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Panel: View from Law Enforcement and Community Impact

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My focus today is local law enforcement as it engages with unauthorized immigration. Most unauthorized immigrants apprehended by local law enforcement have committed only minor offenses that would not ordinarily bring them into contact with the federal criminal-justice process. These individuals almost always plead guilty and accept voluntary departure orders. But many of them soon return to the United States to reclaim jobs or re-unite with their families. This brings them within the purview of the federal courts and the U.S. Sentencing Commission because Congress has seen fit to make unauthorized re-entry within five years a felony. These felons are atypical – they usually lack a criminal history, criminal intent, or a criminal network. Their atypicality makes the penalties to which they are subject an issue worth careful consideration.

The role of law enforcement in relation to unauthorized immigration has changed a lot in the past few years. In some areas, local police have become much more involved in the detection and removal of non-citizens than they were only a few years ago. Other localities have rejected this approach. Most have taken no action at all. The result is an enforcement patchwork in the nation's interior. I have been asked to report on research that three colleagues and I are doing to sort out what is occurring. First let me provide a little background.

When I first came to Arizona in the summer of 2001 and for a few years afterward, local law enforcement was generally not involved in immigration enforcement. The exceptions were when police officers arrested and detained a foreign national for a serious crime, and the occasional joint enforcement action, the best-known example being the notorious Chandler roundup, which ended in a lawsuit for racial discrimination. Interior enforcement was not a federal priority – few resources were coming its way. When local officials send word that they had a foreign national who might be deportable, local federal officials sometimes ignored this information. And the states and city governments had not yet spoken on the matter. There was resentment in Arizona, but not action, which made employers happy and kept immigrant families intact. The governor could say that immigration is for the federal government to handle.

But in 2006, when Congress failed to adopt comprehensive immigration reform and people began marching for more humane reforms, the old non-enforcement paradigm broke down, and Arizona became a leader in devising ways to discourage immigrants without authorization from settling or staying here. The state legislature began to pass laws that make the things unauthorized residents do into crimes – such as working, or being smuggled across the border. Referenda were offered and adopted that cut off welfare and other benefits from these residents, and, most recently, require employees at these agencies to report people who come to them without proper documents. We make sure they don't vote and we deny them bail.

Encouraging police to become more involved in immigration enforcement was part of the effort. This shift was facilitated by 1996 federal legislation authorizing partnerships between local police and federal immigration enforcement agents. This law was ignored by everyone for a number of years, but as the mood shifted, it became an attractive option for local governments and for law-enforcement organizations interested in controlling unauthorized immigration. We were such a place. Our county sheriff's office has more local officers trained under the 287g program than any police agency in the U.S.

The role of the sheriff is particularly important, not only because of the large number of officers who have elected to patrol all over the county, not just in its rural areas, but because the sheriff's office runs the jail, and that is where questions about nationality and legal status are pursued. Everyone arrested who is booked, rather than given an appearance ticket, will be scrutinized for immigration status. This will be true even if the arrest is pretextual or based on racial profiling. This is the crux of a serious problem that federal immigration officials would rather not discuss. In today's *Arizona Republic*, for example, John Morton, assistant secretary for Immigration and Customs enforcement, claimed that mostly dangerous criminals were being deported this way, such as drug trafficking, assaults and rape. But what the federal courts are seeing is overwhelmingly people whose felony is re-entering after being deported. The number of rapists, murderers, and narco-traffickers caught through local law enforcement is tiny compared with the number of people caught while risking everything to get back to jobs and families.

Notably silent in all this are the city governments in our area, and the city police departments. For them, an important concern is that their participation in immigration enforcement will alienate foreign-born residents, and will deny the whole community the benefit of reports by witnesses and victims of crime. Police executives have generally subscribed to the concept of community policing, which involves building strong cooperative relationships with local residents to help control crime. The logic of community policing requires that all elements of the community be included, including those who lack legal documentation, or have family members in this situation.

So, when public officials ask local law enforcement to become more actively engaged in immigration enforcement, they create a complex situation for local police executives. Their response to this situation is the topic of the research that three colleagues and I are conducting. My co-investigators are Professors Scott Decker, a criminologist at ASU's Downtown campus, Paul Lewis, a political scientist on ASU's Tempe campus, and Monica Varsanyi, a geographer at John Jay College of Criminal Justice. I am a lawyer/political scientist in Justice Studies on the Tempe campus. Our work has been generously supported by the National Science Foundation in two separate grants.

In order to better understand how chiefs were balancing their commitment to public safety with pressure to become more involved in controlling unauthorized immigration, we began conducting a series of surveys of police executives, coupled with a small number of case studies of particular communities. So far, one survey -- of medium to large city chiefs -- has been completed and analyzed. A national survey of sheriffs is in the field. We are in the final planning stages of a survey of smaller cities and towns. Today I will discuss results from the initial survey of big-city chiefs. This survey targeted all cities in the United States of 65,000 or

more population that have their own police department, a total of 452 departments. We sent the survey to the chiefs of these departments in the late Fall 2007, and received 237 responses in the ensuing months, a 52.4% response rate. The cities we surveyed varied widely in their foreign-born population, with an average of 16% overall.

