conclusion that the cases abstracted form a representative cross-section. All abstracts of and quotations from deportation proceedings in this report, unless otherwise noted, are taken from these 453 cases or from hearings personally attended by the writer.

3. *Personal investigation.*—In addition to the 453 cases abstracted, the writer of this report attended deportation hearings of various kinds, including both preliminary examinations and hearings on warrants of arrest, in 10 cities throughout the country, including New York, Chicago, and points along both the Canadian and Mexican borders.

4. *Interviews with officials.*—A number of interviews with immigration officials were had by the writer both in Washington and in all the cities where deportation hearings were attended. The officials interviewed include commissioners, assistant commissioners, district directors, immigrant inspectors, and patrol inspectors in the various localities.

5. *Interviews with attorneys and organizations.*—A number of interviews were also had with representatives of organizations interested in various ways in the problems of deportations, and with attorneys who specialize in deportation cases or in matters pertinent thereto.

6. *Letters in answer to questions.*—Letters were received from persons from various parts of the country in answer to particular matters or volunteering information with respect to deportation.

7. *Reports of congressional hearings.*—The reports of congressional hearings in connection with the immigration act of 1924 and the proposed deportation act of 1926, as well as other hearings and reports on recent bills involving the deportation process have been examined.

8. *Printed books, papers, and pamphlets.*—A number of books, documents, and reports on various aspects of deportation have been gone over and considered.

9. *Other reports.*—At approximately the same time this report was being prepared, two other studies were being made which involved the deportation of aliens. One study was that of Dr. William C. Van Vleck, dean of George Washington Law School, on Administrative Control of Aliens, prepared under the auspices of the legal research committee of the Commonwealth Fund. Another study was being made by Miss Jane Perry Clark, instructor in government, of Barnard College, New York City, on Deportation of Aliens From the United States to Europe, for the faculty of political science of Columbia University. Both of these studies were made independently of the present report and are soon to be published. After the writer's investigations had been finished and his conclusions arrived at, he had the

opportunity of examining the study made by Doctor Van Vleck, and, after this report had been printed in galley form, the writer was able to examine Miss Clark's study. In so far as the three reports deal with the same aspects of the deportation proceedings, their findings of fact are substantially the same.

V

LAWS RELATING TO DEPORTATION OF ALIENS

1

History of Deportation Laws

The first general immigration law, passed in 1882, provided only for the deportation of aliens who were excluded at the ports of entry. In 1888 Congress provided for the deportation of contract laborers who within a year after landing were found to have entered in violation of law. The expulsion and deportation of aliens after they had been permitted to land was first provided for as a general system in the act of 1891. The periods during which deportations were possible were extended in certain cases in 1903 and 1907.

In the general immigration act of 1917 the provisions regarding expulsion were greatly enlarged and extended and it is this act with subsequent modifications and enlargements which is still the general basis of warrant proceedings. Important changes as to the time within which deportation could be effected and as to the penalties for violation of the deportation laws were made in 1924 and 1929.

Despite the changes of substantive law, the procedure in general warrant cases has remained unchanged since the act of 1917, which provides that aliens found to be unlawfully in this country "* * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *."

Unlike the general provisions applicable to aliens found to be unlawfully in this country, the Chinese exclusion laws have always provided that any Chinese person found unlawfully within the United States shall be removed to the country whence he came after being brought before some justice, judge, or commissioner of the court of the United States and found not lawfully entitled to be, or remain in the United States. The expulsion of Chinese who are unlawfully living here but who do not come within the general deportation provisions applicable to all aliens is still under the jurisdiction of the Federal judiciary, although the great majority of Chinese cases may be treated administratively as warrant proceedings.

While it is not the purpose of this report to treat in detail the various statutory provisions which designate the aliens who are deportable, it is necessary to give an outline of the statutes before the technique of deportation is taken up in detail. These statutes have been passed at different times and their proper construction sometimes involves difficult questions with which in general this report will not attempt to deal.

For the same reasons, some reference to the court decisions upon expulsion and deportation is necessary.

2

Outline of Statutes

(a) CLASSES OF ALIENS DEPORTABLE

(1) Aliens Deportable Because of Manner of Entry or Condition or Status at Entry

This class includes:

Any alien who at the time of entry was a member of one or more of the classes excluded by law.

Any alien who shall have entered or who has been found in the United States in violation of a law of the United States.

Any alien who was convicted or admits the commission prior to entry of a felony or other crime or misdemeanor involving "moral turpitude."

Any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials.

Any alien who shall have entered the United States by land at any time or place other than as designated by immigration officials.

Any alien who enters without inspection by immigration officials. This covers also aliens who obtain entry to the United States by false and misleading representations or the willful concealment of a material fact.

Any alien who is found to have been at the time of entry not entitled to enter the United States under the general immigration laws.

Any alien who is found to have entered this country other than as permitted under the immigration acts or regulations made thereunder.

(2) ALIENS DEPORTABLE BECAUSE OF THEIR CONDITION OR ACTIONS AFTER ENTRY

This class includes:

Any alien who is an anarchist, who advises, teaches, or is a member of or is affiliated with any organization advising or advocating opposition to all organized government; any alien who believes in or teaches the overthrow by force or violence of the Government of the United States, or of all forms of law, or the unlawful killing or assaulting of any official of the Government, or the unlawful damage or destruction of property or sabotage, or who is a member of or affiliated with any organization so believing or teaching; any alien who writes or causes to be published any matter so advocating or teaching or who is a member of or affiliated with any organization which does so.

Any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing.

Any alien who is sentenced to imprisonment to a term of one year or more because of conviction in this country of a crime involving "moral turpitude" committed within five years after entry.

Any alien who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving "moral turpitude" committed at any time after entry.

Any alien who imports or attempts to import into the United States any alien for the purpose of prostitution or any other "immoral purpose."

Any alien convicted for a violation of the narcotic act.

Any alien interned under war legislation or convicted for violation or conspiracy to violate certain acts of Congress with respect to interference with foreign relations and neutrality, willful injury of war material, and other similar measures.

(*b*) TIME LIMITS WITHIN WHICH ALIENS ARE DEPORTABLE

The act of 1917 set up time limits within which the various classes of aliens were deportable, in effect constituting statutes of limitations in the various cases. These time limits have been greatly affected by subsequent enactments. For example, while the act of 1917 provided that any alien (other than seamen) who entered this country or was found here in violation of law should be deportable at any time within five years after entry, the act of 1924 provides that any alien who is found to have been at the time of entry not entitled to enter the United States or who remains here a longer time than permitted under the acts or regulations, shall be deported. The Supreme Court in the case of Philippides *v.* Day, decided March 23, 1931, has sustained the contention of the Department of Labor that the latter act supersedes the time limitations in the earlier statutes, so that there is no time limit as to the deportaion of aliens entering or remaining unlawfully with respect to the immigration act of 1924.

The Supreme Court of the United States has held that the "entry" of an alien referred to in the various acts means not the first time he entered this country but the last time, so that, with some minor exceptions, no matter how long an alien may have resided in the United States, if he leaves this country, whether for a year, a day, or an hour, and reenters, the same provisions of the deportation acts may apply as though he were entering for the first time.

The acts expressly provide that aliens found to be of certain classes, such as anarchists or those connected with prostitution, shall be deportable at any time. As to these classes of aliens there is no statute of limitations. On the other

hand, in certain classes of cases the period of limitation within which the alien can be deported is expressly set forth. If an alien becomes a public charge after five years from entry he is not deportable under that particular section, and if an alien is sentenced to imprisonment for a term of one year or more because of a conviction of a crime involving "moral turpitude," if the crime is committed after five years from entry the alien is not deportable under that specific provision.

(c) AMELIORATIVE PROVISIONS

(1) Return Permits

An alien legally admitted to the United States who wishes temporarily to depart may obtain a permit to reenter with the approval of the Secretary of Labor and upon compliance with the appropriate rules. This permit can not exceed one year but may be renewed from time to time. Such a permit, however, can not be obtained unless the alien is legally in this country.

If an alien has been legally admitted to this country and has paid his head tax, he can leave without affecting his status, if his absence is for less than six months, and if he reenters legally.

(2) Registration

By the act of March 2, 1929, any alien who (1) entered the United States prior to June 3, 1921, who (2) has resided here continuously since entry, who (3) is a person of good moral character, and (4) is not subject to deportation, can, upon compliance with the regulations of the Commissioner General of Immigration, and with the approval of the Secretary of Labor, obtain a certificate of registration which has the same effect as though the alien had been lawfully admitted to the United States for permanent residence as of the date of his entry. This act in effect constitutes an additional statute of limitations for such aliens as can take advantage of its terms, and is often broadly construed by the department.

(3) Discretion as to Deportation

In certain strictly limited classes of cases there is some discretion as to whether or not an alien should be deported, even if the alien falls within one of the classes subject to deportation. In the great majority of cases, however, the statutes make no provision for any exercise of leniency.

Where an alien is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving "moral turpitude," the act further provides that such alien shall not be deportable if he has been pardoned or if the court sentencing such alien for the crime shall within 30 days from the time of imposing judgment or passing sentence make a recommendation to the Secretary of Labor that such alien shall not be deported.

Under the act of 1924 the Secretary of Labor may under such conditions and restrictions "as to support and care as he may deem necessary, permit permanently to remain in the United States, any alien child who, when under 16 years of age was heretofore temporarily admitted to the United States and who is now within the United States (July 1, 1924) and either of whose parents is a citizen of the United States."

The provisions of the act of 1920 with respect to the deportation of aliens who are interned or violate war legislation apply only "if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States."

(4) Voluntary Departure

The Secretary of Labor may and does exercise some discretion in allowing aliens subject to deportation to depart from this country voluntarily without issuance of a formal warrant of deportation. This discretion is sometimes exercised by the district offices without any application for a warrant of arrest being made. Under this procedure an alien may subsequently apply for readmission under the immigration laws, and, if he has an immediate relative who is an American citizen, may not be subject to the quota, whereas, if he is formally deported, he is forever barred from returning.

The act of 1917 makes provision for the removal to their native country at any time within three years after entry, at Government expense, of such aliens as fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being so removed. This provision, however, and action thereunder do not come within the scope of deportation proceedings.

(*d*) LEGAL EFFECT OF DEPORTATION

Only certain classes of deported aliens were permanently excluded from readmission by the earlier statutes. By the act of March 4, 1929, it was provided that if any alien has been arrested and deported in pursuance of law he shall be excluded from admission to the United States whether such deportation took place before or after the enactment of the act.

This act contains an exception with respect to any alien arrested and deported before the date of its passage in whose case the Secretary of Labor had granted permission to reapply for admission. This saving clause has ceased to be of practical importance.

It is the issuance of the warrant of deportation which bars the return of the alien and not the manner of the execution of the warrant, so that aliens who are not physically deported by the Government but pay for their own passage back are nevertheless forever barred from readmission if the warrant of deportation has been issued. Such departure under a warrant of deportation must be distinguished from voluntary departure before the warrant has been issued.

There is no discretion given under the 1929 act.

(*e*) CRIMINAL PENALTIES

The two most important penal provisions are as follows:

By the act of March 4, 1929, any alien who has been arrested and deported and who enters or attempts to enter the United States after the expiration of 60 days from the enactment of the statute is guilty of a felony and punishable by imprisonment for not more than two years or by a fine

of not more than $1,000 or by both such fine and imprisonment.

The same act provides that any alien who thereafter enters the United States at any time or place other than as designated by immigration officials or eludes examination or inspection by immigration officials or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment.

Severe penalties are provided for those who forge immigration visas or permits, or knowingly take part in the fraudulent procurement of documents. There are penalties imposed upon any person who brings into the United States or attempts to bring any alien not duly admitted or not lawfully entitled to enter or reside in this country, and fines may, in certain cases, be imposed upon steamship companies or other carriers. Penal provisions of other Federal laws may also be involved.

(*f*) PROCEDURE

With the exception of certain Chinese whose expulsion can be only by court proceedings, the Secretary of Labor is given the sole authority to take aliens unlawfully in this country into custody and deport them. No provision is made by the statutes for general judicial review, although, as will be seen, there is a limited scope for judicial review by way of writ of habeas corpus.

Any commissioner or immigrant inspector in charge is given by statute the power to subpœna witnesses and the production of books, papers, and documents with respect to deportation cases, and any district court within the jurisdiction of which investigations are being conducted is given the power to require such persons so summoned to appear before the immigrant inspector and to produce the books, papers, and documents in demand. Failure to obey such an order of court is punishable as contempt.

(g) BURDEN OF PROOF

By the act of 1924 in any deportation proceeding against any alien the burden of proof is upon him to show that he entered the United States lawfully and the time, place, and manner of such entry into the United States. Substantially the same burden of proof has applied to Chinese since 1892.

(h) POWER TO MAKE RULES

The Commissioner General of Immigration, under the direction of the Secretary of Labor, is given the right to establish such rules and regulations not inconsistent with law as he shall deem best calculated to carry out the provisions of the act. The latest revision of these rules is as of January 1, 1930, and includes matters relating to admission and exclusion as well as expulsion. In general, these rules, except in so far as they may conflict with provisions of the statutes or of the Constitution of the United States, are binding upon the department. Other instructions are issued from time to time in the form of circulars.

3

Outline of Procedure

The entire system for the investigation, apprehension, and deportation of aliens unlawfully in this country is centralized in Washington in the Department of Labor. In general, deportation matters are handled by the same officials who handle the various administrative features of the admission of aliens. Certain matters in connection with both admission and deportation are under the jurisdiction of the Commissioner General of Immigration.

The territory within which immigration officials are located is divided into 35 districts under the jurisdiction of commissioners of immigration, or district directors. In each district there are a number of immigrant inspectors who deal with various phases of the deportation processes, generally under an inspector in charge of the particular locality. In certain districts there are also members of the immigration border patrol, one of whose duties it is to apprehend aliens attempting to enter this country unlawfully.

The immigrant inspectors in each locality investigate aliens who are supposed to be unlawfully here. The sources of information which lead to the apprehension of supposed aliens will be considered more fully hereafter. Where an immigrant inspector feels that an alien is here unlawfully, he generally proceeds to conduct a thorough oral examination of the suspect which covers the time and manner of the alien's entry into this country and such other matters as the immigrant inspector may feel pertinent or upon which he may wish information. After such preliminary examination, or, in some cases, without the preliminary examination having been made, the immigrant inspector applies for a warrant of arrest.

Warrants of arrest of aliens supposed to be unlawfully in this country are issued only in Washington in the office of the Department of Labor. The application for the warrant of arrest, under the rules of the department, must state facts showing prima facie that the alien is subject to deportation, but there is provision for telegraphic application in cases of necessity. A large number of the warrants are issued upon such telegraphic applications.

The warrant of arrest, stating in general language the violation of the immigration laws charged, is then served upon the suspect. The alien is detained pending hearing unless he can make satisfactory arrangements for the giving of a bond or unless it is seen fit to release him on his own recognizance. If he is not released under bond or his own recognizance, he is kept either in detention quarters of the immigration department in certain larger cities, or, where there are no such quarters, in a city, State, or county jail or penitentiary with which the immigration authorities have made arrangements for such detention.

Thereafter, the alien is accorded a hearing at which he is given an opportunity to show cause why he should not be deported. This hearing is conducted before an immigrant inspector, often the same inspector who conducted the preliminary examination upon the basis of which application

was made for the warrant of arrest. The hearing is not a public one. The alien is allowed to inspect the warrant of arrest and for the first time is advised that he may be represented by counsel. At this hearing care is taken to obtain the necessary data to show to which country the alien is deportable.

The record of the hearing under the warrant of arrest is then sent to the department in Washington, generally with the recommendation of the inspector as to whether a warrant of deportation should be issued or whether the warrant of arrest should be canceled. With the record of the warrant hearing is sent all the data in the case. This record is reviewed by a nonstatutory body in the Department of Labor known as the board of review, appointed by the Secretary of Labor and functioning under his jurisdiction. Hearings before this board are held upon request. In practice, however, the record is generally reviewed in private by a member of the board of review, who makes written recommendations to the Secretary of Labor. The record, with these recommendations, then goes to one of two assistants to the Secretary of Labor or to an Assistant Secretary who decides whether or not a warrant of deportation should be issued. The recommendation of the board of review is generally followed.

Prior to deportation the alien may be tried, sentenced, and imprisoned for any crime committed in the United States, including a violation of the act of 1929.

If a warrant of deportation is issued, it may be satisfied in one of two ways; either the alien departs with the consent of the Department of Labor, generally paying his own expenses, or he is physically deported by the department. Physical deportation is often accomplished by detaining the alien until a so-called "deportation party" is formed, in which a number of aliens subject to deportation are deported as a group. Deportation by either of these methods is a formal deportation under the provisions of the law.

The entire deportation process is an expeditious one; generally only a few months elapse between the application for the warrant of arrest and the actual deportation, unless the alien is to be tried for a criminal offense or is already

serving a sentence. But, whether the interval be a few weeks or three or four months, the suspect is generally kept in detention quarters or jail, even though he is accused of no crime.

The alien has no appeal from the action of the Secretary of Labor at any stage during the proceedings. He may, however, apply to a Federal court for a writ of habeas corpus on the ground that he is being unlawfully detained.

This, in very broad outline, is the course of the usual deportation proceeding. In the following part of this report there will be given a detailed description of the way each step of the process is carried out.

4

Decisions of the Courts

The process of deportation by warrant proceedings, as has been seen, is carried out solely by the Department of Labor. No appeal is given by the statutes to any court. However, the Supreme Court has decided that aliens held for expulsion are persons within the meaning of the fifth amendment of the Constitution of the United States and so can not be restrained of their liberty without due process of law. The protection accorded by the amendment is not limited to citizens. (Yick Wo *v.* Hopkins, 118 U. S. 356.) An alien held in the custody of immigration officers for deportation is in custody under or by color of the authority of the United States (U. S. *v.* Jung Ah Lung, 124 U. S. 621) and therefore has a right to apply in the Federal court for a writ of habeas corpus. There has been a large volume of cases both in the Supreme Court and the lower Federal courts arising upon applications for such writs. As a result of these decisions, there has emerged a framework of judicial limitations within which the process of deportation must be kept.

The Supreme Court, in a number of cases, has held that the United States can, as a matter of public policy, by congressional enactment forbid aliens or classes of aliens from coming within this country, or expel aliens or classes of aliens from our territory. (Wong Wing *v.* U. S., 163 U. S.

228.) In an early case the Supreme Court further held, with three justices dissenting, that the power to expel aliens could constitutionally be exercised by either judicial proceedings or through executive officers. (Fong Yue Ting *v.* U. S., 149 U. S. 698.) The Supreme Court has also held, however, that if the person whom the department seeks to deport claims citizenship he has the right to have his claim of citizenship determined by judicial process. (Ng Fung Ho *v.* White, 259 U. S. 276.)

While the burden of proving that he has lawfully entered this country may be constitutionally placed upon an alien, the burden of proving alienage rests upon the Government. (Bilokumsky *v.* Tod, 263 U. S. 149.)

The Supreme Court has further held, despite the seriousness of deportation proceedings, that they are not criminal in nature and so the alien, although entitled to due process of law, is not entitled to evoke certain constitutional safeguards applying to criminal proceedings. (Zakonaite *v.* Wolf, 226 U. S. 272.)

The Supreme Court has also decided that while it is not a violation of due process of law to have deportation proceedings conducted entirely by an executive department, these proceedings must be—

> administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts, in proceedings for review, * * * to prevent abuse of this extraordinary power * * *. (Kwock Jan Fat *v.* White, 253 U. S. 454, 464.)

Even though the statutes do not expressly so provide, the alien must have a fair opportunity to be heard. (The Japanese Immigrant Case, 189 U. S. 86.)

There are a great number of decisions in connection with the question of what constitutes a fair hearing in deportation proceedings. The facts in each case are different and upon certain phases of the law the decisions of some of the lower Federal courts are difficult to reconcile. It is not the purpose of this report to attempt to analyze and classify the various decisions.

It may be said that, as a general rule, in the absence of proof that the proceedings have not been fairly conducted, the courts will not disturb the decision of the Secretary of Labor to deport the alien if there is any evidence to support it, regardless of the character or weight of the evidence which the alien has produced.

The decisions of the courts with reference to deportation proceedings are necessarily and properly influenced by the strong presumption of validity of congressional or executive action. (Highland *v.* Russell Car Co., 279 U. S. 253.) A decision that a certain proceeding does not violate due process of law is not an adjudication of the wisdom or the advisability of the proceeding. (Ownbey *v.* Morgan, 256 U. S. 94.)

In other words, the decisions with respect to deportation mark out, within the limits possible under habeas corpus proceedings, the periphery beyond which neither Congress nor an executive branch of the Government can act without violating due process of law. It is one of the purposes of this report to ascertain if these boundaries are preserved. It is another purpose of the report to study the workings of the system within these legal boundaries, with a view to its effectiveness and fairness.

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Chapter II

THE SYSTEM IN OPERATION

I

PERSONNEL

1

Board of Review

The board of review is entirely a nonstatutory body appointed by the Secretary of Labor and subject to his jurisdiction. Since its inception in 1922 this board has reviewed all records in warrant proceedings and has made all recommendations to the Secretary as to whether or not warrants of deportation should be issued. In addition to its work in exclusion cases it handles other matters in connection with immigration.

The board consists of a chairman and nine other members, one of whom acts as assistant chairman. At the time of investigation there were three vacancies on the board.

The chairman of the board receives a salary of $5,600, the assistant chairman a salary of $4,600, and the others varying amounts under that figure. At the present time the lowest salary paid is $3,600.

Almost all of the members of the board have formerly been employees of the Government, generally of the Department of Labor. Some have been immigration inspectors, others have entered the service as law clerks or stenographers and have advanced from post to post. The chairman of the board was formerly in the office of the Solicitor for the De-

partment of Labor. Almost all of the board are members of the bar.

2

Immigrant Inspectors

On June 30, 1930, the number of immigrant inspectors was 1,028.

Immigrant inspectors are divided into five grades. The salary for grade one is $2,100, for grade five, $3,000. Inspectors are promoted successively for two grades following one year's satisfactory service; promotion above grade three is at the discretion of the Secretary of Labor, upon the recommendation of the Commissioner General of Immigration.

Immigrant inspectors are selected by the United States Civil Service Commission. Applicants are given a written examination, the first portion of which consists of a mental test and the other portion of questions on immigration laws and rules. No oral interview is given, nor is any character investigation made. There are no educational requirements.

The reason for the absence of character investigations of applicants for positions in the Immigration Service is understood to be lack of funds. Such investigations are made by the Civil Service Commission in passing upon applications for field positions in other branches of the Government service. Prohibition agents, for example, are so investigated.

Upon appointment the immigrant inspectors are immediately dispatched to the districts in which they are to work, without any preliminary training. They are then subject to a year's probation.

In its annual report for the year ending June 30, 1929, the United States Civil Service Commission said:

> In the general field of law enforcement it is vital that those appointed shall be persons whose conduct, associations, and reputation shall give assurance of honest and conscientious effort at enforcement of the law. * * * Experience has demonstrated the definite need for a searching inquiry into the qualifications and general suitability of persons seeking appointment to positions of responsibility and trust. * * * The commission believes that this examination pro-

cedure (character investigation) should be extended to the following law enforcement positions: * * * immigrant inspectors and immigration patrol inspectors.

The turnover for the last three fiscal years in the force of immigrant inspectors has been approximately as follows:

	Per cent
1928	8
1929	5.3
1930	7.8

Of the persons qualifying as immigrant inspectors, a large number have previously been employed in the Immigration Service in other capacities or have had service in other departments of the United States Government.

3

Immigration Patrol Inspectors

The Immigration Service border patrol came into existence by virtue of authority contained in the appropriation act of May 28, 1924. The primary duty of immigration patrol inspectors is to prevent the illegal entry of aliens, not only those seeking entry for the first time but those who, having already entered, have been excluded. Those patrol inspectors working on or near the international boundaries are also expected to seize contraband of any kind being brought into the United States in violation of the Federal laws and to hold the guilty persons. On June 30, 1930, there was a total field personnel in the border patrol of 805 employees.

The initial salary paid to immigration patrol inspectors is $1,800; the highest salary is $2,000.

Like immigrant inspectors, immigration patrol inspectors come under the Civil Service Commission. Applicants for the position must pass a physical and a general mental test. As in the case of applicants for the position of immigrant inspectors, applicants for the immigration border patrol are given no oral test, nor is any general character examination made.

The Annual Report of the Commissioner of Immigration for the year ended June 30, 1930, states that the turnover for the last three fiscal years in the immigration border patrol has been as follows:

	Per cent
1928	25.4
1929	28.7
1930	20.5

4

Other Employees

There are a number of other employees in the field service in the Bureau of Immigration, such as interpreters, stenographers, guards, and the like. Most of these employees are under the civil service. The total number of employees in the field service on June 30, 1930, excluding immigrant inspectors but including commissioners, assistant commissioners, district directors, and assistant district directors, was 1,355.

5

General Character of Personnel

As a whole, it is believed that the personnel under whose jurisdiction deportation work comes, is honest, zealous, and hard working. Although some instances of individual dishonesty are reflected in the large turnover, it is believed that the great majority of men in the service are free from even suspicion of corruption. The work entailed is difficult and, particularly among immigrant inspectors and immigration patrol inspectors, is not confined to the ordinary working hours of the average Government employee. Members of the border patrol particularly are exposed to hardship of various kinds, including personal risk.

Each branch of the service manifests considerable *esprit de corps*, and zeal, particularly in the investigation and prosecution of suspects. Although there are noteworthy exceptions, the general attitude of the field personnel, as indicated by the cases examined and many personal interviews throughout the country, is that of the detective and prosecutor; the primary interest is to deport as many aliens as possible.

II

DESCRIPTION OF PROCEDURE

1

APPREHENSION

(a) PERSONS MAKING APPREHENSIONS

(1) BORDER PATROL

The immigration border patrol functions primarily along the Canadian and Mexican borders. At such places investigations and apprehensions are generally made by the patrol inspectors rather than by the immigrant inspectors, although the latter work with and suggest leads to the former. Persons crossing at designated places, such as the international bridges, are inspected by immigrant inspectors. The work in this connection comes within the exclusion process rather than the process of expulsion. A considerable number of aliens attempt and often succeed in entering the country at other places by rowing or wading across the river, or, in some cases, by merely walking across the boundary line.

Although they discover a number of aliens subject to deportation who have been in this country for some time, the primary purpose of the border patrol is to apprehend persons entering this country unlawfully at the time of entry or as soon as possible thereafter.

Sometimes the border patrol is stationed along the physical boundary, as along the Niagara River in the North and the Rio Grande in the South. Because of the nature of the terrain adjacent to Mexico, it is often important for the border patrol there to take up positions somewhat back of the physical boundary so they can apprehend aliens as they come out of the brush. The best work in making apprehensions of aliens crossing illegally seems to be when the border patrol has members stationed in both positions.

