

**MINUTES
of the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 23-24, 2010
Barbara Hubbard Room, Pan American Center Annex
Payne St. and Stewart St.
New Mexico State University
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on September 23, 2010 at 10:10 a.m. in the Barbara Hubbard Room, Pan American Center Annex at New Mexico State University (NMSU) in Las Cruces.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook (9/23)
Sen. Clinton D. Harden, Jr.
Sen. Richard C. Martinez
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Dennis J. Kintigh
Sen. Cisco McSorley
Rep. Gloria C. Vaughn

Absent

Sen. Rod Adair
Sen. Mary Jane M. Garcia
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Rep. William "Bill" R. Rehm
Sen. John C. Ryan

Rep. Elias Barela
Rep. Brian F. Egolf, Jr.
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Rep. Bill B. O'Neill
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Jack E. Thomas
Sen. David Ulibarri

Guest Legislators

Rep. Mary Helen Garcia (9/24)
Sen. Mary Kay Papen (9/24)
Sen. Nancy Rodriguez

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS

Thursday, September 23

Call to Order

Being that NMSU is in Representative Cervantes' district, Representative Park suggested that he be the chair of the meeting. It was so done. Representatives Cervantes and Park and Senator Wirth welcomed committee members and the public. The members introduced themselves.

Welcome to NMSU

Wendy K. Wilkins, Ph.D., executive vice president and provost, NMSU, thanked the committee for choosing NMSU as the location to hold the meeting. She gave a brief video presentation on the activities and accomplishments of the university.

Mexico's Perspective on the U.S.-Mexican Border

Ambassador Roberto Rodriguez, Consulate General of Mexico, El Paso Office, began by discussing the relationship between the United States and Mexico, mentioning the opportunities that have arisen due to this relationship. He stated that these are difficult times in Mexico and that crime has resulted, at least partially, from a very bad economic situation.

He briefly explained the Merida Initiative: the bilateral plan between the U.S. and Mexico to combat transnational organized crime. He mentioned the tension between the U.S. and Mexico created by drug trafficking and stated that blaming each other does not solve the problem. While illustrating the seven primary drug cartel areas of control in Mexico, Ambassador Rodriguez emphasized that drug use and drug trafficking are hemispheric issues.

Ambassador Rodriguez discussed the main security challenges, including violence as a result of government action against the drug cartels. He elaborated on a plan for cooperation between the U.S. and Mexico with respect to combating the illegal drug trade and spoke of steps Mexico is taking to combat it on its own, such as the Rule of Law Program. This is an attempt to build a judicial system more similar to that of the U.S. to allow Mexico to apply the rule of law. Mexico is also creating a national police force.

Members of the committee asked Ambassador Rodriguez questions about unemployment and the challenges of increasing trade with Mexico due to border violence; the legalization of drugs in Mexico as an attempt to curb drug trafficking; migration to the U.S. due to unemployment; efforts made by Mexico to keep its citizens in Mexico; and the effects that the Arizona law has had on the relationship between Sonora and Arizona.

Panel Presentation on Border Issues: Security, Communities, Trends, Intergovernmental Agreements and Crime

Chief Randy R. Hill, U.S. Border Patrol, El Paso Sector, Customs and Border Protection, U.S. Department of Homeland Security (DHS), stated that part of the U.S. Border Patrol's success is the result of the collaboration with various law enforcement agencies and access to better technology. He gave figures on the number of illegal alien arrests in New Mexico over the past several years, stating that the number of arrests is decreasing. Using border patrol

standards, he declared that the New Mexico border is secure, with 14.3 miles of pedestrian fence, 100 miles of vehicle barriers and with 2,700 agents in the El Paso Sector.

Chief Hill opined that border security is affected by all levels of government. He stated that one way to measure violence is the number of assaults on agents, which has been reduced due to a decline in the number of immigrants crossing over the border. He expressed concern over the new and more sophisticated methods of crossing and smuggling, such as tunneling beneath the border and the use of juvenile smugglers.