We found that chiefs perceived differences between attitudes in their departments and in their communities. Within departments, chiefs believed, attitudes are less polarized, and officers are more likely to recognize that it can be difficult to determine legal status. Chiefs saw police officers as more likely to recognize the problem of victimization of immigrants and gaining the trust of immigrants than the community at large. Most of the chiefs we surveyed were not feeling pressure from elected officials to become more involved in immigration enforcement – nearly 2/3 believed that officials were satisfied with their current efforts.

Our survey revealed a surprising lack of policy guidance of any sort from local governments regarding local police engagement in immigration enforcement. Nearly half reported that there was no policy of any sort, and only 12 percent said that the department was being asked to take a proactive role in deterring unauthorized immigration. An even larger percent had a policy of “don’t ask don’t tell” (15%) or were “sanctuary” communities (4%).¹

Nor do police departments themselves necessarily address the question. Slightly over half (51%) have no policy, written or unwritten, concerning interactions with immigrants. Only 39% have written policies, and a small percentage have unwritten policies. Less than half (45%) provide any training for officers regarding contacts with unauthorized immigrants.

The informal norms of individual officers appear to be playing a significant role in the decisions individual officers make when they engage with immigrants. One set of questions in the survey provides some useful perspective on this issue. We asked chiefs to describe what typically happens when officers encounter persons they think might lack the legal status to remain in the country. Seven commonly encountered law-enforcement scenarios were presented, ranging from serious criminal encounters (arrest for a violent crime) to benign contacts, such as interviewing a witness or crime victim. We found that, from the chief’s perspective, the more serious the crime, the more likely that their officers would contact ICE. 73% for example, said ICE would be contacted if an individual with questionable legal status were arrested and detained for a violent crime. It went down from there, but not to 0. We were surprised that 13% of our sample believed that officers would contact ICE even when the individual was a crime victim or witness.

We used the responses to this seven-part question to see if the presence or absence of a city or department policy had an impact on the reporting pattern, and we found that it did. Cities that asked for more pro-active enforcement had higher levels of reporting, and those who did not favor enforcement had less. Where there was no policy, the variation was greater, and the overall average was between the other two.

Overall, our survey revealed that police departments maintain a complicated relationship with local immigrant communities. Most departments accept Mexican consular IDs as valid personal

¹ The other two responses to this question were: “Not sure” (5%) and “encourages some types of participation with federal authorities (e.g. through a dedicated taskforce on gangs) (17%).

identification, and many offer benefits for officers who learn foreign languages. They are generally aware of the reluctance of unauthorized immigrants to contact police, and as a result, 17 percent have provided for confidential telephone calls from these residents. These accommodations occur against a backdrop of strong commitment to community policing in most departments surveyed. A majority report holding regular neighborhood meetings, visit schools, churches and neighborhoods, employ bicycle patrols, work with non-governmental organizations, and have officers proficient in foreign languages.

I mentioned earlier that we are seeing a patchwork of immigration enforcement around the country. Some of this is for lack of interest in enforcement and some for lack of immigrants. Only 4 percent of departments we surveyed had a 287g agreement with the federal government that allows for arrests by local officers, and 3 percent have agreements to assist them in jail administration. Eight percent have ICE officers embedded in one or more of their units. But most departments call ICE when they have a serious criminal case and the defendant is already under arrest. At the same time, 14 percent of chiefs said that they do not work with ICE at all.

This survey suggests at least four things:

- There appear to be significant differences between police departments and their communities concerning important dimensions of the immigration issue.
- Police officers often lack guidance from their departments concerning immigration enforcement. More than half of departments lack any policy and do not provide training, so norms may be developing on an ad hoc basis.
- Local governments are not, in general, pushing their local departments to become more involved in immigration enforcement.
- Although the vast majority of departments have no formal agreement with ICE, most view the agency as an important resource. The relationships may be much more significant when we look at sheriffs, however, because the important link may be between jail administrators and ICE.

The bottom line in this presentation is variability – in what cities, towns, counties, and states are doing on their own, in how police departments are evaluating the issue, and in what individual officers are doing in the absence of clear guidance from anyone. For the U.S. Sentencing Commission this means that chance plays a major role in whether the felony of unlawful re-entry will occur. Consider the typical evolution of this crime. The vagaries of local enforcement policy and individual discretion determine whether there will be an original apprehension and arrest for a minor charge. The law prescribes deportation in these instances for people without legal status. At this point human nature asserts itself and the felony of unlawful re-entry occurs. This common scenario places the Sentencing Commission in an awkward position. The Commission must craft a fair and uniform response to a crime that arises out of highly varied local politics.