Sometimes the alien who is attempting an unlawful entry is acting upon his own initiative. In many cases, however, the smuggling of aliens into this country is an organized

"racket." A large part of the unlawful entry of aliens along the Canadian border, particularly in the East, is the work of these organized rings. The aliens are scouted out by agents of the smuggling organizations. Occasionally the idea of smuggling across is suggested to them. Sometimes the agent of the ring pretends a personal interest in the alien, particularly if she be a woman. Often all of the available money of the alien is taken, and he or she is kept practically a prisoner until the time for the attempt comes near. Aliens who are shrewder do not pay their passage money in advance, but make arrangements that it shall be paid upon delivery to a friend or relative in the United States.

Along the Mexican border the physical hazards of crossing are not great. Many Mexicans row or swim across the Rio Grande or even wade. There seems to be some organization of smuggling of Mexicans along less pretentious lines than in the North. Most Mexicans entering illegally do so on their own initiative. Smuggling of Europeans across the Mexican border, however, is apparently highly organized and expensive.

Where the smuggling of aliens is well organized, many of the leaders of the bands live in Canada or Mexico and are not amenable to our laws; others live in our country. The efforts of the border patrol are often particularly directed to the breaking up of these smuggling rings.

(2) IMMIGRANT INSPECTORS

Where apprehension is not made by immigration patrol inspectors it is generally made by immigrant inspectors. This is particularly the case in the interior of the country, where the immigrant inspector combines the function of investigator, examiner, and prosecutor.

(3) OTHERS

Aliens attempting to enter this country unlawfully are occasionally picked up and reported by the Customs Service. In a few cases an owner of property on the boundary will apprehend and turn over an alien who is attempting an unlawful entry.

(b) METHODS OF APPREHENSION

(1) Actual Detection of Smuggling

Apprehension of aliens who are entering or who have entered this country unlawfully is generally made by the immigration border patrol. Sometimes these aliens are caught as they are actually wading the river or making a landing in a rowboat. At other times they are apprehended a few hours or a few days after their entry.

By the act of February 27, 1925, and the rules promulgated thereunder, any immigrant inspector or patrol inspector has power without warrant to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation and to take such alien immediately for examination before an immigrant inspector. Some court decisions hold that this power of arrest without warrant extends until the alien has reached his point of final destination.

(2) Anonymous Communications

A large number of suspects are brought to the attention of the immigration authorities by means of anonymous communications. These letters are often written by personal enemies of the suspect, even members of his own family who for some reason desire to get rid of him. They often serve the purpose of carrying out a private vendetta.

The regulations of July 1, 1907, contained the following sentence:

> Officers are especially cautioned not to lend their aid in causing the arrest of aliens upon charges arising out of personal spite or enmity, unless the truth of such charges is clearly established.

This injunction was omitted after 1911 and anonymous communications are one of the chief sources of information relied upon by immigration authorities

(3) Reports of Penal Institutions and Police

There seems to be general cooperation between the Federal penal institutions and the immigration authorities with respect to reporting aliens convicted of crime, so that further investigation can be made to see if such aliens are deportable.

The cooperation of the State and local penal institutions in this respect, however, is sporadic. In some instances jails and penitentiaries have entered into a working agreement whereby all inmates fill out forms showing their nationality and other personal information and the forms are forwarded to the local immigration authorities. In other States, even in the same district, it is left to the immigration authorities to find which of the inmates of the institution may be deportable.

In some cases the local police report suspects to the immigration authorities. In other cases no report is made. In some localities cooperation even goes to the extent of the judge who sentences an alien for an offense fixing the sentence for a year and a day, so that the alien will be subject to deportation; in some instances a longer term is given, but the sentence is suspended on condition that the alien leave the country.

On the whole, however, cooperation of the State and local penal institutions in reporting deportable aliens leaves much to be desired for the proper enforcement of the law.

(4) Reports of Public Hospitals

The alien may be deportable because he has become a public charge within five years from entry and can not show that the cause arose subsequent to his entry, or his presence in a hospital may tend to show that he was likely to become a public charge at the time of entry. In such cases, the hospital may or may not report the alien to the immigration authorities. Some are anxious to have aliens taken off their hands, or are compelled by law to make reports, but the cooperation here is even less uniform than that of State and local penal institutions.

(5) Reports of Private Organizations

A number of hospitals are conducted by private organizations. Here the tendency to make reports is even less marked. Many of these private institutions are actively interested in rehabilitating the alien who has become a public charge or in keeping him from becoming one.

In a few cases, philanthropic organizations report aliens who are deportable to the immigration authorities, where deportation seems advisable to the organization, either for the sake of the alien or his family.

(6) Deportees

Many aliens, once they are apprehended and see the likelihood of deportation, in chagrin or because of some personal motive, give the names of others who are also subject to expulsion. Even aliens who have actually been deported write back to the immigration authorities to give the names of other suspects.

(7) Aliens Who Wish to Be Deported

Aliens in this country illegally who find subsistence difficult here sometimes report to the immigration authorities and ask to be deported. This has been particularly frequent during the recent depression. Often the 3-year period from entry has expired, so that they can only be sent back at Government expense through formal deportation, although the alien may not realize that deportation will prevent him from ever returning to this country.

(8) Applications for Naturalization

The Bureau of Naturalization occasionally reports to the immigration authorities aliens applying for naturalization who are found to be unlawfully in this country.

(9) Cooperation of Employers

In certain localities, the immigration authorities are working out a system of cooperation with some of the larger businesses which are apt to employ aliens. In such cases the employers will investigate and will make a report to the local immigration district as to any aliens working for them who it is thought may be unlawfully in this country.

(10) Records of the Department

Records are kept of aliens admitted lawfully for temporary stay and investigation generally is made to see if they have overstayed their time.

(11) Ships' Articles

Occasionally crew lists disclose seamen who have remained longer than the 60 days permitted them or who have deserted their ships.

(12) Stool Pigeons

Some immigration inspectors have undercover men or stool pigeons at strategic points, such as large factories which employ a large number of aliens. These men are often aliens whom the inspectors have favored or who are otherwise under obligation to them.

(13) Check-ups

Immigration inspectors sometimes make what is known as "check-ups" of boarding houses, restaurants, and pool rooms where aliens are known to congregate. These check-ups are generally made by at least two immigrant inspectors. Any persons who seem to the inspectors to be aliens are stopped and interrogated, and if their answers give rise to suspicion they are taken to the immigration station for further questioning and preliminary examination. These check-ups are made without search warrants or warrants of any kind. Often all the persons present are detained until everyone has been questioned.

(14) Raids

Recently these check-ups have been undertaken on a much larger scale and there have been a number of raids upon meetings and gatherings of various kinds.

These raids have been generally undertaken for the apprehension of seamen who have been in this country longer than permitted. Foreign seamen, after their boat has landed, are allowed a period of time, generally 60 days, to find a boat on which they can ship out again. Because of recent economic conditions, which have affected shipping, a number of these foreign seamen have been unable to leave the country within the 60-day period. There have been a number of complaints from American seamen or their representatives to the effect that there were not enough jobs on

boats for citizens of this country and that aliens who have outstayed their permitted time generally are apt to get what positions there are, because they will accept lower wages than the Americans.

These raids have generally been upon meetings or institutions where seamen are apt to congregate, such as dance halls, seamen's missions and institutes, and in one case a church which was giving a dinner.

The methods of conducting these raids are generally the same. A number of immigrant inspectors will go to the place chosen accompanied by local policemen or plain-clothes men. Everyone present will be detained and questioned, the policemen guarding the door so that no one can leave. Sometimes the proprietor has been told in advance that the raid is to be conducted, but in most cases it is a surprise to everyone. In some cases there are a large number of people present. Many of the persons present at these meetings are American citizens or aliens whose time has not expired. All present are questioned and the suspects, generally comparatively a small portion, are taken to the local immigration office for preliminary examination. Sometimes 500 or 1,000 people or more are held and questioned.

These raids are instituted without search warrants or warrants of arrest of any kind, although in some cases an official from the Labor Department at Washington with power to issue warrants of arrest has come to the local district so that he can fill out the warrants of arrest when and as the suspects are brought in.

As a rule, unlike the "Red" raids of 1920, no violence is used by the immigration authorities other than the forcible detention of all present. Sometimes this detention is for a number of hours.

(c) VOLUNTARY DEPARTURE

Even if the aliens apprehended are found to be here unlawfully, the local immigration officials have a certain amount of discretion to permit them to depart without the warrant of deportation being issued.

These voluntary departures for the last four fiscal years as shown by the reports of the Commissioner General, with the method of departure, are as follows:

	1927	1928	1929	1930
Shipped foreign one way	165	164	300	150
Paid own passage	939	411	503	370
Departed for foreign contiguous territory	13,515	10,371	25,079	10,861
Total	14,619	19,946	25,888	11,387

As will be seen from these figures, by far the greater number of such voluntary departures are over the land boundaries. Voluntary departure by ship involves expense which the appropriation of the department can not be called upon to stand.

It is to be noted that the number of voluntary departures allowed in the fiscal year ended June 30, 1930, is less than for the corresponding preceding year, although the number of actual deportations effected is greater in 1930 than in 1929. The falling off in the number of voluntary departures allowed is largely attributable to the effect of the law of March 4, 1929, which provides punishment for unlawful entry. While, as will hereafter be shown, the local officers exercise some discretion as to what cases are to be prosecuted under this act, they nevertheless must bear its provisions in mind in permitting aliens to return voluntarily.

The advantage to the alien in this procedure is that no warrant of deportation has been issued so that if he applies for readmission in the proper way he will not be barred.

This is particularly important to Canadians and Mexicans to whom the quota law does not apply, or in cases where the alien can qualify as a non-quota immigrant.

In many cases the aliens to whom such departure is permitted have not just entered the country but have been residing here for some time after having entered unlawfully. In other cases they have entered lawfully some years ago but have recently made an unlawful entry and so are subject to deportation.

The latter situation is particularly prevalent along the Mexican border. A Mexican may have been admitted to

this country legally 10 or 15 years ago and may wish to visit a friend or relative on the other side of the Rio Grande. To go by way of an international bridge would probably involve a trip of many miles on both sides of the river, whereas the Mexican all his life has been accustomed to wading or rowing across the river as he felt inclined. Rather than go to the trouble, expense, and delay of making a legal reentry he takes the easy and natural route and thereby renders himself subject to deportation. Immigrant inspectors along the Mexican border have told the writer that the great majority of Mexicans living in this country, even though they have entered lawfully and are lawful residents here, nevertheless are apt to make themselves subject to deportation by such a technical breach of the statute. It is to this class of aliens that voluntary departure is often accorded.

In one station at the Mexican border, in one month 59 applications for warrants of arrest were made and 180 voluntary departures were allowed.

Sometimes this privilege is accorded to aliens who have families here in order that they may return legally, whereas deportation, to which they may be subject, would permanently separate them from their families. This is, however, by no means a uniform practice. This device of legalizing residence is used very much less in the interior than along the borders and less along the Canadian border than the Mexican.

It is the practice in the department to allow this privilege of voluntary departure only where no expense has been, or is to be incurred. It is rarely allowed when the proceedings have reached the stage of coming before the board of review.

Even at the stage of apprehension, however, applications for warrants of arrest are made in many cases where the violation of the law is only technical and where the alien is not otherwise found to have been an undesirable resident or where he has an American wife and children.

(*d*) EFFICIENCY OF INVESTIGATIONS AND APPREHENSIONS

At almost every immigration station visited the writer was told that the number of investigations and apprehensions was primarily limited not by the difficulty of ferreting out aliens who were subject to deportation but by the limitations of man power and money. In one district the writer was told that the inspectors could bring in four or five times as many deportable aliens as they did if they had the time to go out and get them, and in other districts similar complaints of lack of time rather than opportunity were made.

A general attitude was found both among immigration patrol inspectors and immigrant inspectors of eagerness to discover and apprehend deportable aliens, and willingness to make the investigations even if the inspectors' own time was consumed thereby.

In other words, the problems in connection with the investigation and apprehension of deportable aliens seem to involve internal readjustments within the Department of Labor to give the field officials more time, increased appropriations for the field forces, and concentration upon the apprehension of the classes of aliens whose presence is deemed most undesirable, rather than changes in the scope of the law.

2

PRELIMINARY EXAMINATION

(*a*) PLACE IN SYSTEM

(1) NUMBER OF PRELIMINARY EXAMINATIONS

It has become customary in the great majority of cases when investigation has caused suspicion that a certain person is an alien subject to deportation, to make a preliminary examination of the suspect, under oath. This examination is made by immigrant inspectors before the application for a warrant of arrest and is generally the basis not only for such application but for all the rest of the deportation proceedings.

In brief, this preliminary examination is a private hearing. The alien is not permitted to have counsel or other representation. There are present the alien and the immigrant inspector and sometimes a stenographer or interpreter. In many cases the same inspector acts as examiner and ste-

nographer, or examiner and interpreter, or in his own person combines all three functions. At these examinations, as a general rule, detailed questions are asked the supposed alien as to the manner and time of his entry in this country, his present circumstances and a number of other matters which the inspector may deem to be relevant.

Neither the statutes nor the rules make any general provision for this preliminary examination. The rules provide that—

> The application must state facts showing prima facie that the alien comes within one or more of the classes subject to deportation after entry, and, except in cases in which the burden of proof is upon the alien (Chinese) involved, should be accompanied by some substantial supporting evidence. If the facts stated are within the personal knowledge of the inspector reporting the case, or such knowledge is based upon admissions made by the alien, they need not be in affidavit form. But if based upon statements of persons not sworn officers of the Government (except in cases of public charges covered by subdivision C hereof), the application should be accompanied by the affidavit of the person giving the information or by a transcript of a sworn statement taken from that person by an inspector.

However, in a great majority of the files examined this preliminary examination was held. Of the aliens involved in the 453 cases studied for the year ended June 30, 1929, over 85 per cent were so examined before the application for the warrant of arrest was made. Both in the various districts visited and in the headquarters at Washington these examinations have come to be regarded as the basic feature of the entire proceeding.

(2) Importance

The reasons for the stress laid upon the importance of these examinations are evident. In the great majority of cases the facts which would make the alien deportable are not matters of general knowledge, but, on the contrary, are occurrences to which there were no witnesses. When an alien succeeds in being smuggled over the border, by the very nature of the transaction, there are no witnesses to his entry or none, at least, available for the purposes of an immigrant inspector. If the alien has been legally admitted but obtained his admission by false and misleading statements,

there are generally no witnesses to prove his deceit. If he originally entered the country unlawfully but sufficient time has elapsed to preclude his deportation unless he has subsequently left the country and returned, his last exit is not likely to be a matter of public knowledge.

Even in other cases where the cause for deportation may be the subsequent act or condition of the alien after lawful admission, there is, nevertheless, a general feeling among the inspectors that no evidence which they can obtain is likely to be so strong on behalf of the Government and so hard for the alien to rebut in subsequent proceedings as his own sworn confession. They feel, with some justification, that, unless he has previously committed himself, the alien will be warned and will later tell a story which would make him nondeportable.

As a whole, it is evident that without some system of preliminary examination many deportations now effected would be impossible and the enforcement of the expulsion laws would be seriously handicapped.

It is a matter of pride among many inspectors to make the case for the Government "air-tight" before the application for warrant of arrest is ever made, and as a rule they take every possible measure to consummate their ambition.

It is true that, instead of this private examination, the district office might endeavor to subpœna the suspect and examine him. Some doubt is felt as to whether this procedure applies to suspected deportable aliens as distinguished from witnesses in deportation cases. Moreover, service of formal legal papers upon the alien at this stage of the proceedings might result in his procuring counsel and securing advice which would make it much more difficult for the immigrant inspectors to obtain the desired information. In practice, subpœnas are not used. The immigration officials prefer to rely upon the system which they have evolved.

The importance of the place of this system of preliminary examinations in the deportation procedure can not be overestimated. The entire structure is based in a great majority of instances upon the alien's own admissions.

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(3) Place of Examination

There is no rule or even customary procedure as to where the supposed alien shall be examined; often it is in a penal institution where he is serving a sentence, often in a hospital or almshouse, often at the local headquarters of the immigration office, sometimes it is in the alien's own house, or in a restaurant or whatever other place the inspector may find convenient. In a few cases the examination is made by an immigrant patrol inspector.

Nor is this preliminary examination necessarily the first meeting of the supposed alien and the inspector. In many cases the inspector has questioned the suspect and then brought him to immigration headquarters for the detailed examination. This is generally the case in connection with the "check-ups" and raids described in the preceding section. Here, where a number of people, sometimes over 1,000, are to be examined and where a majority are often aliens lawfully in this country or United States citizens, it is the most the inspectors can do to segregate the suspects. There is neither time nor opportunity for the detailed questions which are to be the basis for the application for the warrant of arrest.

(b) METHOD OF REPORTING

When there is opportunity the reports of these examinations are generally taken down by a stenographer who is an employee of the local district office. In many cases it is impractical to have a stenographer present and the examining inspector makes notes which he afterwards dictates in narrative form. In the cases studied for the year ended June 30, 1929, where there were preliminary examinations of the persons involved, the proportion of stenographic reports to narrative reports was about six to one.

Even stenographic reports do not by any means tell the whole story. They are distinctly dissimilar to the reports of a court stenographer where everything which occurs is transcribed. In form they may be and generally are complete; in practice they often represent merely such part of the hearing as the examiner wishes to have reported.

Sometimes the files in Washington themselves bear internal evidence of the incompleteness of the reports. There is an abrupt break in the testimony of the alien or witnesses or other indication that a stenographer has been stopped. This applies, it may be said, to the records of the hearings upon the warrant of arrest, particularly where the alien is not represented by an attorney, as well as to the preliminary examination. In one such case the inspector in charge dictated a report that:

> The examining officer has caused about 75 per cent of irrelevant matter to be deleted from this record for the reason that the recording of such matter was not directly connected with this case.

The suspicion of lacunæ in stenographic transcription was verified by the attendance of the writer at various hearings in connection with deportation, particularly when the suspect was not represented. At these hearings, whether they were preliminary examinations or warrant hearings, the examining inspector often told the stenographer not to take down a certain portion of the conversation between himself and the suspected alien. When the inspector was ready he told the stenographer to resume taking notes. The stenographers generally seemed used to the proceeding. In the case study made, for over one-third of the suspects who were given preliminary examinations which were stenographically reported, the examining inspector himself acted as stenographer.

In the reports of the preliminary hearings which are not stenographic but narrative in form, the possibility of the selection of material to be narrated is obvious.

In many cases, the omissions are merely of irrelevant or repetitious material. In others, as will be shown hereafter, they are far more serious.

(c) INTERPRETER

Many of the suspected aliens either do not understand or speak our language or do so imperfectly; in such cases an interpreter may be used. In many of the immigration stations, especially where there is a large volume of this work, some of the immigrant inspectors themselves speak a number of foreign languages so that an interpreter can be sup-

plied without going outside the office. This is often the case along the Mexican border or in a city where there is a large foreign group of one nationality. The immigration service employs some interpreters who do nothing else.

Occasionally, when a suspect is encountered who only speaks a language with which not even accomplished linguists can be expected to be familiar such as Arabic, or which no one in the office understands, an outside interpreter is employed. Sometimes such interpreter is furnished by some local organization interested in aliens.

In approximately one-third of the preliminary examinations in the cases studied for the year ended June 30, 1929, the examining inspector himself acted as interpreter for the suspect. In a number of other cases the interpreter was another immigrant inspector from the same office.

In over 10 per cent of the preliminary examinations stenographically reported the same immigrant inspector acted as interpreter, stenographer, and examiner.

The suspect often speaks and understands a limited amount of English. In such cases it is within the discretion of the particular inspector present as to whether or not an interpreter should be called. Some of the cases studied strongly indicate that the alien did not understand the purport of the questions which he was being asked. In others, although there has been no interpreter present at the preliminary examination, an interpreter is used in the subsequent hearing on the warrant of arrest when the alien is there represented by an attorney.

There is again no analogy between the position of an interpreter in these proceedings and the status of an interpreter at a court trial. Even when the immigrant inspector is not fulfilling a dual function, the interpreter may act in an uninterpreterial capacity. He may, if he is an immigrant inspector, ask the witness a question of his own, or even volunteer some information which he thinks may shed some light on the questions being asked. On the other hand, the writer was told, in one case where an outside interpreter had been used, the district had been forced to discontinue his services as it was found that he had been coaching aliens

in advance of the hearing as to how to answer questions so as to save them from deportation.

(*d*) HOW STATEMENTS OBTAINED FROM SUSPECT

(1) Detention of Suspect

There is strong indication that at the time of the preliminary examination in a majority of cases the suspect is being forcibly detained. Most of the examinations are made in the district headquarters to which the suspect has been taken. Undoubtedly he goes under show of authority, believing he must. At this stage no warrant of arrest has been issued, nor is the inspector proceeding under any subpœna issued under authority of statute.

The detention is generally of short duration. Either the suspect is released at the end of it or an application for warrant of arrest, generally in telegraphic form, is made to Washington, and the warrant of arrest comes back by telegraph. On some occasions, however, the suspect, if his first examination is not satisfactory, is detained for further examination, often with the idea that the restraint of liberty will be a conducive factor to make him state what the inspector believes to be the truth.

If the suspect is released after he has first been interrogated, before the preliminary examination, or after the preliminary examination has been made and before the warrant of arrest arrives from Washington, he is apt to disappear before the warrant can be served. This is found to be the case in the jurisdictions where the courts interfere with the practice above referred to. In one such city, where a preliminary examination had been made of the alien and a warrant of arrest had been applied for, when the immigrant inspector went to serve the warrant he was met by the alien's wife, who thanked him in all good faith for having given her husband an opportunity to leave the city.

It is customary, at least in some localities, to have photographs of the suspect taken after or before the preliminary examination. In other localities finger prints are taken.

This detention, whether lawful or not, is regarded by the field force as essential for the enforcement of the law.

(2) Attitude of Suspect

In most cases little difficulty seems to be experienced in inducing the suspect to answer the questions put to him. The suspects for the most part are not highly schooled. Sometimes they are illiterate. Certainly as a whole they have no glimmer of perception of the legal objections which an attorney might raise on their behalf. In many cases they have the conviction of righteousness and are anxious to prove either their citizenship or their lawful presence in this country. At the other extreme they are conscious of the fact that they are subject to deportation and seem anxious to get the matter over with. In most cases, whether they know they are subject to deportation or not, these suspects are confronted by a man obviously invested with some kind of authority, often wearing the uniform of his office and generally conducting himself as one entitled to obtain the information for which he asks. Many of the suspects come from countries where authority speaks with even a stronger voice than it does in the United States, and where failure to answer inquiries from Government officials would involve much more serious consequences. Along the southern border the writer was told by a Government official that Mexicans are anxious to give the answers which they think are expected, whether true or not, and even if the answers will result in deportation, so that sometimes they must be guarded against themselves.

In a very few cases the alien is too frightened to answer the questions put to him, or has been advised by some one that the way to escape deportation is to say nothing, or for other reasons maintains silence. These occasions, however, are too insignificant in number to be considered. In almost every case the suspect answers all the questions put to him.

(3) Notice to Suspect of His Rights

Less than half of the suspects in the cases studied for the year ended June 30, 1929, where the report of the preliminary

examination was stenographic, were advised at the beginning of the examination that anything they said could be used against them in subsequent proceedings. While the proportion of such warnings increased after the passage of the act of March 4, 1929, which provided criminal penalties for aliens entering unlawfully, only approximately one-third of the suspects after the passage of the act were so warned.

Many deportation proceedings result in criminal prosecution against the alien, either under the act last mentioned, or under the prohibition act, or some other Federal statute. In most of the criminal cases the alien pleads guilty, and it is evident that the results of the preliminary examination in the deportation case are in effect the basis for the criminal prosecution which follows.

In the cases studied for the year ended June 30, 1929, approximately 60 per cent of the suspects who were given preliminary hearings were not told at the beginning of the preliminary examination that any statements made by them were not then required to be given by any law but were and should be voluntary on their part—in other words, that they did not have to talk if they did not want to.

Where in these examinations the alien is notified that he has certain rights, the notification is often in forms such as the following:

> As a United States immigrant inspector it becomes my duty to inquire into your right to be and remain in the United States, and it is desired to give you an opportunity to make a statement in that regard. You are advised that, should facts warrant, any such statement as you may make may be used against you in further proceedings; further, that if you are an alien, the law places on you the burden of proving your right to be and remain in the United States. Under these conditions are you willing to make a sworn statement?
>
> Or—
>
> You are advised that I am an immigrant inspector of the United States, and as such am authorized by law to administer oaths and to question thereunder any alien as to his right to enter, pass through, be in, or remain in the United States. I wish to question you relative to your right to be in and remain in the United States. The answers you may give to my questions should be given voluntarily, will be under oath, and you are advised may be used against you in any subsequent proceedings. Under these circumstances are you willing to answer voluntarily and under oath such questions as I may ask?

As has been said, many of the suspects are being interrogated by an interpreter. Many of the others speak and understand our language imperfectly. A great majority of them are undoubtedly unfamiliar with our legal concepts. Under the circumstances there seems to be room for doubt whether a recital of rights such as the foregoing makes any impression whatsoever.

(e) SCOPE OF EXAMINATION

In general, the questions asked at the preliminary examinations cover a wide field. Questions are asked to ascertain whether or not the suspect is an alien, which, of course, is of the essence of the Government's case. He is generally asked as to the time and manner of his entry, how long he has lived here, whether he has been out of the country since his first arrival. If he claims lawful admission, the necessary details are exacted so that verification can be made from the records of the department.

If the alien admits having been smuggled over the border, an attempt is generally made to ascertain the persons who acted as smugglers so that the proper criminal proceedings can be begun against them, if possible. In many cases a number of questions are asked for the purpose of bringing out that at the time of entry the alien was likely to become a public charge. The line of examination varies somewhat with the nature of the charges the foundation of which is being laid.

The examination often proceeds much further, even where the answers already given by the alien clearly show that he is subject to deportation and even though, under statute, the burden of proof rests upon the alien to show that he entered the United States lawfully and the time, place, and manner of such entry. Many inspectors feel it their duty to endeavor to prove the thorough undesirability of the suspect as a resident.

The questioning often goes into a number of other lines such as relations of the alien with persons of the opposite sex, his supposed bootlegging activities, and the like. Detailed questions as to sexual morality are often put even where the previous answers indicated that the alien is deportable entirely on other grounds. For example, after a protracted examination relating to the time of the alien's entry into this country, the following questions were put:

Q. What women have you lived with since coming to the United States?—A. None.

Q. Have any women given you any money since coming to the United States?—A. No.

An alien who admitted illegal entry in November, 1928, and who was illiterate at the time, was asked:

Q. Were you ever afflicted with any venereal disease or with attacks?—A. No.

Q. Have you ever lived in concubinage with any woman?—A. No.

An alien girl, in another case, after having been excluded, admitted having been brought over the Canadian border by automobile without having a visa, without paying the head tax, and without being inspected by an immigrant inspector. She was then questioned as follows:

Q. Isn't it a fact that you have had illicit relations on numerous occasions in Canada with men before coming down here? (No answer.)

Q. This isn't the first time, is it?—A. Well, I don't see where that has any difference.

Q. Have you ever had relations with men for money?—A. No.

Q. All the relations that you have had is with friends? You haven't an enemy in the world, have you?—A. I don't know whether I have or not.

