

A 'maddening' system, from courtrooms to shelters

Tom Roberts | Jul. 1, 2011

Immigration and the Church



Judge Bernardo P. Velasco (Photo by C.J. Garcia)

Tucson, Ariz. -- Each day at the Evo A. DeConcini U.S. Courthouse here, 70 undocumented migrants are seated in orderly rows, hushed like a quiet congregation in long pews in the low light of a modern courtroom.

On this day Judge Bernardo P. Velasco took little more than a half hour to call rank after rank of migrants to a line of microphones in front of the bench. The script was simple -- questions delivered through an interpreter established that the defendants are citizens of other countries, mostly Mexico with a few from Guatemala, and that they knew they could have an individual trial, subpoena and cross-examine witnesses and refuse to testify.

The choreography was precise and efficient. From the benches to the microphones to an exit the defendants shuffled, handcuffed and shackled, attorneys in tow. They disappeared, most of them to be processed, sent to prison for periods ranging from the few days already served to 185 days and then returned to their country of origin. Such is the dance of Operation Streamline, one component of the federal government's attempt to clamp down on illegal immigration. The intent of the program, which began in Texas in 2005 and in Tucson in 2008, is to add quick consequences for those illegally crossing the border from Mexico to the United States.

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Penalties, all ending in deportation back to country of origin, vary depending on whether the migrants have previous convictions for illegally crossing or have been convicted of other crimes. The 70 cases processed five days a week in the district court here represent a fraction of those who have been apprehended.

On April 20, it was 70 cases in 32 minutes, to be precise. That was how Velasco clocked it. He doesn't stand on judicial formalities, on or off the bench. He's blunt in his speech and all disheveled, his tie open and his collar button undone. He draws often on a white nicotine inhaler that looks like the plastic mouthpiece of a cheap cigar. He thinks the laws he just helped enforce are something of an insane exercise. "We keep doing the same

thing over and over expecting a different result, he told a group of students who had been watching the proceedings from the back of the courtroom. His cases finished, Velasco paid an unexpected visit to the group from St. Mary's College of California, a school run by the De La Salle Christian Brothers in Moraga. The students were spending the week in an immersion program to learn more about immigration and border issues.

They had already toured a Department of Homeland Security detention facility where migrants are held, had discussions with members of the Border Patrol in Nogales, Ariz., and visited the Santuario de Guadalupe, where migrants receive food and aid in Nogales on the Mexico side of the border.

Velasco made the effort to talk with the students, he said, to dispel what he knew were preconceived notions about what went on in his courtroom. Indeed, the students had been primed to see the proceedings as a gross miscarriage of justice in which migrants, many barely literate and certainly unschooled in the complexities of U.S. law, are herded through a pro forma process in a system that simply wants to be rid of them as quickly and efficiently as possible.

The actual proceedings, which have the look of a legal cattle call, did little to dispel that prevailing notion. Velasco, however, provided an unexpected twist.

Not only does he think the process borders on insanity, he makes the point that this endless path to legal futility is expensive -- and expanding. He elaborated in a later phone interview:

"The point I make is we're doing the same thing we did in 1976 when I was a federal public defender and we keep expecting a different result. That's not realistic. It's maddening. So we really need to find a way to allow foreign laborers to come in and out of this country with an understanding that if they can move back freely, they can pay taxes and they'll return home. They won't be forced to remain in the United States and/or forced to smuggle their families in."

Velasco told the students he believes most migrants don't want to live in the United States -- they just want to work here.

Meanwhile, the government-funded industry that has evolved to try to keep immigration in check is flourishing. Velasco said when he was a public defender back in the mid-70s, there were five public defenders, two lifetime-appointed judges, and one magistrate in Tucson.

Today there are five lifetime judges, seven magistrates, 40 public defenders and 60 assistant U.S. attorneys.

The cost to prosecute defendants in Operation Streamline averages \$10,000 a day and \$50,000 a week, said Velasco.

There's also a sharper edge to his analysis. He believes the strident backlash against foreign workers and the political benefits that accrue to those advocating harsher law enforcement has its roots in a fear of the "browning of America."

"I think that's true. I think it's true," he said in the phone interview. "I think that's the basis for this, 'I want my America back, I want my country back.' Well, we should have done a little bit better planning."

What seems to be missed in the political and judicial debates, he said, is the obvious: "The United States is not an island and, in fact, we share a border with a very large impoverished country. And when you're faced with that situation and you need cheap labor, you ought to be able to devise a way to get your labor across that border and give them incentives for going home."

The federal magistrate (he's officially a "magistrate judge" but he thinks that title redundant and inflated, so he only uses the single term) found some sympathy among the students after his talk with them, though two who are interested in pursuing immigration law, freshmen Patricia Savelli and Angela Sterling, wished he had somehow found a way to register a protest.

"I've taken a job in a branch of government that's not supposed to make policy," said Velasco. "All I can do is shake my head, do my job and wonder, when is somebody in the legislature going to actually think about looking at this problem in a rational way?"

The solution, he said, lies with the students who visited his court. He encouraged them to take a role in improving government. "They're the ones who, instead of shaking their heads, ought to be shaking their fists at someone," Velasco said.

Church at the border

If Velasco's take is indicative of frustration within the system (he's says he's not alone in his views, just "the most vocal?"), the Catholic church on both sides of the border knows the human face of frustration, the grim reality of families torn apart and men and women imprisoned and deported for the crime of wanting to work for a better life. It is, in some ways, a crazy inversion of the American dream story.

