

A Tale of Two Conferences: How the Border Law Conference Enhanced the Symposium on the Intersection of Criminal Law, Immigration Law, and Detention

This past winter, the FBA El Paso (Texas) Chapter boldly held its first Border Law Conference. Many years of planning allowed this conference to feature a wide array of issues affecting the border, from those that plague countries throughout the world, such as money laundering and child abduction, to those specific to the U.S. Border Patrol, the criminalization of unauthorized reentry after removal, and U.S. immigration law. As a participant and the chair of the committee of the Immigration Law Section (ILS) that supported the conference, I felt that our next ILS conference, a symposium on the Intersection of Criminal Law, Immigration Law, and Detention, would be incomplete without the information that I learned from the border itself and the participation of those who are on the front lines.

This conference, held at the iconic University of Texas El Paso, a campus modeled in the Bhutanese style, successfully demystified the border and also addressed many of the “popular” notions of border communities as myths. The conference also featured panels on labor rights, civil rights, and border patrol issues presented by those in the forefront of these issues, such as journalist and author of the book, *Border Patrol Nation* by Todd Miller. El Paso U.S. Congressman Beto O'Rourke participated in an extremely candid and informative panel on the effects of current immigration policy and unauthorized reentry after removal orders on border communities. Rep. O'Rourke reminded the audience that, while the major media and many of his congressional colleagues portray border communities as under assault from those fleeing extreme violence and insecurity in Central America, El Paso is indeed the safest city of its size in the United States. This, he and others explained, was due not to the militarization of the border but rather to the fact that El Paso and Ciudad Juarez share so much culturally and historically and that



many families live in both places. He also discussed how El Paso overwhelmingly aided the recent entrants from Central America through churches and other community organizations.

The El Paso Chapter arranged for two-hour tours of one of the ports of entry conducted by a Customs and Border Protection (CBP) agent. This tour took us to both the entry points themselves and inside the entry ports, including the detention cells and the room of items confiscated by Customs. It is rare for a private practitioner to get such a close, inside look at CBP operations on the border, and it was a highlight of the conference.

Mark Shmueli is on the board of the Immigration Law Section and a member of its executive committee as chair of the Chapter and Section Liaison Committee. He, along with Immigration Judge Dorothy Harbeck, chaired this year's conference on the Intersection of Criminal Law, Immigration Law, and Detention. He is a solo practitioner in Takoma Park, Maryland.



The amazing link from this conference to the conference on the intersection of Criminal Law, Immigration Law, and Detention was due to the enthusiasm of several of the participants, including federal district judges Robert Brack of Las Cruces, N.M., and Richard Hinojosa of McCallan, Texas, along with ILS board member assistant public defender Kristin Kimmelman of El Paso. The next Border Law Conference is scheduled for December 2016 in Arizona.

The second annual ILS collaboration with the America University Washington College of Law focused on the intersection of criminal law, immigration law, and detention. Before leaving El Paso, I knew that it would be crucial for those in Washington, D.C., to hear directly from the judges along the border, as well as the public defenders. So much misinformation and lack of clarity would be reduced or eliminated when they heard directly from those on the ground at the border. Judge Brack, who has the most convictions of any federal judge in the country due to the astronomical level of arrests for unauthorized reentry after removal, described a typical day in his courtroom and the many families that the law forces him to separate with these convictions. Judge Hinojosa, the recent chair of the federal sentencing commission, explained that the volume of prosecutions for unauthorized reentry was much less in his court, as prosecutors only brought those cases with aggravating factors or additional charges. Jon Sands and Kristin Kimmelman from the public defender's offices in Arizona and El Paso explained the lack of a real defense against the charge of unauthorized reentry and the extremely limited options for their clients. Sands conducted a mock interview with a client in which he explained that crossing the border after being removed would place him in jail and the absolute inability to provide any defense gave him little option but to accept a guilty plea.

In compelling "testimony," Judge Brack explained that the overwhelming majority of his docket consists of guilty pleas for unau-

thorized reentry after removal. His best choice, he lamented, was to accept the plea, sentence the defendant to time served, and watch him removed and separated from his family. Judge Brack called on those in power to take note that their policies were dividing families, doing nothing for security, and preventing the court from focusing on other types of cases. He cited the disconnect between the political rhetoric that the harsh unauthorized-reentry-after-removal laws made the border safer and the reality that they simply divided mostly hard-working individuals from their families and did little to secure public safety.

While these two conferences were not a collaboration or a series, what I saw was that by bringing those from the border to Washington, D.C., those at the real ground zero were able to provide those in D.C. with a perspective that changed the view of almost all of the participants. Just as the El Paso conference had altered my perspective of the border, those at the D.C. symposium also were amazed. There is no question that the collaboration between the ILS and the El Paso Chapter, due in large part to ILS board member and El Paso assistant public defender Kristin Kimmelman, greatly enhanced the Washington, D.C., symposium with these firsthand border accounts.

The Border Law Conference is a permanent fixture, it seems, as there are plans for the second conference at the end of 2016. The annual collaboration between the FBA and the Washington College of Law will also continue with a symposium each spring semester as part of the WCL Founders Day series. ☺

The seal of the Federal Bar Association is a circular emblem. It features a central figure of a woman in classical robes holding a sword and a scale of justice. The text "FEDERAL BAR ASSOCIATION" is arched across the top, and "ORG. JAN. 5TH 1920" is arched across the bottom. Two stars are positioned on the left and right sides of the emblem.

Friend Us. Follow Us. Join Us.



www.fedbar.org