In many cases the questions shown on the record are restricted to building up a case for deportation. In others, the questioning brings out that the suspect is a United States citizen, or, if he is an alien, that he is lawfully here. But in a large proportion of the cases examined and observed the nature and persistency of the questions can only be described as inquisitorial. In such cases the only limits of the scope of the examination are the limits of the examiner's curiosity.

(f) METHOD OF EXAMINATION—ON THE RECORD

(1) General Method

It has been pointed out that these preliminary examinations, while informal in character, in effect constitute gen-

eral hearings in which the immigrant inspector goes over thoroughly such ground as he may think advisable. They do not consist merely of a statement volunteered by the suspect. The inspector asks many and detailed questions on every phase of the investigation, and if the answers are not satisfactory to him he persists and endeavors to catch the suspect in some inconsistency or prevarication. The questions are often leading in nature, strongly indicating the answers wished. If the answers are not satisfactory, the examining inspector often cross-examines the suspect with all the vigor of an unrestrained prosecuting attorney.

This is not true, however, in all the cases. Often the reported questions are direct and colorless and the subject matter of the examination is confined to relevant material. In one important district the questions are almost always confined to nationality, time, place, and manner of entry.

In considering the method of examination, two factors must be kept in mind. In the first place, the record may be and undoubtedly often is incomplete. In the second place, the records of these preliminary examinations on file in the Department of Labor almost invariably only include those instances where application is subsequently made for a warrant of arrest. Where the preliminary examination did not bring sufficient results to make the examining inspector feel that there was ground for deportation, the record of the examination is not forwarded.

These preliminary examinations are not confined to the suspect himself. Often other witnesses, either hostile or friendly to the suspect, are examined. In many cases documents are filed with the report of the hearings, or are referred to but not filed.

(2) Evidence Other Than the Suspect's Statement

In general, the same methods are employed in taking statements of witnesses other than the suspect as are applied to the supposed alien himself.

For example, in one case the inspector was laying the basis for a warrant of arrest on the ground that the alien had been found managing a house of prostitution. An examination

was made of a girl who had been living at the suspect's house for a week. She was examined in part as follows:

Q. How long have you been practicing prostitution?—A. I haven't practiced prostitution.

Q. I say, how long have you been practicing prostitution?—A. I can't answer that question because I don't prostitute.

Q. Do you mean to say now under oath that you have at no time since living at the Palmer Hotel practiced prostitution, or a single act of prostitution?—A. No; I have not.

Sometimes a long and detailed statement previously taken by the inspector from the witness is read to the suspect, who is then examined on the strength of such statement. This statement often is not filed with the records of the examination.

In another prostitution case the witness was asked:

Q. What was you arrested for?—A. I do not know.

Q. Now, you know that I have taken a statement from your wife, and she has told me the truth, and I want you to tell me the truth. Is it not a fact that you were broke and had no work?

The original statement from the wife was not exhibited to the suspect or filed with the proceedings.

In another case the inspector told the suspect:

Q. You are advised that I have just called ——— ——— on the phone and he stated that he knew when you came to his house last night that you were just a vag, that you brought this woman to his house last night but that he just let you stay, that his uncle in La Union, N. Mex., ——— ——— knew you, and that when you left his house this morning you told him that you were going to Anthony, N. Mex., to live. What have you to say to that?

In other cases where other witnesses are examined the questioning, in so far as is shown by the record, is confined to direct questions upon material facts.

(3) Leading Questions

In a number of cases the examining inspector by the questions he puts to the suspect indicates the answers he wishes given.

The following is an example where the inspector was trying to show that the suspect was a contract laborer at the time of entry:

Q. When you left your home in Quebec it was your intention to make your final destination St. Johnsbury?—A. My intention was to go to Lincoln and work in the mills there.

Q. Then why did you say you intended to stay in Lincoln?—A. Because our chum ——— ——— told us there was no work.

Q. Is it not true you intended to go through to St. Johnsbury?—A. I did not even know that was a dam being built there.

Q. Is it not true that you knew that the ——— ——— Co. was building a dam or a series of dams at that point?—A. I don't know it was ——— ———. I thought there was one being built at Littleton, N. H.

Q. Did you come to the United States on October 4 in pursuance of any offer or promise of employment?—A. No.

Q. Is is not true that you could go to work for the ——— ——— Co.?

In the preliminary examination from which the following quotation is made the alien had already admitted that she had entered this country without inspection, that she was not in possession at the time of her entry of an unexpired visa, and was, therefore, subject to deportation:

Q. Mrs. ———, I interrogated your sister, ——— ———, who stated to me that you and Mr. ——— were living together for the past three or four weeks. Is that statement true?—A. No; I have not been living with him.

Q. Mr. ———, who just left this office, also stated under oath that he lived with you approximately three weeks; that is, occupied the same house you did. Isn't that correct?—A. He has never lived with me at all.

In the following case also the alien had admitted not only entering this country without inspection, but being illiterate at the time of entry:

Q. How long has it been since you have not been bootlegging?—A. About three years.

Q. How long were you in the business of handling contraband liquor?—A. I only sold three loads.

Q. Where did you buy this booze?—A. I bought it at McAllen.

Q. Haven't you been accused of hijacking bootleggers or taking their liquor away from them?—A. No; never.

(4) Prejudice of Examining Inspector

In some of the cases the record itself shows that the examining inspector has made up his mind that the alien

should be deported and is doing everything possible to accomplish that end.

In a number of the cases the examining inspector inserts in the record comments of his own with respect to the hearing. In one case the inspector dictated into the record that the refusal of the alien to answer some of the questions "showed very plainly that he was not telling the truth."

In another case, the comment is that "the alien's answers seemed vague."

In another case the inspector appended the following:

It is not believed that he is telling the truth when he states that he has never used any other name and that he was never ejected from the United States.

In another case the inspector stated that:

This alien is evidently, from his actions and the manner in which he answered all questions, an accomplished prevaricator.

In a few, but only in a few, of the cases examined there is clear indication that an inspector has gone to any length, even to the extent of distorting the evidence.

In the following case there was no stenographic preliminary examination, but the inspector made a narrative report in connection with the family of the suspect. This family included the husband and wife and two children born in the United States, who were, therefore, United States citizens. At a later stage of the proceedings the suspects employed an attorney. At the hearing upon the warrant of arrest the report clearly shows an attempt on the part of the two immigrant inspectors who participated in it to cause the deportation of the suspects with or without cause. The board of review itself in reviewing the testimony said:

However, Inspector P ——— made a very poor showing as a witness, and while Inspector M ——— by questioning Inspector P ———, gave a somewhat better complexion to the latter's testimony, still there is not sufficient in the record to bear out the contention that A ——— M ——— has been out of the United States for any period whatsoever, since October, 1922.

This finding is a direct contradiction of the facts set forth in the preliminary report one of the inspectors made.

In his brief filed with the board of review, the attorney stated as follows:

When I arrived at Ellis Island with Mr. M ———, and the first time I met the Inspectors M ——— and P ———, Mr. M ——— paid his respect to me by stating, "You can't get away with this thing, with me," and I asked him what was the trouble and he said "Why that Inspector A ——— doesn't know his business and he had no right to release this man M ———." He asked me then that he wanted to examine the man himself, but I was trying to explain to him that we were through with the examination. But his demeanor was such that there was nothing else to do but to consent to whatever he wanted to do with the alien M ———.

The board of review recommended that the warrant as to the father be canceled, but that the mother and one son not born in this country should be deported. The attorney instituted habeas corpus proceedings and the mother and son were released.

This case, in so far as it illustrates the conduct of the immigrant inspectors, is an extreme one. In one respect, however, it is not extreme but typical of a large group of cases which will be considered more fully in a later section, namely, those in which persons not subject to deportation would have been deported had it not been for additional investigations made and requisite action taken by an attorney.

(5) Duress

There is little indication in the 453 cases that any preliminary statements from the alien are obtained under actual physical duress. There may be a note of the inspector that the alien finally agreed to testify "after much persuasion," but such notes are not general.

In one case the following affidavit was taken from the alien:

JUNEAU, ALASKA, *March 23, 1929.*

I, W——— H———, being first duly sworn, deposes and states that about a week before Christmas, in the year 1928, I took a boat ride to Prince Rupert, British Columbia, on a gas boat, and returned to Ketchikan, Alaska.

(Signed) W——— H———.

Subscribed and sworn to before me this 23d day of March, 1929.

(Signed) C——— S———,
United States Commissioner.

Q. Did you sign that affidavit?—A. Yes.

Q. Is this affidavit true or untrue?—A. It is not true. I can tell you how it was that I signed it. I was picked up at the dock and coming up in the car Deputy S——— told me you know you have a suspended sentence hanging over you and you were supposed to leave the division, if you say you were out of the division, we are done with you. He then took me up to the office and the woman made out two papers and they told me to sign them, when I read them I said that I would not sign stuff that was not true, and I was put back in a room. Deputy S——— came and said if I would sign the paper they were through with me and they would drop the case against me, he said, "Hell, lots of people sign stuff like that," I went into the room and took the pen and signed it. It is not true that I took a trip to Prince Rupert.

The board of review, after further proceedings, canceled the warrant of arrest, stating that—

It appears that this alien was born in England, immigrated to Canada in 1913, and, after service in the Canadian Army, he entered the United States, as shown above, by telling the officer he was only going on a visit. He denies that he has ever been out of the United States since that time. It is claimed that the affidavit mentioned in the record, upon which warrant was based, and which showed the alien's last entry to have been in 1928, was signed by the alien under duress. After perusal of the record such a claim seems to be very logical. Therefore neither charge is sustained due to statute of limitations.

It is significant in this case also that the alien in subsequent proceedings was represented by an attorney.

It is to be noted that the official who obtained the affidavit was probably not in the Immigration Service. It is believed that actual duress by anyone of the nature described in the foregoing case is very rare. In many of the cases the demeanor of the examining inspector is courteous and often kind. On the other hand, it seems clear that in a great majority of instances the alien believes that he is under compulsion to answer the questions put to him and that the immigration officials not only do not negative but encourage such belief.

The following statement was contained in the regulations of July 1, 1907, published in connection with the immigration laws by the then Department of Commerce and Labor:

It is not permissible for officers to resort to any form of intimidation, by threats, violence, or otherwise, in order to extort from any

suspected alien or from any other persons the information to be embodied in the application for the warrant of arrest.

This rule was in force, as shown by the printed regulations, for several years thereafter, but was omitted from the edition of the rules published in 1911 and has not since reappeared.

(g) METHOD OF EXAMINATION—OFF THE RECORD

(1) Attitude of Inspector

The comments which have been made and the excerpts above cited are based entirely upon the records of the preliminary examinations. As has been indicated, it is evident that a great deal occurs at these preliminary examinations which is not reported and never reaches Washington. Various immigrant inspectors interviewed frankly acknowledged this to be the fact, stating that in some cases what took place off the record consumed much more time than what is reported and that "it would not do" to report everything to Washington. Some of the omissions, as has been stated, are immaterial; the nature of others can only be surmised from what appears on the records themselves and from what the writer has personally seen at hearings which he has attended.

The following instance which occurred in the presence of the writer is pertinent:

The writer accompanied the immigrant inspector to a penal institution where an alien was serving a term of 18 months for assaulting another person with intent to kill. At the interview no stenographer was present. The immigrant inspector took notes which he said he would afterwards dictate, and he, himself, acted as interpreter. He afterwards told the writer what had taken place. According to the inspector's own translation of the questions he had put and the answers thereto, the alien had admitted he had come into the country unlawfully, but had sworn that he had not left the United States since 1921. As this was his first conviction for a crime, he would not be deportable if his story were correct. The inspector then told the alien that he had an affidavit from the man whom the alien had attacked to the effect that the alien had said that he left this country

and reentered a few years before the examination. The inspector told the writer that he had no such affidavit. The alien denied making any such affidavit and adhered to his story. The inspector afterwards told the writer that he would endeavor to get an affidavit of the kind of which he had spoken either from the person to whom he had made reference or his wife, and that he did not care if it were true or false as he wanted to deport "the bum."

(2) Search of Suspects

There is strong indication that it is customary, at least in some localities, for the person and effects of the suspect to be searched by the immigrant inspector in connection with the preliminary examination.

There is little evidence of this in the typewritten reports contained in the files, although occasionally there may be a reference to papers or other articles found on the suspect's person. Indications that such searches are often made, however, are substantiated by statements made to the writer by inspectors in different localities and by what the writer himself has observed.

Sometimes these searches are made before the preliminary examination is conducted in order to obtain the material for the examination. Sometimes they are made after the preliminary examination has failed to show what the inspector considers satisfactory results. At other times the person of the suspect is searched at the time of the examination.

The following occurrence took place in the presence of the writer:

An alien was brought into the immigration station for preliminary examination. No warrant of arrest or other warrant had been issued. The examining inspector told the writer, off the record, that he had gone through the papers and effects of the alien at his room and found some documents which were very helpful. An interpreter was present who was also an immigrant inspector, and the stenographer was an employee of the office. The alien answered all questions put to him. He admitted that he had entered this country recently without having an unexpired visa and without being inspected, so that he was obviously deportable.

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According to the alien's story, he had been brought over in an automobile through a designated port of entry, and the immigrant inspector had merely overlooked him, although if he had been inspected he would have been excluded. The alien's story, while clearly showing that he was deportable, did not satisfy the examining inspector because it reflected upon the efficiency of the Immigration Service. The inspector told the stenographer to stop taking notes and instructed the interpreter to tell the alien that he (the examining inspector) knew the alien was lying, that if he told the truth it would go "easy with him," but if he persisted in his lies "something terrible" would be done to him. The alien persisted in his story. At the conclusion of the examination the examining inspector told the alien to stand up, and, in the writer's presence, proceeded to search all his pockets. The inspector then told the writer that the alien would be detained at the station and would be subjected to another examination to "make him tell the truth."

At the time of this preliminary examination no search warrant had been issued by any court or by any administrative body having authority to do so.

3

Other Reports

(a) RECORDS OF CONVICTIONS

The rules provide that where deportation proceedings are predicated on convictions of crimes involving moral turpitude subsequent to entry, the application for a warrant should be accompanied by a copy of the mittimus or a certificate of the clerk of the court in which conviction occurred, stating the offense and the sentence imposed. Such copies are generally furnished with the application for the warrant of arrest, although in many cases they are not certified. Curiously enough, the rule applicable to this class of cases goes on to say that if available a transcript of a statement covering the preliminary examination accorded the alien should be included, although there is nothing said of preliminary examinations in other classes of cases.

(b) ALIENS WHO HAVE BECOME PUBLIC CHARGES

The rules provide that the application in public charge cases must be accompanied by a certificate of the official in charge of the institution in which the alien is confined, or other responsible public official if the alien is not confined, showing that the alien is being maintained at public expense, and there should be submitted also, whenever readily available, evidence (such as certificates from attending physicians, etc.) tending to show that the alien has become a public charge from causes not affirmatively shown to have arisen subsequent to entry.

These cases differ in nature from other cases such as where the alien is deportable because he entered at a place other than one designated by the department. In the public charge cases the alien has generally entered this country lawfully and the question as to whether or not he has become a public charge from causes not shown to have arisen subsequent to entry is often a difficult one.

The main reliance in these cases, unlike the others, is often put upon the certificate referred to in the rules rather than upon the preliminary examination of the suspect. This certificate is generally on a form supplied by the department. Many of the most important questions on this form are often not answered; others are answered by merely stating a conclusion.

There are a number of such forms in the 453 cases examined for the year ended June 30, 1929.

One of the questions on the form is—

> State whether demand made upon alien or alien's relatives for payment of hospital expenses, and if so, result of said demand?

Sometimes this question is not answered. Sometimes the answer is not pertinent, as "Maintained by ——— County," or "Patient is public charge here."

In one case no demand was made upon the alien or relatives for hospital expenses. In the preliminary examination the alien complained that he had over $300, which he claimed had been taken from him, but he was, nevertheless, deported.

The reasons given by the person making the certificate as to why the alien had become a public charge are generally stated in the broadest possible terms.

There are a number of these cases where the alien procured an attorney after such a certificate was furnished, and the attorney proved, sometimes by other medical testimony and sometimes by cross-examination, that the alien was not a public charge, or that the statement that he had become a public charge for causes not arising subsequent to entry was incorrect.

The rule with respect to cases of public charges in former years required—

> An accurate statement in plain terms of the mental or physical disability of the alien, covering any and all complications which his condition may present; also his present condition with reference to the degree of helplessness to which reduced; the probability of a cure, or the degree to which health and ability to become self-supporting may be restored; and in insanity cases, whether recurrent attacks might be expected if recovery from present onset were effected.

4

Warrants of Arrest

The rule relating to applications for warrants of arrest provides that telegraphic application may be resorted to only in case of necessity or when a substantial interest of the Government would be subserved thereby. The applications for warrants of arrest in the great majority of cases, however, are by telegraph.

These telegraphic applications give the name of the suspect, and a code word or words designating the particular statutory provision which it is alleged the suspect has violated. The telegraphic application does not give any particulars and in effect consists of a code equivalent for the statement that the named suspect has entered this country without inspection or the like.

The rule further provides that the usual written application must be forwarded by mail and this is done in most cases. This written application usually consists of the record of the preliminary examination.

There are two warrant officers in the department at Washington who pass upon applications for warrants of arrest. As the warrants of arrest received for the year ended June 30, 1929, exceeded 20,000, it can be seen that the volume of clerical work handled in Washington in this connection is tremendous. In fact, particularly with telegraphic applications, the granting of the warrant of arrest tends to become automatic, and the district officer can generally be assured when he sends the telegraphic application that he will shortly receive a telegraphic warrant in return.

Because of the prevalence of telegraphic applications and telegraphic warrants the issuance of warrants of arrest through Washington rather than through the district offices becomes in the main a form. There are, however, cases in which, when the written application is received in Washington, it is seen that the facts do not support the application, and either the warrant is refused or, if it has already been issued by telegraph, is canceled.

As has been stated, in many cases the suspect is detained by the local office until the warrant of arrest requested has been received and can be served upon him.

5

Hearings on Warrants of Arrest

(a) WHERE AND WHEN HELD

The rules provide that—

> Upon receipt of a telegraphic or formal warrant of arrest the alien shall be taken before the person or persons therein named or described and granted a hearing to enable him to show cause, if any there be, why he should not be deported.

These hearings are generally held in the district office unless the suspect is in prison or is confined in a hospital.

The hearings under the warrant of arrest (often called warrant hearings) are held promptly after the issuance of the warrant. In the 453 cases studied approximately three-fifths of the warrant hearings for the suspects involved were held in less than a week after the issuance of the warrant of

arrest, and approximately one-half of the remainder were held in less than three weeks.

(b) NATURE OF WARRANT HEARINGS

This step in the procedure is in nature a show cause hearing. The suspect has in most cases already been thoroughly examined in the preliminary examination; he is now given an opportunity to rebut what he has already said.

The importance of the hearing from an administrative point of view is to obtain sufficient data for the procuring of a passport for the alien from the country to which he is to be deported, as without this, in most cases, deportation is impossible.

(c) METHOD OF REPORTING

These warrant hearings are almost invariably reported by a stenographer. For over one-third of the suspects in the cases studied the examining inspector was the stenographer. In the other cases the stenographer was generally an employee of the department. As in the reports of the preliminary examinations, in the hearings attended by the writer, the stenographer was sometimes stopped and some of the questions and answers were not reported, particularly when no attorney was present. A large part of the material so omitted seems to consist of irrelevant data or endeavors to make the suspect understand the questions, although the nature of the omissions may be more serious.

(d) INTERPRETER

As in the preliminary examination, it is within the discretion of the examining inspector to decide whether or not an interpreter shall be called. If an attorney is present, he may insist upon one, and, as has been noted, an interpreter is sometimes present at the warrant hearing when the suspect is represented by counsel, although there had been no interpreter at the preliminary examination.

For over one-fourth of the suspects in the cases studied the examining inspector acted as interpreter in the warrant hearing. In many of the other cases the interpreter was another immigrant inspector in the same office.

(e) INSPECTOR IN CHARGE

For over one-half of the suspects in the cases studied the inspector in charge of the warrant hearing was the same inspector who had made the preliminary examination.

As has been shown, the inspector in charge at the warrant hearing often also acts as stenographer or interpreter. For over 10 per cent of the suspects in the cases studied the inspector in charge of the warrant hearing acted in the three capacities—as examiner, interpreter, and stenographer.

In some of the cases the same inspector apprehended the suspect, took the preliminary examination, presided at the warrant hearing, and acted as interpreter and stenographer at either the preliminary examination or the warrant hearing, or both.

(f) PRESENCE OF COUNSEL

(1) When Allowed

The rules now in force provide that—

> At the hearing under the warrant of arrest the alien shall be allowed to inspect the warrant of arrest and shall be advised that he may be represented by counsel. The alien shall be required then and there to state whether he desires counsel or waives the same, and his reply shall be entered on the record. If counsel be selected, he shall be permitted to be present during the conduct of the hearing and to offer evidence to meet any evidence presented or adduced by the Government. Objections of counsel shall be entered on the record, but the reasons for such objections shall be presented in accompanying brief.

On this point the rules have from time to time been materially changed.

The regulations promulgated as of July 1, 1907, gave the suspect the right to counsel as soon as arrested. The ninth edition of the same rules issued February, 1910, provided that the alien should be apprised that he might be represented by counsel—

> At such stage thereof (the warrant hearing) as the person before whom the hearing is held shall deem proper.

The rules of May 1, 1917, provided that—

> Preferably at the beginning of the hearing under the warrant of arrest, or at any rate as soon as such hearing has proceeded sufficiently in the development of the facts to protect the Government's interests, the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued, and shall be apprised that thereafter he may be represented by counsel.

Just before the "red" raids in January, 1920, the rules then in force required that an alien should have the right to be represented by counsel at the beginning of the hearing. During the raids the rule was changed to read that counsel should be allowed—

> Preferably at the beginning of the hearing, or, at any rate, as soon as such hearing has proceeded sufficiently to protect the Government's interests.

At the end of the month the rule was changed back to its original form with the provision for counsel at the beginning of the hearing.

In a habeas corpus case it was held that this change of rule was made for the purpose of affecting the cases of the aliens then under consideration and was in violation of the requirements of due process of law. (Colyer *v.* Skeffington, 265 Fed. 17.)

A memorandum from Mr. Louis F. Post, then Assistant Secretary of Labor, in connection with these hearings is contained in the Congressional Record of Monday, April 12, 1920. (Vol. 59, No. 105.) In this memorandum Mr. Post said that he was adhering to the following principle:

> Statements of the accused alien, whether oral or in writing, made while he is in custody and without opportunity fairly afforded him from the beginning to be represented by counsel, and without clear warning that anything he says may be used against him, will be disregarded pursuant to the principle re Jackson (U. S. District Court for Montana, Bourquin, J.) and of Silverthrone *v.* United States (Jan. 28, 1920), as having been unlawfully obtained.

This new rule, however, if the principle was set forth in the form of a rule, does not seem to have remained long in effect. The rules of February 1, 1924, make substantially the same provisions as the present ones.

While the present rule does not in terms provide that the alien shall be advised at the beginning of the hearing that he may be represented by counsel, in practice this is generally done. If the suspect states that he wishes to be represented, the hearing is adjourned for a few days so that an attorney can be procured.

In so far as can be learned, no objection is made to the suspect's obtaining counsel after the serving of the warrant of arrest and before the hearing under the warrant. The important feature from the standpoint of the Government is that the alien shall not be allowed to have an attorney before his preliminary examination has been taken.

(2) Extent of Representation by Counsel

Even after the alien is apprised that he may have counsel, and even though he may wish to have an attorney, he generally can not do so because of the lack of funds.

Approximately only one-sixth of the suspects in the 453 cases studied were represented by attorneys. The situation in this respect varies throughout the country. In some sections where the residents of foreign birth or descent are large in number and well organized, the inspectors state that there are attorneys present in the warrant hearings in 20 per cent and sometimes more of the cases. In other localities, as along some parts of the Mexican border, attorneys are not present in more than 1 or 2 per cent of all cases. It is safe to say that in the great majority of cases throughout the country the alien is unrepresented.

In many cases, the suspect, on being asked if he wishes to have counsel, replies that he does, but that he does not have any money. Sometimes he asks the inspector if counsel would do him any good, and is told in reply either that he must make the decision for himself or that if the facts to which he has already sworn are true an attorney would only be a waste of funds. In some warrant hearings attended by the writer, the suspect, when asked as to the advisability of procuring a lawyer, was definitely discouraged.

In some sections of the country there are philanthropic organizations interested in aliens who supply attorneys in what they consider meritorious cases and would be glad to do so in still more cases. These organizations, however, know of only a small proportion of the warrant hearings

which are being held. The suspects generally do not know of the existence of these bodies, and the cooperation between the immigration authorities and such organizations, while it has progressed in certain respects, has not proceeded to the point of giving an opportunity to supply counsel to the suspects who may wish to be represented. Many of these organizations would be glad to furnish counsel in such cases as they deem advisable, or, if they are not now able to do so, to build up their organizations to that end.

The results which a reputable attorney may accomplish for suspects in deportation cases in entirely legitimate ways will be considered in a later part of this report. In the same section will be considered the general character of the counsel who appear in the cases at the present time.

(*g*) WITNESSES

Under the statutes and rules, an alien or his representative has the right to request that a witness be subpœnaed. The rules with respect to such subpœna provide as follows:

> The power to issue subpœnas should be exercised only when absolutely necessary. . . . If an alien or his authorized representative requests that a witness be subpœnaed, he shall be required, as a condition precedent to the granting of the request, to state in writing what he expects to prove by such witness or the books, papers, and documents indicated by him and to show affirmatively that the proposed evidence is relevant and material and that he has made diligent efforts without success to produce the same. The examination of the witness or of the books, papers and documents produced by him shall be limited to the purpose specified in such written statement of the alien or his authorized representative. When a witness has been examined by the investigating officer and counsel has not had an opportunity to cross-examine such witness and it is apparent or is shown that such witness will not appear for cross-examination unless commanded to do so, a subpœna shall issue.

As in the preliminary examination, the testimony of witnesses who are not subpœnaed is sometimes incorporated by reference or by affidavit.

(*h*) SCOPE OF HEARING

As a general rule, when a suspect is not represented, the warrant hearing is purely formal. The warrant of arrest,

stating the specific provisions of the law which it is charged have been violated, is presented and explained to the suspect and he is asked whether he wishes counsel. The report of the preliminary examination is then presented or read to him, and any comments which he may wish to make are made a part of the record.

Here the Government's case is generally brought to a conclusion, although under the rules, if it appears to the examining inspector that there is an additional reason for the deportation of the alien, the charge should be placed and the alien notified in order to give him an opportunity of rebuttal.

The inspector in charge is in reality a prosecuting official. His main interest is in seeing that the case of his office, which often he himself has prepared, is substantiated. He does not, as a rule, regard it as a part of his duty to endeavor to bring out any reasons which might be advanced on behalf of the suspect against deportation, even, as is generally the case, where the ignorance or stupidity of the suspect shows that he is incapable of realizing the importance of any defense he may have. On the other hand, there are cases where the inspector, from a sense of fairness, does just this. In others, from some intimation the suspect has given, the inspector sees that he should be allowed to remain in this country for a certain length of time in order to straighten out his affairs, and goes to some trouble in spreading the details of the request on the record.