A 26-year-old immigrant sits across the table after lunch at the Santuario de Guadalupe in Nogales, one of several places that feed those trying to cross the border. He won't give his name. His narrative is familiar to those who work regularly with migrants. He worked for four years in the San Francisco area, two as a roofer and two as a butcher before he returned home to his wife and child. He's trying to return to Oakland, Calif., where he says a job as a butcher is waiting for him. He's tried three times already, unsuccessfully. He'll keep trying.

The undocumented worker describes a process that might, in other circumstances, be outlined on a travel agency brochure. Only he's not paying travel agencies, but layers of coyotes, and the money includes payouts to Mexican drug cartels, which have expanded into people trafficking as well as drug trafficking. Repeatedly those involved in aiding migrants along the border say that one of the consequences of the increased emphasis on law enforcement is the rise in lawlessness. Now if you want to cross the border, it is almost certain that the drug cartels will get a cut.

There are levels of payment. The best packages begin at about \$3,500, he said, for a series of connections that start in one's hometown and continue through the stay in Nogales to the attempt to make it across the border, to a pickup point on a highway in Arizona, to a safe house and then to the final destination.

Rates are often determined by the amount of time one will have to spend in the desert, too often a fatal part of a journey. The times can range from a few hours, the most expensive package, to more than a week, he said.

His motive? He wants to raise the money to provide a better home for his wife, who works as a secretary at a university, and their children. She was two months pregnant at the time with their second child. He thinks he can save enough in three years -- if he succeeds in getting across. Then he wants to go home. He doesn't want citizenship, he said. His wife wants to remain in Mexico.

A new industry

Nogales, once a place of tourism, has become a place of industry for illegal border crossings and a drop-off point for those who have been caught and detained by the U.S. border patrol. Operations along other segments

of the border have created a kind of pinch point in Arizona. Most illegal migration now gets funneled through this town, where evidence of the border-crossing business can be seen in frequent sale displays of black backpacks and water containers painted a matte black so they don't reflect moonlight.

Just inside Mexico, at another border crossing point in Nogales, the Jesuits, with five other Catholic organizations, have organized a comedor, or dining hall, a covered pavilion where up to 200 can sit, and an apartment refuge for migrant women and children.



Jesuit Fr. Peter Neeley looks like he belongs on the frontier, with his straw

cowboy hat, white beard and handlebar moustache. He's the associate for education and formation for the Kino Border Initiative, a project of the California and Mexico provinces of the Society of Jesus; Jesuit Refugee Service/USA; the Missionary Sisters of the Eucharist; the archdiocese of Hermosillo, Mexico; and the Tucson diocese.

Neeley sees firsthand the futility that Velasco rails against. And in a discussion that ensues at the women's shelter among a half-dozen migrants, ages 17 to late 20s, Operation Streamline doesn't appear as cool and efficient as it does in the courtroom. Several of the women have spent 50 and 60 days in lockup after having attempted to cross in the United States. Two of them have lived in the U.S. before, returned to Mexico for family reasons, and are now trying to get back in. "Who decides on the sentence?" One of them asks. "Is it immigration authorities, the lawyers we talked to or the judge?"

One of the criticisms of the Streamline version of justice is that no one seems certain how some detainees are chosen for court and others for immediate deportation. Nor is it clear how defense and prosecuting attorneys come to such amicable agreement on sentencing of wave after wave of migrant defendants.

A few blocks from the courthouse, Isabel Garcia, an attorney and the fiery co-chair of the Coalition for Human Rights, a group opposing militarization of the border, thinks the Border Patrol tactics and Operation Streamline are a travesty of justice. She knows Velasco from the time both of them were public defenders. She has an answer for what she sees as the inadequacies of the current system -- all the migrants should be advised to ask for separate trials, a right they are told they have. That would effectively clog the court system and, she believes, force change.

The polarities in the immigration issue are many; few areas of consensus exist among those who view the issue differently other than that the system is obviously broken. Tucson Bishop Gerald Kicanas has the difficult job of representing the position of the Catholic church, which has long advocated for comprehensive immigration reform and justice for migrants, in a region of the country that is arguably the most divided at the moment by the heated immigration debate.

In an April interview with *NCR*, Kicanas said he thinks that Catholics in the Tucson area represent the same spectrum of opinion as the wider public -- some deeply involved in the social justice concerns of the immigration issue, others minimally concerned with it, and yet others deeply opposed to the church's position.

Kicanas said he gets ?some letters and phone calls? canceling pledges for financial support because people don?t want the church involved in political issues.

?The need is to help show people why the church is involved, that the issue has moral dimensions to it, there are ethical dimensions involved. So the church is involved not as a political partisan -- we?re not a group of politicians trying to get something passed -- but from a religious perspective and from the perspective of our own faith. One of the greatest messages as a church is the need for the respect and dignity to all human life. And one of those pieces is the question of how one treats the migrants.?

Translating church teaching into a position on public policy is always tricky, however, and Kicanas is hoping that demographics will combine with electoral politics in the coming months to encourage some changes in the law, if not comprehensive reform.

He believes major changes are not going to happen but thinks incremental progress is a possibility. One hope is that as the 2012 federal election approaches, both sides will have enough interest in the growing Hispanic population and vote that they might find consensus on narrower initiatives like the DREAM Act, which failed earlier in the year and would have allowed students who have been here since childhood to continue on a path to citizenship and higher education.

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