As a part of almost every warrant hearing, except sometimes in Mexican cases where generally no passport is required, the examining inspector in accordance with the rules obtains full data as to the alien's place of birth, religion, the names and locations of churches and schools he may have attended, his last address, the names and addresses of his nearest relatives residing in the country of his birth and in any country in which he may have been residing, and any other information necessary for the obtaining of the data for the passport.

(i) WARNINGS TO SUSPECT

In very few of the warrant hearings is the suspect warned that what he says can be used against him in subsequent criminal proceedings or that any statements he makes should be voluntary. The warrant hearing is taken to be the alien's opportunity to show why he should not be deported. In most of the warrant hearings no new facts are developed or statements given by the alien.

The rules further provide that—

> Before the hearing is finally concluded the alien shall be warned that under the act of March 4, 1929, he will, if ordered deported, and thereafter enters or attempts to enter the United States, be guilty of a felony and upon conviction be liable to imprisonment of not more than two years, or a fine of not more than $1,000, or both such fine and imprisonment. This warning shall be entered upon the minutes of the hearing in a separate paragraph.

This rule is generally observed.

(j) METHOD OF CONDUCTING HEARING

As has been said, in the warrant hearing, the examining inspector generally feels that the Government's case has been made out by the preliminary examination. He may, however, wish to strengthen some point or develop a new one. In such cases the methods employed are generally the same as those in preliminary examinations, particularly if no attorney is present.

In the following case the suspect denied the correctness of the report of the preliminary examination. The charges in the warrant of arrest were that the alien had entered without a visa at a place other than a designated port of entry, and that at the time of entry he was likely to become a public charge. The examining inspector, after the alien had challenged the correctness of the report of the preliminary examination, asked:

> Q. With whom do you live near Ysleta, Tex.?—A. I live alone.
>
> Q. Have you ever lived with any woman out of wedlock in the United States or Mexico?—A. No.
>
> Q. How often do you get drunk?—A. I never get drunk much, just once in a great while.

In one case, the examining inspector notes that the alien finally agreed to testify at the warrant hearing "after much persuasion." At this hearing the alien was examined as to letters which had been contained in her purse.

(k) RECOMMENDATION OF INSPECTOR

It is customary for the examining inspector at the conclusion of the warrant hearing to dictate and sign a recommendation to the department at Washington either that the warrant of deportation be issued, or that the warrant of arrest be canceled.

In the cases studied where a warrant hearing was held, the inspectors recommended the deportation of approximately 95 per cent of the suspects.

6

DETENTION

The rules provide that upon receipt of warrant of arrest—

> Pending determination of the case, in the discretion of the immigration officer in charge, he (the suspect) may be taken into custody or allowed to remain in some place deemed by such officer secure and proper, except that in the absence of special instructions an alien confined in an institution shall not be removed therefrom until a warrant of deportation has been issued and is about to be served.

In the cases studied for the fiscal year 1929, over half of the suspects involved were detained in jails and about 10 per cent were kept in immigration stations. Arrangements for detention of suspects in the immigration station are generally possible only in the larger cities where such quarters have been provided by the Government; in other cases the district office makes arrangements with the county or city jails to detain the suspect at some fixed charge, generally varying from 60 cents to $1 a day.

The physical conditions of the detention quarters vary. When the United States Government provides such quarters they are generally clean and comfortable. Where local jails are used the nature of the accommodations sometimes gives rise to complaint, particularly when the suspected aliens are kept with prisoners convicted of major crimes.

The period of detention in deportation proceedings generally varies from a few weeks to three or four months.

Only approximately 10 per cent of the suspects involved in the cases studied for the year 1929 were released on their own recognizance and only approximately 15 per cent were released on bail. Except in unusual circumstances the bail is generally fixed at $500.

Of the aliens detained the great majority are kept at the Government's expense. Others, however, at the time the warrant of arrest is issued are already incarcerated in State or local institutions at the expense of the local authorities.

7

Board of Review

(a) STATUS

This board, as has been said, is a nonstatutory organization, functioning within the Department of Labor and subject to the jurisdiction of the Secretary of Labor. Its official designation is the Secretary and Commissioner General's board of review, but it is generally referred to as the board of review.

To this board is sent a record of each warrant hearing, together with a copy of the preliminary examination and any other papers or documents which the district may consider pertinent. It is one of the functions of this board to consider this record and to make its recommendation thereon to the Secretary of Labor, together with its findings of fact on the record.

The work of the board of review is not confined to warrant proceedings. It hears appeals from the local special boards of inquiry in cases of admission or exclusion of immigrants; cases of fines upon steamship companies and carriers come before it; it considers applications for permits and for registration under the act of March 2, 1929. It is to be noted that while its review of admission or exclusion cases is appellate in nature, its work in warrant proceedings is in effect the original finding of the department. The statutes provide that the warrant of deportation is to be

issued by the Secretary of Labor and the work of the board in this connection is the basis for the acts of the Secretary.

(b) ORGANIZATION

The organization of the board will be considered only in so far as it relates to deportation cases. All of these cases are sent to the office of the chairman. He or the assistant chairman classifies them according to type, Chinese expulsion cases, for example, being treated as a distinct category. Each case is then assigned to a member of the board of review who examines the record and prepares a memorandum, which he submits to the chairman for his approval or disapproval. In the ordinary routine the chairman has not the time to examine the great majority of these cases in detail. Most of the memoranda of the particular members of the board who have been over the file will be approved and then sent on to an assistant to the Secretary of Labor for his approval. The board occasionally will send back a case to the district office for an additional hearing or for the obtaining of more information either on behalf of the Government or on behalf of the suspect.

The members of the board of review have their offices in adjoining rooms, two or three members being located in each room. If the member of the board to whom a particular case is sent feels in doubt about it, he may discuss it informally with one or two other members, and, if there is disagreement, there may be a conference of the full board, which, however, rarely occurs. If the case involves a question of policy, it is generally taken up with an Assistant Secretary of Labor to determine the policy which he wishes enforced before the board makes its own decision.

Occasionally the board is consulted by district inspectors in warrant cases to ascertain whether the board will recommend deportation on certain evidence.

The findings and recommendations of the board of review are not published nor are they public records. The entire file, however, is open to the alien and to his counsel, although not to the general public.

In a small minority of the warrant cases an oral hearing before the board is requested and is almost always granted.

In these oral hearings three members of the board sit in a room which is marked "court room" and which is arranged after the fashion of a court room with a bench, behind which the members of the board sit. The hearings are from 10.30 to 12 o'clock in the morning and from 2 to 3 each day when necessary and may be extended when occasion requires. Cases are not formally assigned but are set down for hearing at the convenience of those who wish to be present.

These hearings are not public. The board regards them as a substitute for a hearing by the Secretary of Labor himself. In practice, however, the board does not generally object to persons attending the hearings, although at its discretion the door to the "court room" may be locked.

These hearings are highly informal. In many cases neither the Government nor the suspect is represented by counsel; even when the alien is so represented no one appears on behalf of the Government. The board feels that it is acting in the dual capacity of representing the Government in the enforcement of the law while deciding the questions of law and fact brought before it.

(c) VOLUME OF WORK

The figures of the Department of Labor as to the volume of work of the board of review for the last three fiscal years, each of which ended June 30, are as follows:

	1928	1929	1930
Number of appeal cases reviewed	4,844	4,972	4,343
Number of warrant cases reviewed	12,512	14,235	18,258
Number of cases reconsidered	19,469	21,284	14,436
Number of fine cases	[1] 580	2,130	4,220
Number of permit cases	[1] 1,343	18,524	14,543
Number of oral hearings	1,844	1,798	2,174
Number of registration cases, act Mar. 2, 1929			9,337

[1] Figures represent last 6 months of fiscal year, 1928; figures not available for first 6 months.

Omitting the number of cases reconsidered and the number of oral hearings, each of which includes duplications of other proceedings before the board, the number of cases considered by the board for the year ended June 30, 1929, is 39,861 and for the year ended June 30, 1930, is 50,701.

At the beginning of the fiscal year 1931 the board consisted of the chairman and six members, with three vacancies to be filled.

(d) TIME OF CONSIDERATION OF WARRANT CASES

The board of review considers deportation cases quickly after the warrant hearing. In the case study made, the board made recommendations as to approximately one-half of the suspects involved within three weeks from the date of the warrant of arrest, and as to approximately three-fifths of the suspects within one month.

(e) NATURE OF PROCESSES

The board in its general work combines administrative and judicial functions. In much of its work it is acting purely as an administrative body, as when it imposes fines, extends permits for temporary stays in this country, or acts upon applications for registration under the act of March 2, 1929.

In deciding whether or not a suspected alien should be deported, however, its decisions, irrespective of what they may be called, partake largely of the nature of the process commonly called judicial. It decides facts, passes upon the proper construction of the law, and makes recommendations which in effect are findings and which adjudicate most important personal rights of liberty.

The facts found by the board in deportation cases may be, and often are, simple of ascertainment. Did an alien enter this country without paying the head tax? Did he have an unexpired visa and was he inspected by an immigrant inspector? At the time he entered was the alien illiterate?

On the other hand the finding may be a mixed question of fact and law. At the time the alien entered was he likely to become a public charge? If he entered legally did he conceal a material fact? After a legal entry did he become a public charge; and if so, was it for causes not affirmatively shown to have arisen subsequent to landing? At the time he entered did the alien bring another person with him for immoral purposes? Did the offense for which he has been

convicted involve moral turpitude? Does the alien believe in the overthrow of government by force or violence? Is he a member of an organization which has in its possession any printed matter advocating unlawful destruction of property? Cases of the last-mentioned categories involve questions which often duly constituted courts of the highest judicial caliber find it difficult to answer.

In making its finding the board is under the dual and often conflicting necessities of acting as an agency of an executive body charged with the enforcement of the laws and at the same time of acting in a judicial or quasi-judicial capacity. This conflict of functions is apparent in a review of its processes.

There are many indications in the files that the board, even though it is the creature of and subordinate to the Secretary of Labor, feels its quasi-judicial responsibility. In particular, the summaries of the cases given by the board are clear, succinct and generally fair. This fairness is often continued in the weighing of conflicting evidence and in many cases a judicial tendency is apparent. On the other hand, in many of the cases there is also apparent the checking of this embryonic development by the realization that the board is an agency of an executive branch of the Government, and that the duty of the department and its agency is to enforce the laws to the fullest possible extent.

(f) LIMITATIONS OF THE BOARD

(1) Incompleteness of Records

The board acts upon a typewritten record whose compilation, as has been shown, is within the discretion of the local immigrant inspector and which may contain improper omissions. This record, moreover, may consist of statements taken through interpreters or without interpreters from persons whose knowledge of the English language is imperfect. In practically no case does the board come face to face with the suspect or have a chance itself to examine him and to form its own judgment of his character and reliability. It must act upon the record before it.

(2) Absence of Counsel

In relatively few instances, no matter how difficult the case may be, does the board have the benefit of the oral argument or written briefs of attorneys. Upon doubtful points of the application or construction of the law it may, and often does, consult with an Assistant Secretary of Labor, who may in turn receive a legal opinion from the solicitor of the department, but there are no similar facilities for the adequate presentation of the case of the suspect. Moreover, the fact that the suspect has not been represented in the earlier proceedings may, through no fault of the department, have resulted in the failure to develop vital facts whose importance the suspect does not comprehend and which he is not able to establish unaided.

(3) Lack of Reports

Despite the quasi-judicial nature of its work in deportation cases, the findings and recommendations of the board are not printed or published, so that, unlike judges or other quasi-judicial administrative tribunals, it has no body of precedents upon which to rely and upon which to build a consistent structure of administrative law.

(4) Lack of Discretion

With the few nominal exceptions set forth in the summary of the statutes, the Secretary of Labor has no discretion in the issuing of warrants of deportation. Once the legal machinery with respect to any alien has begun to move, his deportation, if he has violated the law, becomes almost automatic, no matter what may be the extenuating circumstances and no matter what unnecessary hardship and suffering may result to him and possibly to his American family.

It is true that the local offices, before an application for an arrest has been made, may and sometimes do give the alien the privilege of voluntary departure, particularly along the border. It is also true that even where this has not been done, the board of review in occasional instances does itself grant this privilege without the issuance of a warrant of

deportation. In a few cases the board, instead of deporting the alien, may grant him the privilege of registration under the act of March 2, 1929.

But all these cases are implied exceptions to an express statute. Despite the gravity of the deportation process, the board has no power at all analogous to the powers of pardon or probation.

(5) Political Pressure

Partly because the board is only an administrative agency and not an independent tribunal, and partly because of the inelasticity of the law, representations by a Congressman or Senator are often made to the board on behalf of the suspect. Under the present system there is nothing improper about this. An alien may be represented by a Congressman or Senator as well as by an attorney or a philanthropic organization. Indeed, it can well be contended that it is the duty of the political representatives of the suspect to endeavor to prevent substantial injustice or unnecessary hardship through the operation of a rigid law. It is true, however, that even though this pressure may be and often is courteously resisted by the board, it does not tend to make easier the exercise of the board's difficult functions.

(6) Conflict of Functions

The board is hampered by the dual and conflicting functions to which reference has been made.

(*g*) AGREEMENT OF BOARD WITH DISTRICT RECOMMENDATIONS

In the great majority of cases the recommendation made by the inspector who conducts the warrant hearing in the local district is followed by the board of review. In the files studied for the fiscal year 1929, the board of review followed the recommendation of the district as to the disposition of approximately 90 per cent of the suspects whose cases were passed upon by both the district and the board. As the districts recommended the deportation of about 95 per cent of the suspects whose cases were considered, the predominant importance of the local inspectors is apparent.

(*h*) CHARACTER OF FINDINGS

(1) In General

In so far as the findings of the board are quasi-judicial in nature, they vary—at least upon the records before it—from the adjudication of comparatively simple facts to the determination of most difficult questions of the construction and application of the laws. By far the larger part of its deportation proceedings—again on the records as they come before the board—involve relatively easy cases. Even these cases, however, may involve other and important considerations. For example, an alien may be deportable because he has made a technical illegal entry, although he has previously resided in this country for a long period and has an American family. There is, moreover, a considerable proportion of cases in which the determination as to whether or not a warrant of deportation should issue under the law is much more difficult.

In the summary of the statutes given in the first part of this report, a distinction was made between aliens who are deportable because of the manner of their entry or their condition at entry, and aliens who have entered legally and are deportable because of subsequent acts. Before the board of review, however, the cases, in so far as difficulty of determination is concerned, may be separated into two other categories—first, those cases in which a pure question of fact is to be determined, such as whether an alien entered without a visa or whether he has overstayed the period for which he was admitted; and, second, those cases in which the question to be determined is that of the alien's condition or belief, such as whether at the time he entered he was likely to become a public charge, or whether after entry he has become a public charge or has committed a crime involving moral turpitude, or is an anarchist.

It may be said, as a general summary of the work of the board, that in the first class of cases, constituting the larger group, the findings of the board as a whole seem correct on the records before it. Even though such findings are required under the law, however, they may, and often do, as will hereafter be shown, involve unnecessary suffering.

In the second group of cases the correctness of the findings is much less apparent. It is in the second group that the limitations above discussed, for which the board is not responsible, but which nevertheless are imposed upon it, show most clearly. Certain examples from the second group of cases will be given, all taken from the 453 files abstracted for the year 1929.

(2) Public Charge Cases

In a number of the cases studied involving the contention that the aliens had become public charges within five years after entry from causes not affirmatively shown to have arisen subsequent to entry, the correctness of the finding of the board of review on the evidence before it seems doubtful. The following examples are pertinent:

In one case, the alien had lawfully entered the country over four years before he was arrested. An officer of the State sanatorium had certified that the alien had become a public charge, having contracted tuberculosis, and that a complete cure was not possible. In a later report, however, the same official stated that the alien had left the institution in an excellent condition. In the warrant hearing the alien, when asked if he had any reason to offer why he should not leave the State sanatorium, answered:

> A. Yes. If I am being deported because I became a public charge here, I would like to pay back to the State all that they spent on me. I am working now and I will be able to pay it back little by little. Just show me a way that I can pay it back, week by week, or month by month, and I will pay it all back. I don't want to go back to Cyprus. It will be like suicide for me to go back there.

The alien further testified that he had never been sick before coming to this country and had not been taken sick here until two years after he had entered. He was deported.

In another case the alien had been legally admitted to this country in September, 1923. He testified that he had been afflicted with tuberculosis for the first time in 1928 and that no other member of his family had been affected. The certificate from the city division of tuberculosis, issued in June, 1928, stated that:

> This patient has been in the United States for considerably less than five years. The development of a process so extensive and the evolution of tuberculosis makes it positive that the disease was existent at the time of entrance.

The alien was deported.

On the other hand, there are cases of this type in which the board is more tolerant. In one such case the alien had lawfully been admitted in 1923 and had become a public charge in the State sanatorium. The medical report stated that the disease, tuberculosis, dated back to 1925. There was no evidence of an earlier disease. The alien in the warrant hearing stated that he had been steadily employed until 1925 and that he had been examined and passed for life insurance while in this country, and that his policy was still in force. The examining inspector recommended deportation, but the district director stated that there was a reasonable doubt as to whether the causes of disability existed prior to entry. The board of review recommended that the warrant of arrest be canceled.

In a considerable group of cases the contention that the alien was likely to become a public charge at entry and that therefore his entry was illegal is used as a catch-all when there is a wish to deport the alien and no other possible ground. In one case, for example, the alien, a boy, had legally entered this country from Mexico in 1927, paying his head tax. At the time of the application for a warrant of arrest in April, 1929, he was a ward of the juvenile court and was serving a sentence in an industrial school in California until he reached the age of 21. Under the California laws no order adjudging a minor a ward of a juvenile court can be deemed a conviction of crime, so that the Government could not claim the boy had committed a crime involving moral turpitude within five years of entry. He was deported on the ground that his subsequent conduct showed that at the time he entered he was likely to become a public charge.

(3) Cases Involving Morality

(1) immoral purpose

If an alien is found to have entered this country for an immoral purpose, he is deportable. In these cases the board

has to determine what the immoral purpose is. Its decisions on this point are often questionable.

In the following examples the alien was generally deportable on other grounds, but there is an express finding in each case that one of the grounds for deportation is entry for an immoral purpose.

In one of these cases the alien was a Mexican woman, and at the time of her last entry had three children, two of whom had been born in this country. The board found she entered for an immoral purpose because she was not married to the father of her children.

In another case the alien, a woman, had entered the country illegally three years before her apprehension. She had been living with the father of her children for seven years and testified that she had had no sexual relations with any other man. She had two children by the man with whom she had entered and both children were born in Texas. The alien was deported.

It should be explained that many Mexicans live together without being legally married, sometimes through ignorance and sometimes because the expense of marriage in Mexico is too heavy. A large part of the Mexican entries are into Texas, where common-law marriages are recognized.

(ii) ASSISTING A PROSTITUTE

In another case the question of morality upon which the board had to pass was somewhat different. The alien, a seaman, had deserted his ship in 1919 and had evidently been living in this country ever since, so that he was not deportable on the ground of illegal entry or because he had stayed here longer than permitted. The charge brought against him was that he had been assisting a prostitute. In the preliminary examination the alien testified that he was living with a woman not his wife. The following colloquy then took place:

> Q. Did you know whether she ever practiced prostitution?—A. Yes, I'll tell you the whole story. About three years ago I met Julia at one of these "houses of prostitution," and used to try to get her to give up that life. I have helped her out in lots of ways, both during the time she hustled, and after she started living with me a year ago; I have supported her and kept her. She has not hustled since that time.

In the warrant hearing the alien denied that the woman had practiced prostitution since he had been living with her and testified that he regarded her as his wife and intended to marry her legally and become an American citizen. This case also occurred in Texas, where, as has been said, common law marriage is recognized. The alien was ordered deported.

(iii) MORAL TURPITUDE

The holdings of the board of review as to what crimes involve moral turpitude are by no means uniformly convincing. In one such case lewd and lascivious cohabitation was held a crime involving moral turpitude. In another case it was held that confession of the alien that he had been having immoral relations for three years with a Mexican woman was an admission of a crime involving moral turpitude prior to entry.

It is sometimes claimed that a misleading statement to an immigrant inspector at the time of entry is the admission of a crime involving moral turpitude, because it amounts to perjury. In the following case the board of review dealt properly with such a contention.

> The record discloses that this alien at the time of his admission swore that he was single when in fact, as he later admitted, he was married. His wife resides in Canada. It is not shown that alien would have been excludable had he told the truth concerning his marriage. The false and misleading statements on which deportation proceedings are based, are, therefore, not on a material point. The charges that he entered without inspection and that he admits the commission of a crime involving moral turpitude, to wit: perjury, are not sustained.

(i) USE OF DISCRETION

It has been pointed out that the discretion which can be exercised by the board of review is very limited, even in the most meritorious cases. There are some cases, however, where the board of review has by various means dealt with the alien as it thought advisable on general principles of policy despite the law.

(1) Stretching of Facts

In one case the alien had entered this country on October 12, 1923, for a temporary stay and had resided here ever since. He was a chemist and had been vice president and general manager of a company. He was married and a child was born in this country. He had obtained his first naturalization papers, had invested $20,000 in a business here, and had $6,000 in savings. A warrant of arrest was issued on October 6, 1928. The report of the warrant hearing showed that the alien had been taken into custody on the warrant of arrest on October 9, 1928. Despite these dates the board of review recommended that the warrant of arrest be canceled on the ground the alien had not been taken into custody until after five years from his entry. The district director, apparently chagrined, subsequently pointed out the error the board of review had made and that the alien had actually been arrested within the 5-year period, but the board refused to reopen the case, evidently feeling that the alien was a desirable enough resident to warrant a slight stretching of the facts.

In other cases the facts are construed in a way which will render the alien deportable, even though the finding is against the weight of the evidence.

(2) Voluntary Departure

In exceptional cases the board of review occasionally allows voluntary departure without the issuance of a warrant of deportation, so that the alien can reenter properly. A typical recommendation in such a case is as follows:

> Although aliens are deportable in view of exceptional circumstances an order of deportation will not be entered at this time, but aliens should be advised that they may depart from the United States voluntarily to any country of their choice on or before September 1, next, on consent of surety as to man, and that unless they do so depart an order of deportation will be entered and deportation effected, in which event they will not be permitted to reenter the United States.

In this case the alien was represented by an attorney.

In another case the alien, a Mexican, had been legally admitted but had gone back to Mexico for a few hours and had reentered illegally. The following is an excerpt from the preliminary examination:

> Q. Did you not know that your identification card was not good for entry at a place not designated as a port of entry for aliens?—A. No; I did not know it; I thought it was all right.
>
> Q. If you wanted to get a drink, why did you not go to Juarez and cross legally instead of crossing illegally at a place not a port of entry?—A. I did go to Juarez and got to drinking too much, then drove down the valley and went to the other place. I suppose the reasons I did that was because I was drunk.
>
> Q. Are you a habitual drunkard?—A. No, last night was my birthday, and I was drinking a little. I don't drink all the time.

In this case, before the file had gone to the board of review, the Assistant Commissioner General wrote to the district that unless the alien was undesirable he should be given an opportunity to depart voluntarily without prejudice to his readmission.

In another case the alien had been smuggled into this country but was allowed the privilege of voluntary departure because he had appeared as a Government witness against his smuggler.

In the cases studied for the year 1929 the tendency of the board of review to allow voluntary departures shows an increase. The privilege is granted sporadically, however, and there are a number of cases where the alien is formally deported although the considerations in his favor seem to be as strong or stronger than those cases where voluntary departure is allowed.

It must be remembered also that while voluntary departure may be fairly easy along the border, most European aliens have not the means to pay their passage to a foreign country and back. Moreover, in a number of cases, even where voluntary departure is allowed, the alien may encounter serious difficulty in obtaining a visa for readmission because of the operation of the quota law or because of the strict interpretation by consular offices of the law that aliens likely to become public charges are to be excluded.

As a whole, it can be said from the cases studied that while the board of review occasionally recognizes the unwisdom of formal deportation, in a great many cases where unneces-

sary hardship is entailed by deportation, the board of review does not or can not prevent it.

(3) Stays of Deportation

The board of review, even though the alien is to be finally deported, has some discretion in granting a temporary stay. This discretion, like that of voluntary departure, is variably exercised.

The request is sometimes denied without apparently any good reason. In one such case the alien requested a stay in order to collect money due him in this country. The board of review denied the request on the ground that at the time of the warrant hearing the alien had not testified to this effect. In another similar case the alien's attorney made the following statement in the warrant hearing:

> I am satisfied from the foregoing testimony that the alien is subject to deportation but I would respectfully ask that his departure be deferred for three or four months to enable him to collect the moneys owing to him which matter has been placed in my hands.

The board of review, however, refused the request.

(j) COOPERATION WITH OTHER AGENCIES

In some of the deportation cases considered by the board of review the suspect is represented by a philanthropic organization, rather than by an attorney. While these cases are few in number, they show a much more favorable result for the suspects than the cases where no such organization appears. In some of these cases a close cooperation is evident between the department and the organization.

For example, in one case an entire family of aliens was reported to the immigration authorities by a charitable organization as having become public charges. The family had been dependent upon this organization for the past three years and at the time wished to be sent back to England. When deportation proceedings were once begun, however, the family evidently changed its mind and relatives and friends volunteered to help support them. The organization thereupon requested that deportation be avoided and the request was followed out as to most of the family. The cooperation was not complete, however, as the deportation of one daughter, who had been an invalid, was recommended, although the rest of the family was left in America and protested the separation.

In another case the aliens had been legally admitted for a visit of five months, having entered from Mexico. The husband had been in business in Mexico for seven years and had about $35,000 in cash. They applied for admission to Canada and were refused. The family had originally come from Rumania and in the warrant hearing testified without contradiction that they had been forced out of Rumania because of religious persecution and for that reason requested that they be allowed to depart voluntarily to Mexico. This request was granted. A philanthropic organization was interested in the case and the time of departure was extended in order that an appeal could be prosecuted from the decision of the Canadian immigration authorities. The aliens eventually left voluntarily for Mexico and the immigrant inspector who had handled the case wrote to the Commissioner of Immigration commenting favorably upon the cooperation of the aliens and of the organization involved.

8

Subsequent Proceedings in the Department

In some cases, as is indicated from the figures as to the work done by the board of review, this body considers a deportation case more than once, in a few instances as many as five or six times, as when there are repeated requests for stays of deportation.

When the board of review has reached its decision it is submitted to an Assistant Secretary of Labor or an assistant to the secretary who generally follows the board's recommendation. In a few cases, however, the recommendation of the board is not followed. While it is not customary for any further hearings to be held after the board of review has considered the case, there is nothing in the statutes or

the rules to prevent personal appeals to the officials who have the final word and such appeals are sometimes made.

If and when a warrant of deportation has been issued, it is generally necessary to procure a passport from the country to which the alien is to be deported. This is generally done at Washington through the passport division of the department, although occasionally the district will procure the passport from the local consul. There is often unavoidable delay in obtaining the passport, and sometimes the reopening of the case by the Department of Labor is necessary in order to obtain additional information as to the alien's nationality.

9

Counsel

(a) RULES RELATING TO ATTORNEYS

Attorneys are admitted to practice before the department or any immigration station or office if they are in good standing in their respective communities. Appearances must be entered in writing. The Secretary of Labor is given power to suspend or entirely exclude from further practice before the department any attorney who defrauds or deceives an alien, who is not of good character and reputation, who has been disbarred, or who refuses to comply with the immigration laws and rules.

Attorneys are permitted by the rules to review the records in all cases in which their appearance is noted, until deportation is actually effected.

While the rules limit the fees which attorneys can charge or receive from any person or organization in admission cases to $25 for any alien or single family, this restriction does not apply to deportation cases. In practice, in these cases, the department does not go into the question of the fees which have been charged.

(b) CHARACTER

There are indications that in certain cases aliens are exploited by less reputable members of the bar who charge

exorbitant fees and who often neglect the cases entrusted to them. Statements to this effect are made by immigrant inspectors as well as by some of the philanthropic organizations interested in aliens. It is true the ignorance of the suspect and his state of mind when deportation proceedings have been instituted tend to make him an easy prey to such attorneys as may frequent the jail where he is being detained.

On the other hand, many of the cases disclose efforts made by attorneys in the highest traditions of the American bar. Sometimes these attorneys are furnished by organizations. At other times they have no such connection and it may be surmised that the fees received are often entirely inadequate for the amount of work necessitated.

(c) EFFECT OF COUNSEL

(1) In General

As has been stated above, suspects in deportation proceedings are represented by attorneys in only a small portion of the cases; this proportion in the cases studied for the fiscal year 1929 is only approximately one-sixth. But even in this small portion of the cases the difference in result is significant. In the cases studied the board of review recommended deportation with respect to approximately 85 per cent of all the persons not represented by attorneys; where they were so represented the board of review recommended deportation of less than 70 per cent. As in some of the cases in which the suspect was considered to have been represented by an attorney, the lawyer did not appear in the case until after the warrant hearing or even after the board had acted, these figures become even more significant.

It has been pointed out that the employment of an attorney has no relation to the merits of the defense, but is controlled by such fortuitous circumstances as the suspect's ability to pay or the chance that some private organization has heard of the alien's case and has become interested in it.

The following examples are only illustrative of what an able and determined attorney can do.

(2) Particular Cases

(i) points of law

In some of the cases, of course, the work of the attorney is primarily concerned with the application of some point of law in favor of the suspect. This may be done either in habeas corpus proceedings or in the department itself. The attorney may show, for example, that the department erred at the time of the admission of the alien in not charging her to the quota allotted to the country of which she was a citizen when such quota had not been filled; or that the warrant of arrest was defective in that it did not charge that the alien entered the country at a time when the quota had been exhausted.

(ii) due process of law

In some important cases the attorney is successful in showing that the hearing accorded the alien was unfair because statements were taken under duress or because of the treatment accorded the suspect by the immigration authorities. Some of these cases have been described in the discussion of preliminary examinations. There are many others in the Federal reports.

(iii) public charge cases

In a large number of cases an attorney is successful in either rebutting the factual testimony offered by the immigrant inspectors or in introducing new testimony to show that the alien is not deportable. This is particularly true in public charge cases.

In one such case the alien had been in this country a year and a half, having been legally admitted for permanent residence. A certificate had been obtained from a State medical official to the effect that the alien was an insane public charge in a State institution and that she had been of constitutional psychopathic inferiority at the time of entry. At the warrant hearing the alien's attorney brought out that her husband was an American citizen, having been naturalized, that when he sent over for his wife he had been making $2,000 or

$3,000 a year as a shoemaker, and had always supported his wife and children. The attorney showed that the husband had offered to pay his wife's hospital bills and subsequently produced a receipted bill from the hospital for all of the expenses incurred. His wife, the alien, had been separated from him for eight years and, after she rejoined him, had a stillborn child. It was after this that for the first time she showed signs of mental illness. The attorney produced two witnesses who testified that they had known the alien in Italy, that she showed no signs of mental illness there, and that there was no insanity in her family. The hearing was adjourned at the request of the attorney so that he could cross-examine the doctor who had given the medical certificate upon which the warrant of arrest had been issued. In the course of this subsequent cross-examination the attorney showed that the doctor's opinion to the effect that the alien's insanity was due to predisposition before she reached this country was based solely upon the fact of her present condition. The attorney then produced another doctor who testified that the stillbirth was a sufficient cause for her present condition; that the present mental illness may have been due to toxic poisoning at that time. The attorney further proved that the alien had showed no signs of mental illness for a year subsequent to her entry into this country and that she had been examined at the time of her admission by the immigration authorities.

The board of review did not recommend the deportation of the alien upon this record but held the case open to determine her subsequent mental state. It appears that she was later discharged from the hospital and had not since required any medical attention.

This is one of the many cases where the efforts of the attorney undoubtedly prevented a deportation which would have been an injustice but which the alien herself would have been powerless to stop.

(iv) citizenship

In some of the cases the attorney is successful in the warrant hearing in showing that the alien is an American citi-

zen, sometimes because she married a native-born American or an alien who had become naturalized, and under the law took her husband's nationality. In some of these cases the attorney must search for and produce the marriage record and the certificate of the husband's naturalization, both of the documents occasionally being in States other than the State in which the alien is being held.

(v) DEVELOPMENT OF OTHER FACTS TO PREVENT DEPORTATION

The following case is an interesting example of how an alert and conscientious attorney, after the Government's case has been presented, can, by further investigation of the facts, prevent deportation.

In this case the alien had first come to this country a number of years ago and had been naturalized in 1890. The Government's case was to the effect that he had returned to Italy in 1907, that he had remained there for 20 years, had been elected mayor of a city there and had paid taxes, the contention being that he had relinquished his acquired citizenship. At the opening of the warrant hearing the former alien was asked if he wished a lawyer and replied that he had no money. The hearing was adjourned and an attorney appeared in the case. Despite this fact, the hearing was reopened without notification to the attorney. At this reopened hearing the former alien was reported as saying that he wanted to be sent back to Italy, and deportation was recommended by the board of review. The legality of the reopened hearing was subsequently protested by the attorney, the board of review agreed that the procedure had been improper and the case was reopened.

When the case was reopened, the alien's attorney brought out that the taxes which had been paid in Italy were paid not on the property of the former alien but upon his father's house, that the town of which he had been made mayor was a small one and the oath which he took was not an oath of allegiance but merely an oath to act impartially. The former alien had refused to join the Fascist Party. Moreover, after the Fascisti had come into power he had been asked to take an oath of allegiance but refused on the ground that he was an American citizen. The attorney produced an expert on Italian law who had the degree of doctor of jurisprudence from the University of Rome and who testified that at the time the former alien had been elected mayor it was not necessary to take an oath of allegiance and that under the Italian law he was eligible for that position because he had once been an Italian subject.

The case was considered several times by the board of review and eventually the warrant of deportation was ordered canceled.

10

Writs of Habeas Corpus

The only possible court review of any matter in connection with deportation proceedings is by application for a writ of habeas corpus to a Federal court. Such application can be made while the suspect is in detention before actual deportation. As has been seen, the scope of judicial review possible under this procedure is limited. The number of writs of habeas corpus in deportation cases pending during each of the fiscal years 1928, 1929, and 1930, as shown by the reports of the Commissioner General of Immigration, is as follows:

	1928	1929	1930
Cases pending beginning of year	88	94	19
New cases during the year	292	326	302
Pending close of year, before—			
District courts	58	87	95
Circuit courts	34	29	57
Supreme court	2	33	2

The number of writs sustained, dismissed, and withdrawn during the same years with some indication of the kind of case involved, are shown in the reports of the Commissioner General as follows:

	Sustained	Dismissed	Withdrawn
Year ended June 30, 1928			
Cases disposed of during year:			
Criminal	9	36	5
Immoral	7	29	2
Act of 1924	13	63	11
Publican	1	14	4
Mental or physical defect (excluding publican)	1	3	
Chinese exclusion law	2	15	
All others	28	39	4
Total	61	199	26
Year ended June 30, 1929			
Cases disposed of during year:			
Criminal	6	26	7
Immoral	10	17	1
Act of 1924 (including General Order No. 80)	12	52	12
Publican (public charge)	3	12	1
Mental or physical defect			
Chinese exclusion law	1	2	
All others	32	25	2
Total	64	134	23
Year ended June 30, 1930			
Cases disposed of during the year:			
Criminal	11	23	12
Immoral	7	13	3
Act of 1924	30	171	24
Mental or physical defect and public charge		9	6
Chinese exclusion law		12	1
Citizenship, excess quota, anarchist and others	8	11	7
Total	56	238	53

These figures are important in two aspects. First, they show the insignificant proportion of applications for writs, when it is considered that the average number of deportations for the three years is over 13,000 a year. This small proportion of court proceedings is caused by absence of counsel, by lack of funds, and by realization of the limited scope of judicial review. Second, these figures show a substantial proportion of cases in each of the three years where the writs were sustained.

11

Criminal Proceedings

(a) IN GENERAL

After a warrant of deportation has been issued by the Secretary of Labor the alien may be criminally prosecuted. Most of these prosecutions are under the act approved March 4, 1929, and involve either an alleged misdemeanor on the ground that the alien has entered the United States unlawfully or a felony on the ground that he has been previously deported and has subsequently entered or attempted to enter this country. The penalty under the section which deals with misdemeanors is imprisonment for not more than one year or a fine of $1,000, or both. The penalty under the felony section is imprisonment for not more than two years or a fine of $1,000, or both. Complaint is sometimes made that the punishments for violations of this act in substantially similar circumstances are far from uniform.

The alien may also be prosecuted under other sections of the immigration law dealing with the smuggling of other aliens or contract laborers, or under some entirely different Federal provision, such as the Volstead Act.

(b) COOPERATION BETWEEN IMMIGRATION AUTHORITIES AND FEDERAL DISTRICT ATTORNEYS

The United States district attorney's office in the district in which the alien is to be prosecuted knows of the case generally only through the report of the immigration officials. Discretion is used as to which cases should be prosecuted. Where the local immigration authorities feel that there should be no criminal prosecution because of the alien's family, or other reason, they often write a letter to that effect to the office of the district attorney and the recommendation is generally followed. In other cases the immigration office makes a formal report and prosecution generally follows automatically. Sometimes the immigrant inspector gives a summary of the alien's testimony; in some cases he has the alien sign a separate résumé of the preliminary examination.

(c) PLEAS OF GUILTY

In a great majority of cases, after an alien has been reported and has been prosecuted under the immigration laws, he pleads guilty, or, if he pleads not guilty, substitutes a plea of guilty before the case comes to trial. In one station on the Mexican border which handles a great many deporta-

tion cases there were 346 such pleas of guilty in criminal prosecutions of aliens who had been ordered deported during the fiscal year 1930, and not one case was contested.

Where pleas of guilty are entered, particularly in misdemeanor cases, the judge often imposes a sentence of 30 or 60 days imprisonment. In felony cases, in some instances, the judge will impose a maximum sentence and suspend it on condition that if the alien reenters the country he will have to serve the full term. A suspended sentence of this kind is apt to be particularly effective inasmuch as there are some aliens who reenter not only once but several times after they have been deported.

The following quotation from one of the cases studied for the fiscal year 1929, while the questions are leading, sheds some light upon the attitude of the alien in the criminal proceedings:

By attorney to alien:

Q. Your plea of guilty was made on June 18, 1929, in Federal district court, and some three or four days before June 18, 1929, did your attorney call on you at the county jail, and advise you in the premises to the effect that the burden of proof is upon you to show that you entered the United States legally, and not on the Government, and that you show you entered this country illegally, and if you entered a plea of not guilty you would have to remain in jail until the October term of court in El Paso, and likely your case would not be called for trial before November, and that if found guilty the time you would have spent in jail, from May 18, 1929, the date of your arrest until the date of your trial and verdict of the jury would not be considered and that the sentence which the court would impose upon you if found guilty would likely be 60 or 90 days dating from the date of verdict. You were so advised by your attorney?—A. Yes.

Q. Did you, or did you not, state that you were not guilty of knowingly entering the United States as you were so charged, and advised your attorney that in view of the fact that you had no witnesses in your behalf, and the burden of proof being on you, rather than take the risk of being found guilty by the jury, and having to remain in jail some several months, and then having an additional sentence imposed upon you, you decided to plead guilty to these court proceedings?—A. Yes.

(d) CRIMINAL PENALTIES AS WARNING TO EMIGRANTS

One of the main purposes of the passage of the act of March 4, 1929, was to deter the illegal entry of aliens into

this country. It is believed that the act has been a potent influence in limiting the number of illegal entries.

The Department of State has had inserted appropriate statements containing the provisions of the act of March 4, 1929, on the formal application blanks executed by aliens seeking visas with which to apply for admission to the United States. It is doubtful if this printed notice is always read or understood. Some of the consular offices in foreign countries seem to go further and explain to the unsuccessful applicants for visas the criminal penalties which they will incur if they seek to enter unlawfully, but there seems to be no general practice in this particular. It is obvious that the greater the familiarity with the criminal provisions of our law among prospective foreign emigrants, the more hesitation they will have in trying to smuggle into this country.

12

DEPORTATION

(a) WHEN EFFECTED

The alien is deported as promptly as possible after the warrant of deportation has been issued. There are, however, several factors which may delay deportation. There may be difficulty in obtaining a passport, or the alien may be detained for criminal prosecution or to act as a witness in a criminal prosecution against another.

Aliens are often deported in groups or "deportation parties" and are detained until such a party is formed. One of these parties, in the form of a transcontinental train which picks up deportees as it goes along, is almost constantly moving from coast to coast.

The rules provide that—

Any alien sentenced to imprisonment shall not be deported under any provision of law until after the termination of the imprisonment. Imprisonment shall be considered as terminated upon the release of an alien from confinement, whether or not he is subject to rearrest or further confinement in respect of the same offense. Release of an alien from confinement on parole shall be considered as a termination of imprisonment.

After an alien has been ordered deported, in many cases he is paroled in order that there be no further charge to the State or penal institution in which he is lodged. The act of March 2, 1931, gives the Federal Board of Parole authority to release prisoners who are eligible for parole on condition that they be deported and remain outside the United States.

(b) HOW EFFECTED

(1) "RESHIPMENT FOREIGN"

In a number of cases the alien is allowed to "reship foreign" or depart at his own expense in satisfaction of the warrant of arrest. What this means, in practice, is that, although deported, the alien is allowed to pay or work his way back to the foreign country to which he is bound. Legally it is a compliance with the warrant of deportation and the alien can never reenter the country. It is a different proceeding from actual voluntary departure, which, if allowed, must be exercised before a warrant of deportation has been issued.

The practical advantage to the alien of reshipping foreign is that he escapes the ignominy of forcible deportation with the resulting stigma in his native country. As far as the Government is concerned, these reshipments save a considerable amount of money, as otherwise the aliens, in most cases, would have to be deported at public expense.

This procedure is often taken advantage of by seamen who work their way back on ships, although in some cases aliens of other classes leave in a similar manner.

When reshipment foreign is allowed, there is generally no limitation as to the country to which the alien may return except that sometimes, when he is a European, provision is made that it can not be to adjacent countries. The purpose of such a restriction is to prevent the alien from going across the border and later endeavoring to slip back. The whole purpose of the deportation procedure, however, is not to punish the alien but to rid the country of him, and as long as he leaves under the warrant the purpose of the immigration authorities is satisfied. While there is no express authorization for this procedure in the statutes, it is impliedly recognized in the act of March 4, 1929, which provides that for the purposes of the act any alien ordered deported who has left the United States shall be considered to have been deported in pursuance of the law "irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed."

(2) PHYSICAL DEPORTATION

Where the alien does not reship foreign or leave at his own expense under the warrant of deportation, he is forcibly ejected. Sometimes, when certain provisions of the law are applicable, this deportation can be charged to a steamship company or other carrier, but in most cases it must be at the Government's expense. In the case of Mexicans, however, relatively little expense is incurred.

During the fiscal year 1928, 90 deportation parties were moved; during the fiscal year 1929, there were 106 parties; and during the fiscal year 1930, 174.

These parties are generally formed nationally, although the local district sometimes has enough deportable aliens to form a party of its own.

The following figures taken from the reports of the Commissioner General show how warrants of deportation were executed during the three fiscal years 1928, 1929, and 1930.

	1928	1929	1930
Warrant of deportation issued:			
Deported at expense of immigration appropriation—			
From seaports	3,687	2,523	3,256
Across land boundary	3,020	7,013	10,586
Deported (ocean voyage at expense of steamship companies)	2,032	1,458	1,476
Permitted to ship foreign one way, as a compliance with warrant of deportation	887	802	555
Departed—paying own passage—as a compliance with warrant of deportation	843	594	368
Departed voluntarily across land border as a compliance with warrant of deportation	550	518	390
Total	11,025	12,908	16,631

(c) TO WHAT COUNTRY

The act of 1917 provides that the deportation of aliens shall, at the option of the Secretary of Labor, with certain

exceptions, be to the country whence they came or to the foreign port from which they embarked to the United States. There is a further provision that if the country from which the aliens entered the United States refuses to take them back, deportation can be to the country of which they are citizens or to the country in which they resided prior to entering the United States.

There are a number of rules with respect to deportation providing, among other things, that aliens ordered deported to Mexico shall be returned to Mexico at the nearest port, unless humanitarian or other reasons make it advisable to effect the deportation through some other point.

(*d*) WHEN DEPORTATION IS IMPOSSIBLE

Foreign countries are not under any obligation to accept back their nationals from us other than the general comity between countries. Most foreign nations will accept aliens whom we deport if it can be shown to the satisfaction of their officials that the aliens are subjects or citizens of the particular country.

Occasionally, however, it is impossible to establish the nationality of a deportee. He may have left the country so long ago that he has expatriated himself. Confusion often occurs in determining nationalities because of the changes effected by the World War. In such cases it is occasionally impossible to effect deportation to any other country, and as a result the alien, after being detained a number of months, generally in prison, will finally be released. In several cases of this kind the alien was imprisoned for over four months. In one such case, on a writ of habeas corpus, the Federal judge stated that he would order a release unless definite orders to remove the alien were received promptly.

Sometimes deportation has become impossible because the alien married a United States citizen at a time when under our laws she did not acquire her husband's nationality, although she forfeited her own.

This country does not recognize the Soviet Government and as a consequence the general principles of comity do not apply. Aliens only deportable to Russia therefore, no matter how serious the breach of the law with which they are charged may be, can not be deported except in the rare cases where Russia consents to receive them. In one of the 35 administrative districts the writer was informed that approximately 600 Russians against whom warrants of deportation had been issued are still in this country because the warrants can not be executed. These Russians are out on bail, or are detained at the expense of State or local institutions, or are at large; only a comparatively few are of the anarchistic classes. In another district approximately 100 such undeportable Russians were reported at the time of the writer's visit.

Even where deportation is not legally possible, however, the expulsion of the alien by some means is occasionally managed. Relations between our immigration officials and those on the other side of the border may result in one of our neighbors taking back an alien not legally deportable to it. In other cases the alien is told he can reship foreign one way and does so even though no passport can be obtained for him from any country.

(*e*) CONSIDERATIONS FOR ALIENS' SAFETY

(1) Aliens Physically Disabled

The laws and rules make certain humanitarian provisions for the care and protection of aliens who are to be deported.

Under the law, when, in the opinion of the Secretary of Labor, the mental or physical condition of the alien is such as to require physical care and attention, the Secretary is authorized to employ a suitable person for that purpose who shall accompany the alien to his final destination at the Government's expense.

The rules provide that the record of the warrant hearing of an alien who is suffering from any mental or physical disability shall be supplemented by a medical certificate showing whether the alien is in condition to be deported without danger to his life, and whether he will require special care and attention on the ocean voyage.

Where the health or safety of an insane alien would be imperiled by immediate deportation, the rules make provi-

sion for the detention of the alien at the expense of the Government, if necessary, where the funds can not be otherwise provided.

(2) Cooperation with Philanthropic Organizations for Detention of Women

The rules also provide for special treatment to be accorded to female deportees, who shall not be incarcerated in jails or other similar places unless such incarceration is absolutely unavoidable, and arrangements may be made for their detention by some philanthropic or other similar society.

(3) Political Refugees

(i) in general

There is another class of aliens whose physical safety is often involved in deportation—those aliens who, because of religious or political persecution, are in danger of their lives if they return to the country from which they came.

In such cases the Government generally allows reshipment foreign or departure at the alien's expense under the warrant of deportation as a compliance with the warrant. There are several examples of this procedure in the 453 cases studied for the year 1929. In one of these cases, already considered, the family of aliens involved testified that they had escaped from Rumania because of religious persecution; they were allowed to go back to Mexico. In another of these cases the alien, a seaman, was a Spaniard and said that he feared to go back to Spain as he had some political trouble there. He was given the privilege of reshipping foreign under the warrant. In another case where the writer attended the warrant hearing, the alien was a Russian, and, it was claimed by representatives of the Soviet Government, had violated its law. In this case, the Russian Government was willing and anxious to have the alien returned to it, but he was allowed to ship foreign to another country because of his testimony that if he returned to Russia his life would be in danger.

A recent and startling exception to this practice has caused international comment. The case of Guido Serio was not

one of the 453 studied, but is too important in its implications to be omitted from this report, particularly if it be the precursor of a change in the Government's traditional policy.

(ii) the serio case

Guido Serio is an Italian. In this country he had been a Communist and was clearly subject to deportation under the appropriate provisions of the immigration laws.

At the warrant hearing Serio testified that in Italy he had been an anti-Fascist, that at the time he had left Italy he was not a Communist but was opposed to the Government then in power; that he had been threatened and attacked before he left, and that if he were sent back to Italy he would be killed. His testimony on this point was not contradicted.

Serio was ordered deported to Italy. His attorney applied for a writ of habeas corpus in the Federal District Court for the Southern District of New York. There was a hearing on the writ at which it was not contended that the alien should not be deported. The alien's attorney, however, stressed the danger to his client's life if deportation to Italy were enforced. He presented to the court a cable from an official of Soviet Russia stating that the Soviet Government would be willing to permit Serio to enter, and showed to the court a certified check for Serio's traveling expenses to Russia, so that it was clear that the warrant of deportation could be satisfied and the country rid of the alien without danger to Serio's life and without expense to the United States.

The following is an excerpt from a letter written to the Commissioner General in Washington by the acting United States attorney for the Southern District of New York after the hearing before the court:

> Judge Bondy stated that he saw no reason why the Department of Labor should insist upon the deportation of the relator to Italy, especially in view of the fact that Soviet Russia would permit the relator to enter Russia, and consequently Judge Bondy suggested that I take up with your department the question of permitting the alien to leave for Soviet Russia. He suggested also that I forward to you his recommendation to the same effect and he reserved decision awaiting to hear from me as to the reply that I shall receive from your department.

In view of the fact that the relator will be admitted to Russia if permitted to depart voluntarily, and in view of the fact that relator has made arrangements for his traveling expenses, this office joins in the recommendation made by Judge Bondy that relator be permitted to depart to Soviet Russia.

Will you kindly advise me whether or not your department will permit the departure of Guido Serio to Soviet Russia?

The board of review met a few days afterwards and denied the request made to it. It stated that while ordinarily the United States attempted to afford asylum to political refugees, Serio had sought to destroy our Government and was not entitled to the rights of asylum in the United States for political embroilments. The last two sentences in the finding of the board of review, which finding was approved and assented to by an assistant to the Secretary of Labor, are as follows:

The law under which the proceedings were taken is in existence for the protection and welfare of the United States, and in our judgment that welfare and protection is best secured by the alien's deportation to Italy.

It is considered and recommended that the request that the alien be permitted to depart at his own expense to Soviet Russia be denied.

After the refusal of the board of review to change its order, the district court, which had been holding the case under advisement, gave its opinion on December 20, 1930. It held that the court could not exercise a discretion vested in the Secretary of Labor and that the writ must be dismissed. The concluding paragraph of the opinion is as follows:

However, in view of the practice of permitting aliens to depart voluntarily to the country of their choice and in view of the alien's fear of violence if he is sent to Italy, it is pertinent to repeat what was stated by the court of appeals of this circuit in United States ex rel. Giletti *v.* Commissioner, 35 F. (2d) 687: "True, this does not prevent us from ridding ourselves of his presence for crimes committed here, but it has been our traditional policy from the outset not to assist in the prosecution of political offenses, and it would seem to be a corollary that, when the choice is open, we should not make it an incident of the execution of our own laws that the offender should be subjected to the discipline of another country for crimes of that character. The occasion would therefore seem to be one in which the utmost latitude might properly be given him, consonant with law to escape these consequences."

An appeal from this decision has been taken to the Second Circuit Court of Appeals.

The Supreme Court of the United States has held that deportation proceedings are not criminal in nature but are merely the exercise of the political right of ridding our country of undesirable aliens. Serio, however undesirable as a resident, is a deportee, not a convicted criminal. As has been shown, both the statutes and rules in deportation cases make particular provision for the safety of deportees. The annual reports of the Commissioner General not only show the prevalence of the practice of allowing departure at the alien's expense under the warrant of deportation as a fulfillment of the warrant but stress the saving to the Government thereby effected, and the practice has been recognized by statute. Despite all this, and despite the recommendations of the United States judge and district attorney, the board of review insisted upon making deportation a death penalty.

In a statement issued May 22, 1931, by an Assistant Secretary of Labor in connection with the case of Li Tao Hsuan, the department strongly indicates that its attitude in the Serio case will be followed in other similar circumstances.

13

Effect of Deportation

Once an alien has been deported he is forever excluded from admission to this country whether the deportation took place before or after the passage of the act of March 4, 1929. It is immaterial in this respect whether the warrant of deportation was fulfilled by departure at the alien's expense or by forcible expulsion.

There is a minor exception applying to aliens arrested and deported before March 4, 1929, when the Secretary of Labor has granted permission before that date to reapply for admission. This exception, however, has ceased to have importance.

There is no discretion given by the terms of this law, nor can any be exercised by the Department of Labor. No matter how long the alien may have resided in this country before his deportation, no matter how technical may have been the nature of the violation of our laws, no matter

whether he has an American family in this country whom he can not take with him, his banishment is perpetual.

III

THE DEPORTEES

1

Classes of Deportees

The following figures show the principal causes of deportation as compiled by the Department of Labor for the last 10 years:

Aliens deported from the United States, years ended June 30, 1921, to 1930, by principal causes

Causes	Year ended June 30—					
	1921	1922	1923	1924	1925	1926
Total	4,517	4,345	3,661	6,409	9,495	10,904
Public charges from causes existing prior to entry	750	560	336	716	803	1,087
Mentally or physically defective at time of entry	167	135	103	161	110	156
Criminal and immoral classes	1,119	779	730	967	1,037	1,200
Without proper visa under immigration act of 1924					2,723	4,582
Failure to maintain student status						15
Remained longer than permitted						26
Under Chinese exclusion act	34	62	115	172	93	178
Geographically excluded classes	1	52	44	53	57	58
Unable to read (over 16 years of age)	328	274	262	345	474	494
Likely to become a public charge, including professional beggars, and vagrants	1,313	1,718	1,194	2,095	1,761	889
Other causes	663	694	817	1,846	2,371	2,102
Contract laborers	152	71	60	54	66	27

Causes	Year ended June 30—				Total 10 years
	1927	1928	1929	1930	
Total	11,662	11,625	12,908	16,631	92,157
Public charges from causes existing prior to entry	817	938	647	656	7,310
Mentally or physically defective at time of entry	225	168	25	386	1,026
Criminal and immoral classes	1,613	1,844	1,857	2,456	13,692
Without proper visa under immigration act of 1924	5,464	5,367	6,874	6,694	31,704
Failure to maintain student status	17	20	24	12	88
Remained longer than permitted	192	1,165	2,064	2,019	5,466
Under Chinese exclusion act	141	139	33	166	1,133
Geographically excluded classes	64	34	2	12	377
Unable to read (over 16 years of age)	708	333	63	2,696	5,977
Likely to become a public charge, including professional beggars, and vagrants	571	478	373	305	10,697
Other causes	1,762	1,110	935	1,156	13,456
Contract laborers	88	29	11	73	631

It will be noted that the largest cause for deportation was failure to have a proper visa; the criminal and immoral classes constitute only about one-seventh of the total.

The classification of deportees of criminal and immoral classes for the last 10 years as compiled by the Department of Labor is as follows:

Aliens of the criminal and immoral classes deported from the United States during the 10 fiscal years ended June 30, 1921, to 1930, by principal causes

Causes	Year ended June 30—					
	1921	1922	1923	1924	1925	1926
Total	1,119	779	730	967	1,037	1,200
Criminals at time of entry	40	131	145	169	257	234
Criminals after entry	270	303	240	356	380	559
Anarchists, and violations under act of Oct. 16, 1918, as amended June 5, 1920	446	64	13	81	22	4
Violation of narcotic act			18	21	42	76
Polygamists	1	6	6	1	9	5
Prostitutes or aliens coming for any immoral purpose	111	88	121	106	123	102
Prostitutes after entry or inmates of houses of prostitution	82	57	60	80	86	174
Supported by or received the proceeds of prostitution or connected with house of prostitution or other place habitually frequented by prostitutes	50	55	18	47	51	62
Aliens who procured or attempted to bring in prostitutes or aliens for any immoral purposes or assisted or protected prostitutes from arrest	91	56	78	93	53	41
Found in the United States after having been deported as a prostitute or a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purpose	22	19	22	13	14	33

Causes	Year ended June 30—				Total, 10 years
	1927	1928	1929	1930	
Total	1,613	1,844	1,857	2,456	13,692
Criminals at time of entry	373	530	709	949	3,627
Criminals after entry	580	681	610	762	4,756
Anarchists, and violations under act of Oct. 16, 1918, as amended June 5, 1920	9	1	1	1	642
Violation of narcotic act	54	67	52	44	374
Polygamists	25	2			55
Prostitutes or aliens coming for any immoral purpose	247	164	101	275	1,438
Prostitutes after entry or inmates of houses of prostitution	142	188	124	152	1,145
Supported by or received the proceeds of prostitution or connected with house of prostitution or other place habitually frequented by prostitutes	65	123	127	132	730
Aliens who procured or attempted to bring in prostitutes or aliens for any immoral purposes or assisted or protected prostitutes from arrest	68	52	42	118	692
Found in the United States after having been deported as a prostitute or a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purpose	50	36	1	23	233

An indication of the nature of the crimes which have been held to involve moral turpitude is shown by detailed figures kept by the Department of Labor at the request of the commission for the three months July, August, and September in the year 1929. The principal offenses within this category during these three months were: Murder, manslaughter, anarchist, assault and battery, robbery, larceny, shoplifting, perjury, forgery, dope peddler, rape, adultery, perverts (sodomy, fornication).

There are often a number of causes for the deportation of an alien. For example, during the month of July, 1929, of the 126 aliens of the criminal classes deported, the warrants of deportation in 82 of the cases showed second causes, and of these 82 there were 66 third causes. In some cases among this group there were 6, 7, and 8 causes for the warrant of deportation.

On the other hand, of the 179 aliens deported during the same month because they had remained longer than the time for which they had been admitted, in only 6 cases were the warrants of deportation issued for more than one cause.

2

Length of Residence in United States

In the cases studied for the fiscal year 1929, approximately 60 per cent of the aliens deported had resided in this country less than one year between the date of their last entry and the date of the application for the warrant of arrest.

In a number of these cases, however, the persons involved had in fact lived in this country a much longer period, but had left temporarily and then made an illegal return. The records in the cases studied show that in approximately one-quarter of the above group the alien had lived in this country before the date of his last entry. The proportion may in fact be much larger, as the examining inspector does not necessarily go into this question; under the decisions of the Supreme Court, the alien, when he makes an illegal entry, forfeits any rights of limitation which prior residence might have given him.

About 10 per cent of the deportees in the cases studied had been in this country over one year and less than two years from the date of their last entry to the date of the application for warrant of arrest. Others had been here for a longer time, varying from two to over five years.

3

The Individual Cases

(a) IN GENERAL

At best, statistics are a cold and formal approach to matters involving as important human rights as do the proceedings in deportation. Under the mathematical compilations there becomes apparent in the study of the particular cases an almost inconceivable amount of suffering and hardship, of separations of husbands from their wives and of fathers from their children, of exile from a country where the deportee has been a desirable citizen and has formed all his attachments. These results occur for the most part not where the deportee has committed a crime but where he has been guilty of a technical violation of the immigration laws.

It is not necessarily to be assumed that hardship and suffering result from most deportations. In a very large protion of these cases the alien is in effect only inconvenienced in not being able to live and work where he desires. Moreover, along both borders, particularly the Mexican one, there is a large element which shifts from side to side of the boundary as economic opportunity and personal inclination may dictate. On the other hand, it is undoubtedly true that in many of the cases there is actual suffering which does not appear from the typewritten records. It is, in general, not conceived to be the duty of the immigrant inspectors to make inquiry as to the results of the enforcement of the law, although in some cases they do, nevertheless, make such inquiries and endeavor by the allowance of voluntary departure or otherwise to mitigate the law's harshness. There appears, however, even from the records studied, a substantial minority of cases where amelioration of the law was either not possible or was not effected and where real and unnecessary hardship resulted.

It is believed that any study of the reports will lead to the irresistible conclusion that there is a group of such cases, comparatively small in proportion but large in number and tragic in their consequences.

(*b*) WHERE DEPORTEE SEEMS A DESIRABLE RESIDENT

Occasionally in the cases studied, the deportee, despite an illegal entry or an unpermitted extension of the time allowed him in this country, gives strong indication that he would have been a desirable resident. In one such case, the alien had become a soldier in our Army and had taken first citizenship papers. His superior wrote a letter to the effect that he was of excellent character and well qualified for citizenship.

In another case the alien had entered illegally. He had invested $4,000 in a factory in this country and had developed a new industry. From time to time the board of review granted him an extension and at the time of the last extension the alien was employing 85 persons, with a weekly pay roll of $2,500, but apparently eventual expulsion was inevitable.

In another case, the alien had deserted his boat in this country in 1924 when he was 15 years old and had worked continuously in a dairy farm ever since. His employer wrote a letter testifying as to his ability and good character and there were other letters to the same effect. He was ordered deported.

In another case the alien, a boy, had entered under bond as a student and had attended a technical high school and a theological college. His uncle, a naturalized American citizen, had adopted him and guaranteed that he would continue to support him and that the boy would not become a public charge. The alien was, nevertheless, deported.

(*c*) CHILDREN

An alien when he enters this country often brings his children with him. The father's entry may have been illegal and the entry of the children in such cases comes under the same category even in cases of babies in arms. These children are deportable although all their conscious lives may

have been spent in this country. Voluntary departure without a warrant of arrest is sometimes allowed, but in many other cases, where the head of the family is deported, the children are deported with him and forever barred from readmission.

In another group of cases the alien's entry into this country as a child may have been legal, but his own subsequent actions or condition may have made him deportable. This is generally true, of course, where the head of the family has become a public charge. It is also true where the child himself has subsequently become a criminal.

In one such case the alien had come to this country when he was 3 years of age. He had been educated in a public school and had been subsequently convicted of a crime involving moral turpitude. The case found its way into court under writ of habeas corpus. In its opinion, the court said in part:

> In these deportation cases I can not help but feel the intent and spirit justifies a more strict and severe interpretation from the point of view of an alien, in the case where an alien himself had made application for entry to this country, and has been received, and then displayed that kind of ingratitude toward the hospitality of the country by violating its laws; in that case I believe a severe interpretation of the statute should be made and the applicant shipped back from whence he came; but should the same interpretation, the same approach, be taken when the person involved never made application for admission to this country but was brought here a baby in arms by his parents, and from the very beginning becomes largely a product of our own surroundings, a product of our own environments, our own school system, our own everything? This petitioner came here when he was three years of age, educated in our public schools, brought up in the city atmosphere and surroundings which this Government has itself provided and accorded. Now after that end of it he violates our laws and we are to proceed upon the strict ordeal of the statute and send him back to the country of his nativity, where he has no relatives, with all members of his family here; from every point of view that isn't deportation, it is exile.

In some cases, the alien has entered the United States illegally and has had children born here who are, therefore, American citizens. In many of such cases, when the aliens are deported, they take their American children with them,

so that deportation often in effect results in forcing native-born Americans out of the country.

(*d*) SEPARATION OF FAMILIES

In a considerable number of the cases studied for the year 1929, it was apparent that deportation resulted in the separation of families, some of whose members were American citizens. In some of these cases, the husband was forced to leave an American wife or an alien woman was sent away from an American husband. In many of the cases American children were involved. It is difficult to state even an approximate figure as to the number of deportations in which such separation results. In the first place, the proceeding is primarily concerned with the alien, and while inquiries are often made as to his family there are probably many cases where the family comprises American citizens and the facts do not appear in the record. In the second place, the file generally closes with the recommendation of the board of review, and an entry of execution upon the warrant. Whether or not the alien takes his family with him is necessarily left to the imagination. In some of the cases, however, the alien in his examination testifies that if he is deported he can not take his family with him because he could not support them in the country to which he is to be sent. What happens to the families left in America when the heads are deported likewise does not appear.

With respect to approximately 9 per cent of the aliens deported in the cases studied for the year 1929, there was affirmative evidence that the alien had an American husband, wife, or child. Upon this basis, it can conservatively be estimated that over 1,100 Americans were directly affected by deportation during the year ended June 30, 1929. In the fiscal year 1930, upon the same basis, over 1,500 Americans were involved.

In some of these cases the alien is of the criminal or definitely immoral classes. In many others he has apparently violated the immigration laws but is otherwise a desirable resident.

The three following cases found among the cases studied for the year 1929 illustrate the extreme result of the deportation process under the present system.

A Mexican had legally been admitted to this country in 1923, having paid the head tax. He was a foreign laborer, had married an American, and had eight children born in Texas. One day he went fishing, and, in wading the Rio Grande, crossed to and landed upon the Mexican side. Upon his return shortly thereafter he was apprehended and deported. He subsequently wrote from Mexico that his wife and children needed him for their care and support. Under the law he can never reenter this country.

In another case the alien, a Scotchman, had entered this country in 1920 and had obtained his first citizenship papers. He was convicted here for a violation of the Mann Act and served a term of a few months in prison. Afterwards he made a visit to Canada, returning without inspection in 1928. He was ordered deported to England because he had last entered this country without a visa and because of his conviction of the offense mentioned before his reentry. Just before he was deported he wrote the following letter:

R. R. ------, Box ------,
DAYTON, OHIO.

THE IMMIGRATION DEPARTMENT,
Washington, D. C.

DEAR SIR: Owing to the fact that I left the States last summer for Canada and did not apply for a new permit on my return I am informed that I am to be deported. Such being the case I wish to draw to your attention that I have a child born in Pittsburgh, Pa., who is now 7 years old, and not having any relations over here or any money I wish to ask you what is to become of my child. Surely you can not expect to leave such a young child here and to fight the world alone. I have always taken care of the child myself since he was 15 months old. This is the first time I have ever been away from him. During my life this is the first crime I have committed and I wish to ask you for a little consideration concerning my child. As far as being deported I do not mind, but I do care what is to become of my boy's future. On the other hand if my boy was old enough to take care of himself it would be a different thing. The question is what is to become of my boy? I have nothing. Will you kindly allow him to go with me. Just a child 7 years old. Trusting my appeal will approve of your favor.

Yours respectfully, ——— ———.

In another case, the alien, a Mexican, had first come to this country in 1915 and had been working here ever since, with the exception of a few short trips to Mexico. He had never been arrested or imprisoned but was technically deportable. He had an American wife and two children, one of whom was born in this country.

After his deportation, the alien wrote the following letter to the President:

LISTA DE CORREOUS,
VERACRUX VER. MEXICO.

Mr. HERBERT HOOVER,
President of United States of America,
White House, Washington, D. C.

DEAR SIR: Pardon my nerve, but you are the only one that can halp me in my status under the immigration law. My name is ————. I born in Merida Yucatan and immigrate in the United States in the year of 1915, after my parents' death. Rised in New Orleans. Married in 1919 and I has two children now a boy and girl, they are natives of New Orleans.

I am deported from New Orleans last November, until I get my paper straight. But after all this time of suffering I found out that I am not registered in this country. I am a man without country. I will be 30 year old this Monday.

The immigration commissioner of New Orleans say I can not get back to my wife and children any more. Kindly please halp me or give me a chance to be American citizen. I feel as I were one. I can't halp my children from here, there is nothing for me here, no parents, no job, no way to get back to my children. I had been and honest working man, always in New Orleans, La., and rised there. I believed my self American citizen all that time I resided there.

Please can I work in the ships or something. I must halp my children so they can have a little education. I am not citizen here either, so please give me a chance. I like to get back home. I am seaman also if I could be recommended to get a job in a ship. I am willing to give service if necessary just to get by my children.

Kindly let me know if there is any hops to get a chance to be American and be by my family.

Respectfully, yours, for service,
(Signed) —— ——.

There was no hope. The President has the right under the law to pardon any offender against the Federal laws, no matter how serious the crime, but neither he nor any one else is given the power to allow a deported alien such as this to rejoin his American family.

Chapter III

OBJECTIONABLE FEATURES AND PROPOSED REMEDIES

I

OBJECTIONABLE FEATURES IN PRESENT SYSTEM

1

INVASION OF PERSONAL RIGHTS

(*a*) ILLEGAL SEARCHES AND SEIZURES

As has been shown in the first part of this report, the methods of immigration officials in apprehending suspects have gone to the length of forcibly detaining groups of people many of whom are aliens lawfully in this country, or even United States citizens, without any warrant of arrest or search. These methods of late have included raids on institutions and gatherings of various kinds where a large number of people are congregated. No one is permitted to leave until the officials have questioned each individual and picked out any persons whom they wish to hold for further investigation. Serious inconvenience has resulted.

It is often customary for the immigrant inspectors to jail suspects, however apprehended, without a warrant of arrest or any other kind of a warrant. Both the persons and effects of many supposed aliens are searched before the warrant of arrest has arrived from Washington.

The fourth amendment to the Constitution of the United States provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and

no warrant shall issue but upon probable cause supported by oath or affirmation.

The Supreme Court in the case of Boyd *v.* United States (116 U. S. 615) referred to some of the incidents which led to the passage of this amendment.

James Otis had denounced the practice of issuing writs of assistance to British officials and empowering them in their discretion to search places for smuggled goods as "the worse instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book," since they placed "the liberty of every man in the hands of every petty officer."

In England John Wilkes had made his memorable fight against the practice of issuing general warrants for the searching of private houses for the discovery and seizure of private books and papers.

In the famous case of Entick *v.* Carrington (19 Howell's State Trials 1029), Lord Chief Justice Camden had denounced unlawful search for evidence as confounding the innocent with the guilty.

In Boyd *v.* United States the Supreme Court held that:

> any compulsory discovery * * * compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it can not abide the pure atmosphere of political liberty and personal freedom.

In Weeks *v.* United States (232 U. S. 383) the Supreme Court said of the fourth amendment:

> * * * This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights.

> * * * The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.

It is not only aliens who are involved in deportation proceedings; the rights of United States citizens are often infringed. They themselves are often subjected to these illegal searches and seizures, which partake of the nature of the very abuses against which the fourth amendment was intended as a protection.

Several Federal courts have held that aliens as well as citizens are entitled to the protection of the fourth amendment. While there was an earlier dictum that the amendment did not apply, in the case of Bilokumsky *v.* Tod (263 U. S. 149) the Supreme Court assumed that evidence obtained through an illegal search and seizure could not be made the basis of findings in deportation proceedings. Even if aliens are not protected by the terms of the Constitution against unreasonable searches and seizures, and whatever may be the decisions on the use of evidence so obtained, there can be no question but that the methods above described violate the spirit of the amendment.

Moreover, the immigration statutes and rules only provide for the taking of aliens into custody upon the warrant of the Secretary of Labor, with an express statutory exception giving immigration officials the right to make an arrest without a warrant only where aliens are attempting to enter the United States unlawfully in their presence. The Circuit Court of Appeals for the Second Circuit has said that a resident alien "could not be taken into custody except by warrant." (United States ex rel. Commissioner Fink *v.* Tod, 1 F. (2d) 246, 256.)

While there have been some round-ups from time to time under the Chinese exclusion law, the last general occurrence of deportation raids was in 1920, when outrageous methods were used in the apprehension of supposed deportable radicals. This episode has been discussed in detail by Prof. Zechariah Chafee in his book on Freedom of Speech, in the Report upon the Illegal Practices of the United States

Department of Justice, issued by the National Popular Government League in May, 1920, and in The Deportations Delirium of Nineteen-Twenty, by Louis F. Post, Assistant Secretary of Labor from 1913 to 1921. The methods involved in the making of these "Red" raids were denounced by several Federal courts.

In Ex parte Jackson, Judge Bourquin said:

> The law and courts no more sanction such evidence than such methods, and no more approve either than the thumbscrew and the rack. Otherwise the vicious circle of age-old tyranny—to subject to and convict by unlawful means because guilty, and to condemn as guilty because subjected to and convicted by unlawful means, to which both alien and citizens fall victim. The Declaration of Independence, the writings of the fathers, the Revolution, the Constitution, and the Union, all were inspired to overthrow and prevent like governmental despotism. They are yet living, vital, and potential forces to those ends, to safeguard all domiciled in the country, alien as well as citizen.
>
> * * * Assuming petitioner is of the so-called "Reds" and of the evil practice charged against him, he and his kind are less a danger to America than are those who indorse or use the methods that brought him to deportation. (263 Fed. 110, 113.)

In Colyer *v.* Skeffington, Judge Anderson said:

> I refrain from any extended comment on the lawlessness of these proceedings by our supposedly law-enforcing officials. The documents and acts speak for themselves. It may, however, fitly be observed that a mob is a mob, whether made up of Government officials acting under instructions from the Department of Justice, or of criminals, loafers and the vicious classes. (265 Fed. 17, 43.)

The recent raids have had for their chief purpose the apprehension of seamen who have outstayed their time here, rather than radicals, and have apparently not been characterized by the brutal methods used in 1920, but the unlawful interference with the rights of personal liberty has been the same. Moreover, it is a short step from these raids to the breaking up of any meeting which a Government official may not approve.

As the Federal court said in the recent case of United States ex rel. Murphy *v.* McCandless (reversed on another ground):

> The "mild mannered" methods employed do not change the truth that the arrest and detention were wholly without authority of law.

> * * * The relator is charged with a failure to observe the immigration laws; she is sought to be condemned by another violation. (40 F. (2d) 643.)

Considerations of practical expediency can not be urged to defeat constitutional rights. Fundamental provisions for the protection of individual liberty mean nothing if they can be waived at the discretion of a governmental department.

It is no defense for the use of despotic methods, at least in our country, to say that they accomplish results. The enforcement of our deportation laws, important as they are, must be subordinated to the protection of constitutional rights. One of the purposes of the deportation laws is to protect Americans and American institutions; that protection is endangered when the laws are illegally enforced.

(*b*) INQUISITORIAL EXAMINATIONS

It has been shown in the first part of this report that, in general, the entire basis for the deportation proceedings is the preliminary examination given the supposed alien. This examination is conducted in private and the suspect is not allowed to have counsel. The questions of the immigrant inspector are often not confined to the time and manner of the suspect's entry. In many of the cases there is a searching cross-examination involving among other matters questions as to the supposed alien's private beliefs and personal morality. In a large proportion of these examinations the suspect is not apprised of any rights that he may have. In many of the cases the statements are not given voluntarily but are the result of fear, of restraint of liberty, and in some cases of duress. These preliminary examinations are not only the principal ground for subsequent deportation but often themselves form the basis for criminal prosecutions.

No Federal official has the right to extort a confession. Duress need not take the form of physical violence to be illegal. As the Supreme Court said in the case of Ziang Sung Wan *v.* United States:

> In the Federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if,

it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. (266 U. S. 1, 14.)

There is strong ground for the belief that many of the statements taken from the supposed aliens are extorted by methods both illegal and unfair.

While the burden of proof is upon the alien to show that he entered the United States lawfully, and while inferences unfavorable to him may properly be drawn from refusal to answer questions, the suspect's legal right to refuse to be examined in this particular proceeding is clear. In a great number of cases, however, not only is the suspect ignorant of this right, but the bearing of the immigrant officials and the detention to which he has already been subjected strengthen his belief that he must answer whatever questions he is asked. If he does refuse to answer or if his answers are not deemed satisfactory, he may be cross-examined not only once but several times and in some cases intimidation is used to secure the desired information.

Whatever may be an alien's right with respect to the privilege of self-incrimination—and the effect of subsequent criminal proceedings is to be considered on this point—he should in fairness be apprised that anything he says may be used against him.

While it has been held that deportation is not a criminal proceeding, the Supreme Court has shown that the purpose of the constitutional provision is not to be narrowly construed.

> It is impossible that the meaning of the constitutional provision can only be, that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases; but it is not limited to them. The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. (Counselman *v.* Hitchcock, 142 U. S. 547, 562.)

Deportation, whatever may be its technical status under our laws, involves as serious consequences to the alien and

his family as does punishment for the breach of many of our criminal laws. The second chapter of the proposed Code of Criminal Procedure prepared by the American Law Institute states, with respect to preliminary examinations, that it is the duty of a magistrate when a person is brought before him upon an arrest, either with or without a warrant, to inform him of the charge against him, of his right to aid of counsel during the preliminary examination, that the defendant may refuse to make any statement, but that if he does make such statement, whatever he says therein may be given in evidence against him.

In view of the fact that no counsel can be present at preliminary examinations in deportation proceedings and that what the alien says may and often is made the basis for his deportation and for his criminal prosecution, it would at least seem that the suspect should be notified, in intelligible terms, that he is not obliged to answer questions and, if he does answer, whatever he says may be used against him. Even now some such warning is given in some cases. Although this warning may not be a technical requisite under the fifth amendment, it is the minimum protection of individual rights demanded by elementary fairness.

It has been said that no such warnings are given in a large proportion of the deportation cases. Even where they are given, however, they are often couched in legal verbiage unintelligible to a person who speaks our language imperfectly and who is often uneducated.

The form of warning used in preliminary investigations of crimes in England under the Judges' Rules has a simplicity which is in striking contrast with the forms sometimes used by our immigration authorities:

> Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

It is the duty of every official charged with the enforcement of the law to see that the person before him understands the nature of the proceedings and what his own rights are.

In United States *v.* Bell the court said:

> An ignorant negro man, brought before an official for whom naturally he must have great regard in respect of his authority, is taken into the office of the official, which, while it is a public office, is not an open court, but more like a private corner; and, separate and apart from all the world, with only those two, he is subjected to a close, presumably artful, and necessarily an inquisitorial, examination, intended to develop whatever criminality may have existed in the transaction with which the witness has been concerned, whether it relates to him or other persons; and this without any attendance of counsel, without any previous consultation with counsel, and without any warning by the official of his right to be silent—absolutely silent—so far as every question that was put to this witness was concerned, as we may infer from the nature and character of the document itself, and in total ignorance of his privilege in the premises. It is idle to say, in view of such circumstances, that this citizen had voluntarily appeared for his examination; that he had knowingly waived his privilege of being silent, and answered with a full responsibility of one who was aware of that which he was doing, and of the magnitude of its importance to him in many and divers directions. (81 Fed. 830, 839.)

The injustice of the methods used in preliminary examinations is not confined to failure to apprise the suspect of his rights or even to extortion of a statement under some form of duress. The nature and scope of the questioning to which many suspects are put can only be described, in the phrase of Mr. Justice Brewer, as a star-chamber proceeding.

The analogy is not rhetorical. The practice of apprehending a suspect and examining his belongings and person without some form of a bill was often resorted to by the star chamber. Scofield says, in a study of the court of the star chamber:

> Again, the usual somewhat elaborate form or proceeding was sometimes replaced by a much more summary form. A suspected person was, on some occasions, in direct violation of Stat. 3 Hen. VII, c. 1., apprehended without the form of a bill, and was privately examined—"without oath or any compulsory means," writes Hudson; but, even if that were true (it probably was not true in earlier days) fear, or the hope of pardon, which was more readily forthcoming to one who confessed than to one who, pleading not guilty, then experienced the ordinary process of the court, must often have served as well as compulsion. If the accused acknowledged his confession when brought to the bar after such examination, the attorney general then set forth the charge, the defendant made what excuses for himself he could, and the court at once proceeded to the sentence, judging the party only on his confession.

Remonstrances were made to Parliament against the "exercising of the oath ex officio, and other proceedings by way of inquisition reaching even to men's thoughts, the apprehending, and detaining of men by pursuivants." Speeches were made against the practice and these inquisitorial proceedings were one of the chief reasons which led to the abolition of the court in 1641. This practice is strikingly similar to that used in many cases by immigrant inspectors.

One of the greatest legal writers in speaking of the preliminary inquisition of one not yet charged with an offense says:

> The system of "inquisition," properly so called, signifies an examination on mere suspicion, without prior presentment, indictment, or other formal accusation; * * * and the contest for one hundred years centered solely on the abuse of such a system. In the hands of petty bureaucrats, whether under James the First, or under Philip the Second, or in the twentieth century under an American republic, such a system is always certain to be abused. * * * No doubt a guilty person may justly be called upon at any time, for guilt deserves no immunity. But *it is the innocent that need protection.* Under any system which permits John Doe to be forced to answer on the mere suspicion of an officer of the law, or on public rumor, or on secret betrayal, two abuses have always prevailed and inevitably will prevail: First, the petty judicial officer becomes a local tyrant and misuses his discretion for political or mercenary or malicious ends; secondly, a blackmail is practiced by those unscrupulous members of the community who through threats of inspiring a prosecution are able to prey upon the fears of the weak or the timid. (4 Wigmore on Evidence, 2d Ed., sec. 2251.)

Preliminary examinations of persons suspected of being aliens are not in themselves illegal nor are they necessarily unfair. The burden of proof is always upon the government to show alienage and there is no good reason why any person, alien or citizen, should object to being asked about his nationality by a proper official. If the person is an alien there is no reason why he should not further be asked as to the time and manner of his entry and the lawfulness of his

presence here, even though he may have the right to refuse to answer the questions put.

But there is no reason which can justify the practices of the Inquisition in cross-examination by immigrant inspectors. Here again the reference is more than a figure of speech.

The following excerpts are taken from a scholarly history of the Inquisition of the Middle Ages:

> At best the inquisitorial process was a dangerous one in its conjunction of prosecutor with judge, and when it was first introduced in ecclesiastical jurisprudence careful limitations to prevent abuse were felt to be absolutely essential. The danger was doubled when the prosecuting judge was an earnest zealot bent on upholding the faith and predetermined on seeing in every prisoner before him a heretic to be convicted at any cost; * * *. All the safeguards which human experience had shown to be necessary in judicial proceedings of the most trivial character were deliberately cast aside in these cases, * * *. The inquisitor, with endless iteration, was empowered and instructed to proceed summarily, to disregard forms, to permit no impediments arising from judicial rules or the wrangling of advocates, to shorten the proceedings as much as possible by depriving the accused of the ordinary facilities of defense, * * *
>
> Perhaps the mildest form of the devices to entrap an unwary prisoner was the recommendation that the examiner should always assume the fact of which he was in quest and ask about the details. (Lea's History of the Inquisition of the Middle Ages, Vol. I, pp. 405, 416.)

A reference to the description of some of the preliminary examinations in deportation cases shows the appropriateness of the comparison. As in the Inquisition, the inquiries in deportation cases often search every aspect of the suspect's life and thought.

Like the use of illegal methods, many of these inquiries, it is believed, are kept out of the record. It is of interest in connection with such omissions that the Report of the Royal Commission on Police Power and Procedure recommends that preliminary statements should report both questions and answers as nearly as possible in the actual words used.

Under the proposed Code of Criminal Procedure of the American Law Institute, the making of a statement by a

suspect in a preliminary examination would not subject him to cross-examination unless he voluntarily tenders himself as a witness; cross-examination in preliminary examinations is expressly forbidden by the English Judges' Rules.

The preliminary examination in deportation cases often partakes far more of the nature of compulsory cross-examination than of voluntary statement.

It is doubtful if anywhere in the entire system of Anglo-Saxon jurisprudence are government officials given similar unfettered rights of private inquiry, or is the exercise of governmental power more often characterized by violations of fairness and decency.

(c) LACK OF CUSTOMARY SAFEGUARDS

Despite the seriousness of the result of deportation, the proceedings are private. There are no public records of the reports of the immigrant inspectors or of the findings of the board of review. There is no provision for appeal to the courts; judicial reviews by writs of habeas corpus are few in number and limited in scope.

One of the most striking features of the entire procedure is the lack of counsel for the suspects. No attorneys are allowed in the preliminary examinations, and even at the warrant hearings the persons with whom the processes of deportation laws are apt to come into contact generally have no funds with which to procure lawyers. In the great majority of cases, suspects have no one at any stage of the proceeding to protect their rights.

Chief Justice Hughes devoted most of his recent address to the members of the Federal Bar Association to the discussion of the problems brought about by the tremendous powers given to administrative agencies, and pointed out the increasing need for lawyers:

> In this new dispensation the service of the lawyer becomes more than ever indispensable. In the early days it was the fearless lawyer, standing in the dignity and authority of his profession, unabashed and determined, before tyrannical judges prone to abuse judicial prerogatives, who vindicated essential liberties and secured for us our happy tradition both of judicial independence and judicial responsi-

bility. So to-day, it is to the well trained, learned, and experienced members of the bar justifying the trust reposed in them, and representing their clients with honorable zeal, that the individuals of the community must continue to look for protection against every encroachment upon individual rights. (Reported in the United States Daily, February 14, 1931.)

No better illustration of the Chief Justice's remarks could be found than the workings of the deportation process. In the first part of this report examples have been given of the many cases in which, when attorneys were present, they were able to establish additional facts or the proper construction and application of the laws and thereby prevent deportations which would otherwise have been effected. In all probability a great many unrepresented persons have been deported whom lawyers could have saved.

(d) DESPOTIC POWERS OF THE ADMINISTRATIVE AGENCY

In the first part of this report, there has been shown the tremendous power of the field personnel in deportation cases. Members of the same local office make the investigations, conduct the preliminary examinations, decide whether an interpreter is needed, act as interpreter and as stenographer, conduct the warrant hearing, and make a recommendation to Washington as to whether or not the suspect should be deported. Often the same individual acts in a number of these capacities. Moreover, the record sent to Washington contains only so much of what has gone on as the inspector may wish.

In all these proceedings, the Government officials are not bound, the courts have held, by the ordinary rules of evidence. Hearsay testimony and rumors are produced and relied upon. Under the decisions of the courts, the hearing of an alien, though it must be fair, can be "summary."

Judge Hutcheson in the case of In re Osterloh referred to a deportation case involving charges against a "young woman, a stranger in a strange, though adopted, land, speaking English imperfectly, and relying upon one man as inquisitor, interpreter, prosecutor, and judge," as a hearing "stripped of the conditions which make for justice." (34 F. (2d) 223, 224.)

In commenting upon another deportation hearing, Judge Learned Hand said:

> The attitude of the examiner, the introduction of confused and voluminous evidence taken elsewhere, the strong indications that the appellant was vaguely regarded as undesirable, and that deportation was thought the easiest way to get rid of him and to avoid the normal processes of law—all these warn us of the dangers inherent in a system where prosecutor and judge are one and the ordinary rules which protect the accused are in abeyance. It is apparent how easy is the descent by short cuts to the disposition of cases without clear legal grounds or evidence which rationally proves them. These are the essence of any hearing in which the personal feelings of the tribunals are not to be substituted for prescribed standards. (United States ex rel Iorio *v.* Day, 34 F. (2d) 920, 922.)

In the department's headquarters at Washington, these records so compiled are reviewed by another group of officials who are appointed by and responsible to the head of the department charged with the enforcement of the law.

It is this body which in effect decides whether the suspected person should be deported. Its decisions, no matter what terms be used, involve the determination of the most important questions of fact and of law. It is to this group of men alone that the suspect in a great majority of cases must look for the safeguarding of his rights.

In his book, The New Despotism, Lord Hewart of Bury, Lord Chief Justice of England, said:

> One would have thought it perfectly obvious that no one employed in an administrative capacity ought to be entrusted with judicial duties in matters connected with his administrative duties. The respective duties are incompatible. It is too much to expect in such circumstances that he should perform the judicial duties impartially. Even if he acts in good faith, and does his best to come to a right decision, he can not help bringing what may be called an official or departmental mind, which is a very different thing from a judicial mind, as everybody who has had any dealings with public officials knows, to bear on the matter he has to decide. More than that, it is his duty, as an official, to obey any instructions given him by his superiors, and in the absence of special instructions, to further what he knows to be the policy of his department. His position makes it inevitable that he should be subject to political influences.

Chief Justice Hughes, in the address already quoted, referred to the dangers of administrative authority in the following words:

> We are thus confronted with the distinctive development of our era, that the activities of the people are largely controlled by Government bureaus in State and Nation. It has well been said that this multiplication of administrative bodies with large powers "has raised anew for our law, after three centuries, the problem of executive justice"; perhaps better styled "administrative justice." A host of controversies as to private rights are no longer decided in courts.
>
> Administrative authority, within a constantly widening sphere of action, and subject only to the limitations of certain broad principles, establishes particular rules, finds the facts, and decides as to particular rights. The power of administrative bodies to make findings of fact which may be treated as conclusive, if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say, "Let me find the facts for the people of my country, and I care little who lays down the general principles" * * *.
>
> * * * these new methods put us to new tests, and the serious question of the future is whether we have enough of the old spirit which gave us our institutions to save them from being overwhelmed.

It is inevitable, particularly when none of the customary safeguards of the rights of the individual are present, that despotic power given should be despotically used. It is inevitable, however fair the board of review may and undoubtedly does wish to be, that, by reason of its position in the administrative structure, it can not properly fulfill its functions of quasi-judicial determination. That in many cases it does not do so, even on the records before it, is shown in the first part of this report. In the great majority of cases, it follows the recommendation of the immigrant inspector.

Another inevitable corollary of the board's position is that it cannot exercise the proper supervision over the prior stages in the procedure. An independent tribunal, whether judicial or quasi-judicial in character, would at least endeavor to see that the proceedings below were properly conducted with due regard, not necessarily for the laws of evidence, but for constitutional rights and general considerations of fairness. The board of review is confined to the record before it.

The effect of this tremendous concentration of authority in one administrative department has been described by Judge Holt, in United States ex rel. Bosny et al. *v* Williams, Commissioner.

> It is, of course, obvious that such a method of procedure disregards almost every fundamental principle established in England and this country for the protection of persons charged with an offense. The person arrested does not necessarily know who instigated the prosecution. He is held in seclusion, and is not permitted to consult counsel until he has been privately examined under oath. The whole proceeding is usually substantially in the control of one of the inspectors, who acts in it as informer, arresting officer, inquisitor, and judge. The secretary who issues the order of arrest and the order of deportation is an administrative officer who sits hundreds of miles away, and never sees or hears the person proceeded against or the witnesses. (185 Fed. 598, 599.)

Nor is this dangerous concentration of authority necessary for the proper enforcement of the law—indeed, it is contrary to the development of the American administrative structure. We have become familiar in recent years with specialized courts, such as the Court of Claims, the Court of Customs and Patent Appeals, and the United States Customs Court, which deal with cases of one particular type. We have become still more accustomed to independent bodies or commissions appointed by the President, making their own rules of procedure and entirely separated from the jurisdiction of any other govermental department. Examples of such commissions are the Interstate Commerce Commission, the Federal Trade Commission, the Federal Radio Commission, and the Board of Tax Appeals. These bodies often combine administrative and quasi-judicial functions, and their creation and development has been favorably regarded as a distinct contribution to the technique of government in modern times.

In almost all of these independent administrative tribunals, the questions, although important, are financial in nature. The importance of the questions in deportation cases is even greater, for these cases involve human rights and liberties.

Unfortunately, some of the objectionable features to which reference has been made in this report are symptomatic rather than confined to one governmental department alone. Personal rights have been invaded in other branches of the law. Many persons other than those against whom violations of the immigration laws are charged are deprived of the presence of counsel in important matters by rule or by pecuniary limitations. There is a general danger in the increasing powers given to administrative tribunals, as the Chief Justices of England and America have pointed out. But it is believed that nowhere else in legal processes of so important a nature is there the deplorable combination of all the elements of illegal procedure, absence of safeguards and despotic power which is to be found in the proceedings of deportation.

(e) LACK OF DISCRETION

Despite the tremendous powers given the Department of Labor, it has comparatively little discretion to prevent cases of unnecessary hardship and suffering, either to the alien or to American citizens who may be members of the alien's family.

The inconsistency of the statutes themselves in this respect is anomalous. If an alien has committed a crime involving moral turpitude, the judge who sentences him has the power to prevent deportation. If the alien has been convicted of trading with a public enemy, the Secretary of Labor must find that he is an undesirable resident of the United States before deportation is possible. But there is no statutory discretion anywhere as to the great majority of aliens who are deportable, even though they have been the most desirable of residents and even though their deportation may result in their American children becoming public charges. While some administrative discretion is possible through the use of such devices as voluntary departure, this discretion is limited and sporadically exercised. The first part of this report shows how insufficient this discretion is to prevent cases of unnecessary hardship.

In the criminal law there is always somewhere the right of pardon or probation, even in the most serious cases. The

proportion of deportees who are members of the criminal or immoral classes is comparatively small; most persons deported are guilty only of technical violations of our law. Many have lived in this country for a long period, some have come over as children, others have married Americans and have had American children born to them. It is inconceivable that there should be no power analogous to that of pardon or probation in a process through which over 16,000 persons, exclusive of their dependents, are affected in one year. Yet the law gives no such power.

It does not follow that if such a power existed it should be exercised in all cases of long residence or of American families, any more than all criminals are pardoned or placed on probation under similar circumstances. But it is an insufferable reflection upon our humanity that our laws can give such despotic power in deportation and yet provide so little opportunity for even administrative mercy.

While there is some little discretion, however limited, in effecting deportation, once an alien is expelled he is forever barred from readmission in this country. Here there is no exception. Deportation means banishment.

In his annual report for the fiscal year 1930 the Commissioner General of Immigration recommends that the Secretary of Labor be authorized to permit aliens heretofore or hereafter arrested and deported to apply in highly meritorious cases for readmission. In the same report the commissioner general recommends that the Secretary of Labor be given authority and power to admit aliens in cases of hardship. The question of admission of aliens is not within the scope of this report, but it surely follows that if discretion should be given in the admission of immigrants who have not yet landed, at least the same discretion should be allowed in the expulsion of aliens who may have spent most of their lives in this country.

As to the necessity of these recommendations, there should be no question. The absence of discretionary power, both in the deportation of aliens and the readmission of aliens who have been heretofore deported, has had results which should not be tolerated in a civilized country.

2

Defects in Machinery of Enforcement

(a) LACK OF COOPERATION IN APPREHENSION OF ALIEN CRIMINALS

In the first part of this report reference has been made to the lack of cooperation of penal institutions and police officials in certain localities. While this condition is apparently being remedied, in part at least, it still results in a number of aliens of the most dangerous classes being confined in jails or penitentiaries and eventually turned loose upon the community without the immigration authorities' knowledge.

Effectiveness of law enforcement is qualitative as well as quantitative. It would appear that concentration of the district immigration authorities upon the investigation and apprehension of alien criminals is highly desirable even if such concentration temporarily may mean fewer deportations for technical violations.

(b) OVERCENTRALIZATION

Reference has been made to the prevalence of illegal arrests. In the first part of this report, it was found that the reason for many of these arrests is the fact that warrants can be issued only in Washington. The local offices are often on the horns of a dilemma. Either they must violate the law or they run serious risks of a deportable alien's escape before he can be seized. Moreover, the issuance of the warrant of arrest in Washington is generally on a telegraphic application which does not set forth the actual facts and tends to become a mere formality. Obviously, some procedure should be worked out which can obviate this difficulty and at the same time prevent further abuse of power by local immigrant officials.

(c) INSUFFICIENCY OF FIELD PERSONNEL

The border patrol is insufficient in personnel to prevent a large number of illegal entries. It is much less expensive to apprehend an alien at the time of effecting illegal entry

or shortly thereafter than it is to ferret him out and prove he is deportable after he has been living here some years. A larger number of immigration patrol inspectors would greatly aid in preventing illegal entries both along the borders and, as the Commissioner General of Immigration suggests, at seaports, by examining vessels for alien stowaways.

The work of the immigrant inspectors in investigating and apprehending aliens is limited, as has been shown, not so much by inadequacy in the scope of the law as by lack of man power. The greater the number of competent immigrant inspectors, the more the law can be enforced.

The salaries paid the field personnel are in general insufficient to command the services of men properly qualified for the performance of the important functions with which they are charged.

(d) HANDICAPS RESULTING FROM CONFUSION OF FUNCTIONS

The charging of the Department of Labor with quasi-judicial as well as administrative functions has unfortunate results other than violation of personal rights. It takes time even to go through the motions of hearings. Forms must be filled out, stenographers are tied up and one or more immigrant inspectors must sit in each case. As a consequence, the investigation and apprehension of deportable aliens, which after all is the primary duty of the department, is handicapped.

Moreover, the board of review in Washington has functions other than the reviewing of records in deportation proceedings. An increasing volume of immigration work has overloaded the members of this board, as is shown by its annual output tabulated in the first part of this report. No group of men can be expected to handle such a volume of work with proper attention given to each case. Removal of their quasi-judicial function in deportation cases would give the board more time for the performance of their administrative duties.

II

CAUSES OF OBJECTIONABLE FEATURES

1

Lack of Consideration of the Deportation System

The growing emphasis laid in recent years upon the necessity of broadening the powers of deportation, while it has had valuable results in efficacy of enforcement, has operated to preclude necessary study of the structure of the deportation system. Deportation has been regarded, in the main, only as the concomitant of our immigration policy and a method of ridding the country of undesirable residents. Congress has from time to time added to the classes of deportable aliens and the Department of Labor has shown steadily increasing vigor in carrying out the enforcement of the statutes. It by no means follows that greater enforcement of a law should be accompanied by failure to study the structure of the enforcement machinery and the technique developed. In the deportation process, however, this has been the case. It has been felt that the greater number of deportations effected is sufficient evidence of the soundness of the entire deportation system.

2

Absence of Public Findings

The results of the deportation process have been expressed almost entirely by mathematical figures. The published records chiefly consist of the mounting numbers of aliens deported, and the increased appropriations necessary for the work of the department. The Annual Reports of the Commissioner General necessarily deal only with statistics; the actual facts with reference to each case are hidden in the archives.

In no other tribunal or administrative body dealing with important rights on such a large scale is there a similar situation. In the courts the facts which are the basis for each decision are set forth, often at length. This is true even in legislative courts such as the Court of Claims, or

the Court of Customs and Patent Appeals. The Board of Tax Appeals, an administrative tribunal dealing entirely with financial matters, publishes the facts upon which its decisions are predicated.

In deportation cases the Government is dealing not with rights of property but with some of the most important rights of personal freedom. Any detailed study of a group of these cases must show not only the broad range they cover but also the tremendous effect which these decisions may have upon human lives. Any such study, however dispassionate, must, it is believed, disclose the defects and abuses which characterize the present system—not, in the main, because of the omissions or commissions of the department administering the law, but because the defects and abuses are inherent in the system itself. Such studies are made almost as a matter of course in the workings of our laws in almost every other particular. The constant scrutiny of the decisions of our tribunals, whether judicial or administrative in nature, has always been regarded as one of the greatest safeguards of our system of government. The lack of general opportunity to make such studies in connection with deportation proceedings must be regarded as one of the main reasons for the general lack of consideration of the deportation system, and for the objectionable features of that system which have resulted.

3

Handicaps of the Department of Labor

It would be highly unfair to charge these defects and abuses to the particular department of our Government which has had all the handling of the deportation process thrust upon it. The objectionable features of the present system are not, in the main, the fault of the Department of Labor, but of the system itself. The criticisms involved in this report are not to be taken as criticisms of the Department of Labor; indeed, it is doubtful if any group of men could have done better under the limitations and handicaps imposed. No group of men, however zealous, able, and conscientious, can be expected to combine within themselves the

duties of investigator, prosecutor and judge, and satisfactorily to discharge each function. There are limitations of human nature which no statute can remove.

Moreover, the department at Washington merely represents the top of a pyramid. The base consists of the immigrant inspectors scattered throughout the country—men whom in general the officials of the department at Washington do not even see before they are selected, who often have not the qualifications necessary for the use of their tremendous powers and whose reports of their proceedings are often incomplete.

It has already been said that, as a whole, immigrant inspectors are honest and hard-working. But neither the salaries which they command nor their lack of training for their duties can be expected to result in the evolution of officials who are able to sit dispassionately in judgment upon cases which they themselves have investigated and prosecuted.

The cumbersome centralization at Washington is probably caused in large part by a realization of this condition. Decentralization under the present system, while it would probably result in a greater number of deportations, would also give even more power where power is already often abused.

It is natural, if not inevitable, where duties of prosecution are combined with duties of a judicial nature, that the magistrate should become swallowed up in the detective. At the same time, even the motions of judicial hearings and the clerical work necessitated consume time and energy, so that the confusion of functions limits the effective performance of each function involved.

4

Status of Suspects

The persons coming within the scope of the process of the deportation laws, as a whole, occupy a low status in our economic structure. Many of them are ignorant. Some of them are members of classes who, whether or not deportable, are not the best material for citizenship.

Moreover, aliens have no votes and little influence. The tide of public sentiment, at one time so cordial, has definitely turned as our population has increased and our conditions have changed. The alien, even if he has been properly admitted to this country and is a law-abiding resident, does not command popular sympathy.

Those who are interested in aliens or in persons who come within the scope of the deportation processes often mar with sentimentality the considerations which they advance. It is suspected, sometimes with cause, that protests against the deportation system may be indirect attacks upon recent restrictions of immigration.

The economic status of suspects has another important aspect. The persons caught within the meshes of the law are generally unable to afford counsel and as yet no satisfactory system has been evolved for the supplying of counsel in such cases by voluntary agencies.

The effect of competent counsel in these proceedings has already been shown. Undoubtedly, the employment of attorneys has prevented the expulsion from this country of some persons who otherwise would have been deported, and many a person has been deported when, if he had had good counsel, the result would have been different.

There is, however, another and equally important result of the general absence of competent attorneys in these proceedings. Whatever may be the abuse of legal technicalities in criminal processes in this country, it is an accepted fact that, as a whole, the interest and efforts of competent lawyers constitute both a checking and guiding force in the development of Anglo-Saxon institutions. This force, in the development of the deportation procedure, has been almost entirely absent.

As a result of the combination of the various factors involved, the general approach to the entire problem of deportation has become tinged with emotionalism. As the realization grows that our social and economic structure is not yet perfect, it becomes more and more natural to seek a scapegoat upon whom to vent our dissatisfaction. The alien possesses many obvious qualifications for such a rôle.

In so far as he is interfering with our laws or even residing here unlawfully, there is in general no reason why he should not be deported, or why the process of deportation should not be executed and witnessed with a glow of pleasure. This emotional reaction, however, may result in grave injustice.

5

Public Indifference to Personal Rights

In the enforcement and observance of certain of our Federal laws public antagonism has often been a deterring factor. This is not the case with respect to the laws governing deportation of aliens.

In a larger sense, however, the defects and abuses of the present system must in part be laid at the door of public opinion. The objectionable features of the present system of deportation are largely attributable to a general indifference to the preservation of the individual rights of others. Rights of property are zealously maintained, but we have manifested an increasing apathy to the invasion of rights of personal liberty when we ourselves are not directly and tangibly affected.

III

PROPOSALS TO REMOVE OBJECTIONAL FEATURES OF PRESENT SYSTEM AND TO AID ENFORCEMENT

1

Nature of Proposals

In the discussion of proposals for changes in the present deportation system, the considerations set forth in the preliminary part of this report must be kept in mind. It is, after all, a practical situation with which we are dealing. Individual rights must be protected; at the same time, there should be no undue interference with the vigorous enforcement of the immigration laws. There is no intrinsic reason why governmental machinery can not operate effectively and at the same time with proper regard for the rights of

the individual. It is not always easy to strike the proper balance between efficiency and protection of the individual but it is believed that in the deportation process a satisfactory structure and technique can be worked out. The changes in the present system herein suggested are not radical in nature but, it is believed, are the logical outgrowth, not only of tendencies of the present deportation system, but of the entire development of American administrative law.

Many of the suggestions contained herein, if adopted, could be made effective by rearrangements within the Department of Labor without enactment of new legislation. Other proposals, while not requiring legislative changes, would look to the cooperation of different branches of the Government or of voluntary agencies. Only the suggestions dealing with the separation of functions and power of discretion would require congressional action; this action could be simple of execution and would have ample precedent.

This report does not deal with the classification of aliens subject to expulsion.

2

Separation of Functions

(a) NECESSITY

Emphasis has already been laid upon the confusion of functions of the present system whereunder one department of our Government is forced to perform the conflicting duties of investigator, prosecutor and judge, with almost unlimited power. Reference has been made both to the grave abuses and to the handicaps of proper law enforcement which have inevitably resulted.

(b) INVESTIGATION AND PROSECUTION

The functions of investigation and prosecution are closely related, and while, as is pointed out in another report made to the commission dealing generally with the subject of prosecutions, further study needs to be given to the proper relation between the functions of prosecuting attorneys and those of police or investigators, it would seem that in the deportation cases the Department of Labor is equipped to

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combine and effectively carry out the functions of both investigation and prosecution. This part of the structure of the deportation system, it is believed, should not be disturbed.

(c) JUDICIAL FUNCTIONS

(1) General Considerations

It has been pointed out that, while under the decisions of the Supreme Court the deportation process is not criminal in nature and does not necessitate a hearing before a judicial tribunal under our Constitution, it nevertheless involves important functions of a judicial nature. Whether the exercise of these functions be called judicial or quasi-judicial makes little difference for any practical purpose. The important consideration is that in a matter of such serious moment as deportation, the findings of fact and the application of the laws should be made by a body of men fitted by training, character, and experience for the process of adjudication. It is equally important that this body should not be appointed by and function under the jurisdiction of the governmental department responsible for the investigation and prosecution of the cases which the judging body is to decide. This body should have an unfettered opportunity to review the prior processes of the cases which come before it to see if all the facts have been properly developed and if due process of law has been observed; it should not be answerable for its decisions to the department charged with the enforcement of the deportation laws.

Two proposals are to be considered with respect to the separation of this quasi-judicial function from the other functions involved in the deportation process.

(2) Proposal to Give Federal Courts Jurisdiction

It has been ably contended by some organizations and individuals that warrants of deportation should be issued only by the Federal courts. It is argued that the rights involved in deportation processes are as important as most of the matters which the Federal courts are now called upon to adjudicate and more important than many of such cases It is further contended that the giving of this jurisdiction

to the Federal courts would prevent many of the abuses of individual rights complained of in investigation and prosecution and that the judiciary would see to the development of any facts which might operate to prevent unwarranted deportation when the suspect was too ignorant to defend himself. Instead of reviewing a paper record, often incomplete, to determine whether or not a warrant of deportation should issue, the court would have the opportunity to see the suspect and to form its own opinion as to his character and reliability. It is argued that the decision as to whether or not a warrant of deportation should be issued is in effect a judicial question, and that it is useless to create other tribunals when the judicial machinery provided by the Constitution can be utilized. In this connection the fact is stressed that even under the present deportation laws many Chinese are still deportable only by judicial process. It is asked why the benefit of court hearings should be given to suspected members of a class which is almost entirely excluded under our laws when members of other classes against whom no such general discrimination is made are forced to have their rights adjudicated by administrative machinery alone.

Despite the weight of these arguments, the writer does not believe that the duty of making the original decisions as to whether or not suspects should be deported should be placed upon the Federal courts. The President of the United States, the Attorney General, and this commission itself have stressed the present burden imposed by law upon the Federal courts and the congestion which has resulted throughout the country. The volume of deportation processes is large and is steadily increasing. During the last fiscal year over 20,000 warrants of arrest were received by field officials. To impose upon the district courts the duty of presiding in deportation cases would cause considerable delay in the deportation process itself and would seriously interfere with the present work of the Federal judiciary.

However judicial in nature the process involved in making the decisions as to deportation may be, there is also contained in many of these decisions an element administrative in character. This is particularly true, if, as has been

contended, a greater power of discretion in these cases should be given by the law. The exercise of such power of discretion should not be arbitrary or capricious. One tribunal passing upon all deportations, if properly constituted and if its decisions are reported, is bound in time to evolve certain general principles relating to the exercise of the discretion. On the other hand, if the discretion were to be exercised by Federal judges in different parts of the country, the building up of such general principles would be more difficult. Again, the proper adjudication of deportation cases is considerably aided by familiarity, not only with the particular applicable law but with the general conditions in which the law operates.

In other words, consideration of the elements involved seems to point to the advisability of the creation of an independent specialized tribunal for the decision of deportation cases.

(3) Creation of an Independent Tribunal

The creation of such independent tribunals in other branches of our Government has already been discussed; as a whole, the development of the system under which such independent bodies as the Interstate Commerce Commission, the Federal Trade Commission, and the Board of Tax Appeals have arisen is one of the most successful features of administrative law which this country has developed.

Such tribunals, in independence and soundness of judgment and in the character of their members, often have a position and dignity similar to that of a court. Unlike a court, their adjudications are confined to a particular field, and they often have administrative powers.

The creation of such an independent tribunal for the determination of deportation cases seems to be the logical development of the present system itself. The Department of Labor has found it advisable to create a board of review within its own organization. As has been shown, this board had developed certain embryonic judicial tendencies, although the growth of these tendencies has been hampered by the subordinate position in the department which the board occupies. The next step in development seems

clear—the dichotomy should be made complete. The board of review should be lifted out of its place in the Department of Labor and should be made an independent tribunal.

Perhaps the closest analogy in structure to such a proposed tribunal is the Board of Tax Appeals, an independent governmental agency created by Congress in 1924. This board neither initiates nor prosecutes the cases which are brought before it but in effect sits as a court. Its hearings are public and its decisions are reported. It has some power of appointment and is working out an elastic organization. Appeals are allowed from its findings to the Circuit Courts of Appeals in the respective circuits. The independence of this board and the satisfactory nature of its decisions are generally conceded.

There seems to be no good reason why we should not proceed at least as far in the establishment of a satisfactory system with respect to the important personal rights involved in deportation as we have with respect to the property rights involved in taxation.

The creation of such an independent tribunal as an integral part of the deportation process is not indicated by the growth of administrative law in our own country alone. Under the English law, the Home Secretary is given the power to make an order of deportation if he deems it to be conducive to the public good. The problems in connection with deportation are by no means as serious in Great Britain as they are in this country. The number of deportations from England in the years 1924 to 1930, inclusive, was only 1,471. But there have been protests in England, as in America, against the broad powers in deportation cases and against the unrestrained power of administrative bodies. Whether or not as a result of these protests, the British Home Office, the writer has been informed by that body itself, intends voluntarily to recommend the creation of an independent tribunal to hear appeals from the Home Secretary's findings in deportation matters.

That there is in America at the present time, and for some future time will be, ample work for such an independent tribunal to perform is self-evident. Whatever may be the

accuracy of the guesses as to the number of aliens who are unlawfully in this country, the aggregate is sufficiently great to insure an increasing number of deportations for a number of years. Moreover, in spite of the most vigorous efforts of the border patrol and the immigrant inspectors, a certain number of aliens will continue to enter unlawfully. In addition, there are the aliens who have entered this country legally but who because of commission of crimes or economic misfortunes will in the future become subject to deportation. If and when we reach the happy point where deportation is no longer a major problem, the necessity for such a board could then be reconsidered by Congress. At present, unfortunately, such a time seems far distant.

(4) Character of the Tribunal

This tribunal, if created, could be known as the Board of Alien Appeals. The name is unimportant. It would be appointed by the President and would not come under the jurisdiction of any department of the Government. The men appointed to it should be of judicial caliber and the salaries provided should be adequate to assure acceptance of appointment by men of the necessary qualifications. A majority of the board should be lawyers but it should include men with practical experience in immigration work.

(5) Jurisdiction

The immigration statutes should be changed so that warrants of deportation shall be issued by this board instead of by the Secretary of Labor as at present. As this board would have the sole power to issue warrants of deportation, the hearings under the warrants of arrest would come under its jurisdiction. These warrant hearings, as has been shown, are themselves quasi-judicial in nature as it is here for the first time that the alien is given an opportunity to show cause why he should not be deported. The power to issue warrants of arrest would follow the power of deportation.

It might be found advisable to give the board jurisdiction in certain immigration matters other than cases of deportation, such as appeals from local boards of special inquiry

in cases of admission or exclusion, but the consideration of such questions is not within the scope of this report.

(6) Organization

This board should be given broad powers to effect its own organization. There should be provision for the appointment of such subordinate officials by the board, in conjunction with the civil service, as it may find necessary for the proper fulfillment of its functions. These officials should be properly qualified and should be responsible only to the board. Similar powers of appointment are given to the Board of Tax Appeals and the Interstate Commerce Commission.

It is deemed inadvisable to outline in too great detail the organization of the proposed board. Such tribunals must in a measure feel their way and work out their own structure as their experience shows necessary. However, certain tentative suggestions of organization may be advanced.

The board of alien appeals would itself sit in Washington. Under its power to appoint subordinate officials, however, it could designate such officials to conduct the warrant hearings in the different localities. These local officials should always be available for warrant hearings so that the deportation cases be not unduly delayed. They must be responsible not to the Department of Labor, which has prepared and is prosecuting the case against the suspect, but to the board of alien appeals.

It might be found advisable, in addition to these local officials, for the board to have a corps of such officials who traveled about the country so that procedure could be made uniform and freshness of point of view could be obtained. Members of the board of alien appeals themselves might occasionally find it advisable to travel about the country and see the system in operation. Here again there would be a close analogy to the working of the Board of Tax Appeals.

Warrants of arrest would be issued upon probable cause, not by the board sitting in Washington, but by its local officials, upon complaint made by an immigrant inspector.

In this manner the present unfortunate situation in the law, under which the local immigration officials either feel constrained to detain persons illegally without a warrant or to see suspects escape before warrants can be procured, would be obviated.

Care, of course, would have to be taken by the board of alien appeals to see that the proper kind of subordinate officials was obtained, that they acted independently and fairly, and with the requisite dispatch. In the beginning at least there might be a large turnover, as there still is in the field personnel of the immigration service itself. As for the compensation of these subordinate officials, they could be on full-time salary where the volume of work in their particular locality justified it, or where the work is more sporadic, they could be paid on a part-time basis.

These subordinate officials would, in certain respects, perform the same functions as the attorneys and examiners of the Interstate Commerce Commission and the technical assistants of the Board of Tax Appeals.

The important work which these officials could do in the various localities at which deportation hearings are held is obvious. In presiding at the warrant hearings they would be acting impartially. They would see that due process of law had been observed in connection with the apprehension and preliminary examination of the suspect and that any reasons which the suspect might have why he should not be deported would be sufficiently developed. On the other hand, as officials of the United States Government, it would be their duty to see that the immigration laws were properly enforced.

At the warrant hearings they could make proper inquiry as to the possible hardship which deportation would entail either to the alien or to his American family so that the board would have the necessary information upon which any exercise of discretion might be predicated.

Certain subordinate officials of the board of alien appeals could be stationed at Washington to receive the records sent to the board. These records would be forwarded to the board after the warrant hearing, just as they are now forwarded to the Department of Labor. Assuming that the

records under the proposed system would in many cases be fuller than at the present time, the great majority of such records would probably disclose undisputed facts, and automatic application of the law. The records in these cases could be passed upon by the subordinate officials and the board would have to consider only such cases as involve doubtful questions of fact or of law or where the exercise of some discretion might be called for. Under such a system, with the requisite number of subordinate officials, the work of the board could probably be handled adequately by five or seven members.

The board, when it so deemed advisable, could send the case back to the district for further investigation or hearing on any specified points.

(7) Hearings, Reports, and Appeals

The board of alien appeals, like the Board of Tax Appeals, should hold oral hearings whenever requested.

The reports of the board should be published and would form a body of case law valuable, not only for the determination of future cases, but also for the study of the entire immigration situation. The board would not necessarily publish all of its decisions. Cases in which the facts and law were clear and where no exercise of discretionary power was indicated could be omitted. In cases involving details of an intimate nature, letters could be substituted for the names of the persons involved, as is sometimes done in English court reports.

Appeals should be allowed from the decisions of the board to the Federal Circuit Courts as is done with decisions of the Board of Tax Appeals. Such appeals, it is believed, should be confined to questions of law. The remedy of habeas corpus would always be possible to the suspect under our Constitution, but the number of applications for such writs would in all probability be considerably diminished under the proposed system.

Obviously, irrespective of the technique developed, the success of the functioning of the proposed board would depend upon the caliber of the board itself. A good board inde-

pendently functioning can best work out its own organization. Consideration of the details of the technique to be developed should not obscure the importance of the creation of such a tribunal.

(*d*) EXECUTION OF WARRANT OF DEPORTATION

The execution of the warrant of deportation and the physical handling of the deportees should remain under the jurisdiction of the Department of Labor, with the important qualification that the board of alien appeals shall designate the manner of the execution of the warrant. This would cover the privilege of reshipment foreign as well as the designation of the country to which deportation is to be effected. The board would therefore have the power to see that the deportees were not sent back to countries where their lives would be in danger for their political opinions.

3

Power of Discretion

Sufficient reference has already been made to the inflexibility of the present system and the unnecessary hardship which results. The inconsistencies and rigidity of the present statutes are obvious; unfortunately the violations of the most elementary principles of humanity which result are not so obvious; they are buried in the archives and in the sufferings of the obscure.

One of the most important recommendations that can be made with respect to the entire deportation system is that somewhere in that system some further power of discretion be given.

The form of the provision would not be difficult. In effect it would state that deportation need not be carried out if the alien is found to be a desirable resident of the United States or if deportation would inflict hardship upon American citizens or is otherwise found to be inadvisable under all the circumstances. Under such a power the warrant of deportation could be suspended and further residence in this country be made conditional upon good behavior or the fulfillment of certain conditions. The provision would only

embody in the deportation process a power analogous to that of pardon or probation. As a corollary of this power, there should be authority to permit aliens theretofore or thereafter arrested and deported to apply in meritorious cases for readmission.

This power of discretion as to deportation would be vested in the board of alien appeals, if such a board is created. The fear of political pressure upon such a board in connection with the exercise of this discretionary power should be no more a consideration than is such fear with respect to any Federal court or independent administrative tribunal. We do not deny our Federal judges the right to place a prisoner on probation because of apprehension that they may be annoyed by political pressure. Indeed, any argument as to the danger of outside pressure in connection with the giving of discretionary power in deportation matters is only another reason for the creation of the independent tribunal advocated.

Obviously, the discretion would be exercised in comparatively a small minority of cases. As has been indicated, the proposed board of alien appeals would in all probability evolve certain general principles which would guide its decisions in the exercise of this power.

4

Furnishing of Attorneys

The importance of competent counsel in deportation proceedings has been pointed out. In the great majority of cases such counsel is lacking because the alien has no funds and the litigation has no financial stake. Certainly it is not the purpose of the United States Government to deprive the suspect of adequate opportunity for the development of his defense. It is not the practice of the Government in any department, however, to supply counsel for those against whom it is bringing charges. It is not within the scope of this report to go into the merits of the arguments either for or against the system of public defenders. In the deportation cases, it is believed, the problem of adequate representa-

tion can be worked out without any radical change in the present policy.

There are a number of philanthropic organizations interested in aliens and having branches throughout the country. There are also legal aid societies in many of the places where deportation hearings are held. Investigations made in connection with this report indicate that at least certain of these organizations would be willing to supply counsel to suspects who desire and need representation but are unable to pay for it. Indeed, to some extent they do so already.

Under the present system the organizations interested do not know of most of the deportation cases that are being prosecuted. Assuming the willingness of these organizations to cooperate, as they do in other branches of the deportation work, all that would be necessary would be for the Government official who is conducting the warrant hearing, after telling the suspect that he may be represented by counsel, to further notify him that, if he can not afford an attorney, one of the organizations listed may furnish a lawyer for him. The organizations, of course, would make an investigation in each case, which would be relatively easy, as to the bona fide nature of the suspect's plea that he was without funds. If satisfied on this score, the organizations in each locality, by some working arrangement between themselves, could have an attorney available. In some cases, an attorney might be supplied through the agency of the consul of the country of which the alien is a citizen, or by an organization representing residents of his nationality or native-born descendants of such immigrants.

There is already cooperation between the immigration authorities and some of these philanthropic organizations in other branches of the deportation work. Sometimes these organizations themselves notify the department of the presence of a deportable alien. Sometimes the local district may call upon such an organization for an interpreter, or even discuss a troublesome case with it. The department's own rules provide for cooperation with these agencies in the deportation of women.

The Government itself would not be inconvenienced in the working out of the suggested plan. A simple change

in the rules pertaining to warrant hearings would be sufficient. The proposal, however, would require the active interest of the voluntary agencies referred to in order to make it effective. The financial considerations would be particularly important. Some competent attorneys might be found in various localities who would volunteer their services in a certain portion of the cases, but in many other cases additional expense would be involved. The system would take some time to work out, but the investigation of the writer indicates that a great deal could be done even now in the way of such voluntary cooperation if the organizations concerned knew that the arrangement was possible and if the Government officials would cooperate with them to the extent mentioned.

The presence of attorneys in more of the cases undoubtedly would result in greater protection of the rights of the individual suspects. Government officials are more apt to restrain their zeal within legal limits if they know that competent lawyers will have an opportunity to investigate their procedure. Probably the most valuable result, however, would be the development of factual defenses in many cases in which the suspect may not appreciate the defenses which he has or, if he does, may not be able to assemble the necessary evidence.

On the other hand, the presence of attorneys in more of the cases should operate in some respects to save expense and trouble to the Government. In a large number of cases, particularly in the interior of the country, the attorney, if convinced that the alien was subject to expulsion, might obtain the consent of the local officials to the alien's immediate voluntary departure. Such departure might, if necessary, be financed by the organization which the attorney represents. The further handling of these cases and the expense of deportation would be avoided and the essential object of the deportation process, which is to rid the country of aliens unlawfully here, would be fulfilled. In certain cases the Government would probably insist upon formal deportation or upon reporting the alien for prosecution under the penal laws, but in other cases the Government would be saved time, trouble and expense.

In many cases the attorneys could arrange for bail for suspects or convince the Government that releases upon the suspects' own recognizance should be allowed. Certainly every effort should be made to prevent the unnecessary jailing, sometimes for months, of persons who are accused of no crime. Here, again, attorneys could prevent expense for the Government and hardship for many individuals.

The attorneys offered by the organizations referred to would almost invariably be reputable and would develop a familiarity with the deportation laws and procedure advantageous to both the suspect and the Government.

5

Raising the Caliber of Immigration Field Personnel

(a) QUALIFICATIONS

It has been shown that although immigrant inspectors and members of the border patrol are selected by the Civil Service Commission, funds have not recently been available to conduct a preliminary examination and investigation of applicants for the positions. Enough has been said as to the importance of the work carried out by these officials and the extent of their authority to show that such further investigation of applicants is imperative.

These examinations should not be confined to tests of general intelligence or even knowledge of immigration laws. It is not necessary, however advisable it be, that applicants should have had legal training. But no man should be made an immigrant inspector or immigration patrol inspector unless he evidences some conception of the rights of the individuals with whom he will deal.

If higher salaries are necessary to obtain men with the proper qualifications, as they probably are, the money should be expended.

(b) TRAINING

The imposition of additional qualifications for admission to the immigration service is not enough. Before these men are sent out to the field they should be given some training as to the nature of their duties and the methods to be used.

Under the present system, new immigrant inspectors and immigration patrol inspectors are immediately turned loose upon the district officials, forcing upon these already overburdened agents the additional duty of training of recruits. It is probable that for some time after the new inspectors report they are as apt to be a handicap as a help.

The efficiency of the operation of the investigation and prosecution functions would be materially aided if newly appointed inspectors would be given some training, no matter how brief, before they reported for active duty. It would not be necessary for this training to be given at Washington. Courses could be provided at various points throughout the country. Any necessary expense involved should be more than made up by increased efficiency when the inspectors began their work.

(c) CONTROL

In addition to these measures, the Department of Labor should take whatever additional steps are necessary to see that the inspectors, while vigorously carrying out their duties, keep within the limits of constitutional rights and fundamental decency.

6

Prevention of Abuses of Power by Immigrant Inspectors

Raids should be prohibited. The dangers here, not only to aliens but to American citizens and institutions, are obvious. If the discontinuance of these raids means more trouble in the apprehension of suspects, then it must be remembered, as Professor Chafee said in his book on Freedom of Speech, that "every rule in the interest of personal liberty necessarily diminishes the efficiency of government."

If the proposals above made are adopted, arrests without warrants can no longer be defended even on the supposed ground of practical necessity. In any event, illegal actions must be discontinued. This applies also to the custom of searching the persons and the effects of suspects without search warrants.

The former rule with respect to the conduct of immigrant inspectors in the preliminary examinations should be reinstated and enforced. This rule read as follows:

> Officers are directed to make thorough investigation of all cases where they are credibly informed, or have reason to believe, that a specified alien is in the United States in violation of law. It is not permissible for officers to resort to any form of intimidation, by threats, violence, or otherwise, in order to extort from any suspected alien or from any other person the information to be embodied in the application for the warrant of arrest. Officers are specially cautioned not to lend their aid in causing the arrest of aliens upon charges arising out of personal spite or enmity, unless the truth of such charges is clearly established.

The rules should further provide that before any suspect is examined he should be warned that he is not obliged to say anything and that anything he says may be used against him. A suggested form for such apprisal is as follows:

> You are advised that I am an immigrant inspector of the United States and wish to question you as to your right to be in and remain in the United States. You are not obliged to say anything unless you wish to do so, but whatever you say may be used against you.

Where the suspect does not seem to comprehend the meaning of this warning it should be carefully explained to him.

In addition, inspectors should be warned against making inquisitorial cross-examinations. While preliminary examinations are necessary for the proper enforcement of the immigration laws and are lawful if properly conducted, efforts should be made whenever possible to check with other evidence the self-incriminatory testimony which the suspect may give. There is, as has been said, no reason why anyone should not be questioned, after being properly warned, as to his nationality and the time, place, and manner of his entry into this country. Beyond this point, however, examinations leave the realm of external facts and enter the vaguer domains of condition, morality, and belief. It is here particularly that the examinations are apt to transgress the limits of decency, even if the testimony of the suspect is voluntary.

In many of the cases in these fields the matters charged can be proved by other sources. If an alien has entered this country lawfully, his own testimony should not be necessary to establish whether he has become a public charge. If it is alleged that an alien woman has become a prostitute, the external evidence of her occupation should be as easily procurable as it is in the police courts. If an alien has been endeavoring to overthrow the United States, the best evidence is not what he may say about his inward beliefs but what he has actually done.

Observance of constitutional rights and considerations of decency can not be enforced by rules alone. It is the attitude, not the printed word, that is important. The board of alien appeals, if created, and the office of the Commissioner General should work together in seeing that the proper attitude on the part of the immigration field personnel is achieved and maintained.

It has been noted that the draft of the Code of Criminal Procedure of the American Law Institute gives persons charged with having committed an offense the right to the aid of counsel during the preliminary examination. There is much to be said for giving a similar right to persons charged with having violated the immigration laws and being subject to deportation. Certainly the presence of counsel at these preliminary examinations would go far to prevent abuses. It has been argued with great force that in a matter of such serious moment as deportation, suspects should be allowed to have counsel before they are asked to incriminate themselves.

On the other hand, the practical considerations involved can not be forgotten. It is undoubtedly true that in many of the deportation cases the aliens would unjustly escape deportation and the law would be stultified if they did not disclose their nationalities and the time and manner of their entries into this country. It is equally true that if present in these preliminary examinations, lawyers would probably feel it their duty to advise their clients in many cases not to answer any questions put to them. When it is remembered that the great majority of suspects can not afford to employ counsel and that it is one of the recommendations of this report that the Government should cooperate in see-

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ing that counsel are available in the warrant hearings, it seems at least questionable whether the Department of Labor should be asked to go further and cooperate in the furnishing of lawyers at the preliminary examinations. Without such cooperation the allowance of counsel at this step would mean little in practice.

On the whole, a balance of the considerations involved seems, at least to the writer, to indicate that the present rule forbidding counsel in the preliminary examination should not be disturbed—if, and only if, however, these examinations are conducted more lawfully and more decently than has heretofore been the case. If illegal searches and seizures are not discarded, if suspects are not warned of their rights, if the self-incriminations continue in large part to be involuntary in nature, if the examinations in name are cross-examinations in fact and inquisitorial cross-examinations, then considerations of practical expediency must be sacrificed for the preservation of constitutional rights.

7

Proposals to Aid Enforcement

(a) ADDITIONAL STEPS TO PREVENT UNLAWFUL ENTRY

(1) Increase of Border Patrol

The greater the efficiency of our measures to prevent the unlawful entry of aliens, the less trouble and expense it will be in future years to rid the country of aliens unlawfully here. The border patrol, while individually efficient, is insufficient in number. Additional funds should be appropriated so that it can carry out its important functions more fully.

(2) Warnings by Consular Offices Abroad

While the operation of the penal laws with respect to violation of immigration statutes have been effective in discouraging illegal entries, it is doubtful if the knowledge of these laws is as general as it could be made among the particular classes of other countries to which emigration appeals. Our consular offices abroad may well take additional

steps to disseminate this information. The printing of warnings on the forms for applications for visas is a step in the right direction, but the Department of State will probably be able to evolve additional steps, such as oral warnings to unsuccessful applicants, tactfully to inculcate among prospective emigrants the knowledge that illegal entry into this country is punishable by fine and imprisonment.

(b) INCREASE OF NUMBER OF IMMIGRANT INSPECTORS

It has been found that the extent of the apprehensions made by immigrant inspectors is limited by insufficiency of personnel rather than by any inadequacy in the scope of the law. The request of the Commissioner General in his annual report for 1930 for an increase in this force for the proper enforcement of the law seems justified.

(c) CONCENTRATION UPON APPREHENSION OF ALIEN CRIMINALS

The most important function of deportation laws would seem to be to rid our country of alien criminals. While the criminal and immoral classes together constitute a comparatively small portion of the deportees, certainly criminal aliens are far more dangerous to our country than aliens who have merely committed a technical violation of the immigration laws. It is not meant that aliens of the latter class should not be apprehended and deported; the enforcement of the law should be vigorous in all fields. But if it is true that, through insufficiency of personnel or of funds, the processes of deportation are selective rather than exhaustive, certainly it is the criminal classes to whom first attention should be paid.

In this respect a process of education is still necessary with respect to the desirability of State and local cooperation. While in some localities this cooperation seems to be all that can be desired, in other places many alien criminals are not reported to the immigration authorities. The necessity for such country-wide cooperation should be stressed and proper means taken to see that it is brought about.

(d) THE SUGGESTION OF REGISTRATION

Many arguments have been advanced both for and against the compulsory registration of all aliens in this country. These arguments on both sides include considerations other than efficiency of the operation of the deportation laws.

It is not taken to be within the scope of this report to discuss these considerations, particularly as investigation discloses that the efficiency of the present system of apprehension of deportable aliens is chiefly limited by lack of man power and money. If the necessary funds are supplied and the caliber of the field forces raised, it is at least open to question whether in time most deportable aliens can not be expelled without the enactment of so radical a departure from our traditions as a general registration law.

(e) CODIFICATION OF THE LAW

The immigration statutes themselves have been enacted in a piecemeal fashion and are often far from clear. The Commissioner General of Immigration has repeatedly recommended that the laws be codified. Codification and clarification would make enforcement easier. While it is not within the province of this report to consider questions of the substantive law concerning immigration, it is possible that satisfactory substitutes could be found for the provisions which make deportation depend upon questions of private morals.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

1. A vigorous enforcement of the deportation laws is necessary both to carry out our immigration policy and to rid the country of undesirable residents unlawfully here.

The execution of the laws involves most important rights of personal liberty; the processes of deportation reach over 100,000 persons a year, many of whom are aliens lawfully in this country or United States citizens. In the administration of these laws one agency of the United States Government acts as investigator, prosecutor, and judge, with despotic powers. Under the present system not only is the enforcement of the law handicapped but grave abuses and unnecessary hardships have resulted.

(*a*) The apprehension and examination of supposed aliens are often characterized by methods unconstitutional, tyrannic, and oppressive.

(*b*) There is strong reason to believe that in many cases persons are deported when further development of the facts or proper construction of the law would have shown their right to remain.

(*c*) Many persons are permanently separated from their American families with results that violate the plainest dictates of humanity.

(*d*) The enforcement of the deportation laws is handicapped by overcentralization of the administrative machinery and by burdening that machinery with the performance of conflicting duties.

2. The defects and abuses inherent in the present system are not primarily the fault of the agency in charge of deportation but result from a number of causes.

(*a*) Emphasis upon the broadening of deportation power has operated to the neglect of proper study of the process by which the power is carried out.

(*b*) The absence of public findings in the individual cases has prevented the building up of a consistent body of administrative law, such as we have in other quasi-judicial administrative bodies whose functions involve even less important rights.

(*c*) The patrol and immigrant inspectors are insufficient in number and generally have not the necessary qualifications properly to use their tremendous authority.

(*d*) Under the present system a governmental agency is forced to sit in judgment on the cases which it itself has prosecuted, and to pass upon the acts of its own agents.

(*e*) The economic status of suspects generally precludes employment of competent counsel and results in the inadequate defense of vital rights.

(*f*) Despite the broad power of enforcement given the Department of Labor, it is given little discretion to prevent unnecessary hardships and suffering.

3. The following suggestions, it is believed, if adopted, would not only largely cure the abuses of the present system but would aid vigorous and proper enforcement of the laws.

(*a*) The Department of Labor should be charged only with the duties of investigation and prosecution of aliens unlawfully in this country and of execution of warrants of deportation when issued.

(*b*) The caliber of immigrant inspectors and patrolmen should be raised; they should be taught and made to observe constitutional rights and elementary principles of fairness in their investigations and examinations.

(*c*) More cooperation between State and local authorities and the immigration authorities should be effected in the investigation of aliens subject to deportaton, particularly aliens of the criminal classes.

(*d*) An independent board, with some such name as the "board of alien appeals," should be created, composed of men of judicial caliber, to be appointed by the President. This board should be charged with the duties of issuing warrants of arrest, of conducting hearings on the warrants, and of deciding when warrants of deportation should be issued. Its findings should be published.

(*e*) The board of alien appeals should have discretion to allow even deportable aliens to remain in this country where deportation would result in unnecessary hardship to American families, or is otherwise found to be inadvisable. Discretion should also be given to admit aliens previously deported.

(*f*) This board should have broad powers in effecting its own organization. It should have the right to appoint subordinate officials, such as masters or examining attorneys; these appointees would act as officers of the board in the different localities and would be under its sole jurisdiction.

(*g*) Legal aid societies and certain philanthropic organizations should cooperate in arranging to furnish attorneys to persons charged with being illegally in this country, where such persons desire counsel but have no funds therefor. In such cases the suspects should be notified of the provisions so made for them at the time of the serving of the warrant of arrest.

(*h*) Aliens subject to deportation to a country where their lives may be in danger because of their political opinions should be allowed to depart at their own expense to any other foreign country willing to receive them, as a compliance with the warrant.

(*i*) The agencies for preventing unlawful entry into this country should be strengthened. The personnel of the border patrol should be increased and the consular offices abroad should take further steps to see that applicants for visas realize that unlawful attempts to enter this country are punishable by fine and imprisonment.

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