John Wheeler, secretary, Homeland Security and Emergency Management Department, discussed intergovernmental cooperation and programs and emphasized the need for information-sharing among agencies involved in border security. Both he and Chief Hill discussed how this department is the conduit for coordinating state and federal resources along the border.

Vicki B. Gaubeca, director, Regional Center for Border Rights, American Civil Liberties Union (ACLU) of New Mexico, works in Las Cruces. She explained that the Las Cruces office works with affiliates in San Diego, with various national legal programs and with border advocacy groups. She expressed that the border issue is multidimensional, and while the ACLU recognizes that federal law enforcement's primary focus is border security, the ACLU believes that immigration enforcement should be guided by equal protection and due process.

Ms. Gaubeca brought forth concerns of the ACLU, including the massive increase of federal law enforcement resources on the border. She informed the committee that this deployment occurred at a rapid pace and without adequate oversight. She added that the current rhetoric focuses on false theory, claiming that before the broken immigration system can be fixed, the federal government must seal the border. She stated that there is no rampant crime, and the media and the government are exaggerating the issue of corruption. She mentioned that there are now 9.4 agents per U.S. border mile and that this does not include unmanned vehicles. The ACLU desires the prevention of human rights violations and hopes to meet with the U.S. Immigration and Customs Enforcement (ICE) and U.S. Border Patrol to discuss how to prevent such violations. Ms. Gaubeca ensured the committee that the ACLU is attempting to form a holistic approach to border security that includes not only enforcement, but also community well-being and opportunity and drug policy reform.

Sister Anne Salaun, Religious of the Assumption, stated that Chaparral is a colonia with hard-working, low-income families of mixed immigration status. She discussed a police raid in the middle of the night in September 2007 where sheriffs deputies, followed by U.S. Border Patrol agents, used pretexts, such as an unleashed dog or a refrigerator left outside, to ask for immigration papers and deport members of the community. She noted that law enforcement did not address the crack house in town or other crimes but only focused on immigration. She stated how the raid has caused a rift and a breach of trust between the community and law enforcement. Crimes and domestic violence incidents go unreported because many families are of mixed immigration status. She expressed concern that if situations such as this are allowed to continue, the welfare of the community will continue to dissolve.

Richard Williams, chief of police, City of Las Cruces, discussed crime rates and population growth in Las Cruces and their impact on law enforcement in the area. He mentioned

the collaboration of law enforcement agencies and the effectiveness of reorganization to ensure public safety during the current budgetary challenges. He assured the committee that he does not direct his officers to conduct raids, and has not heard of the Las Cruces Police Department conducting raids or assisting in the enforcement of immigration laws.

Francisco Venegas, deputy field office director, Enforcement and Removal Operations, ICE, DHS, explained that the El Paso Office covers 18 counties in west Texas and all of New Mexico. The primary mission is the removal of illegal aliens, which requires the identification of those individuals with an emphasis on those individuals with criminal backgrounds. He stated that his agency does not "go knocking on doors", but works with other agencies to promote public safety and national security. Mr. Venegas stated that interagency operations are needed to eliminate international criminal threats. He gave an explanation of "enforcement", which includes the apprehension of aliens and violent criminal aliens and gathering intelligence. He noted his office also participates in homeland security operations. He echoed the sentiment of Chief Hill that cooperation among agencies is a must.

Fernando Garcia, executive director, Border Network for Human Rights, stated that the border is generally safe and secure and the idea that killings and chaos exist is untrue, and that this idea has been sold to the media due to political interests and a racist agenda. He discussed the border community security poll that was conducted in an attempt to seek the truth of this matter, which indicated that the majority of border residents feel safe. He also declared that the border has no spillover and the need for increased border officials is a false argument. He opined that the U.S. has a system that does not work and that it needs a change in how it views the border, immigrants and enforcement.

Marcela Diaz, executive director, Somos Un Pueblo Unido, discussed some of the problems that occur when undocumented immigrants are arrested in New Mexico. She explained that some counties hold immigrants for the ICE and are not getting reimbursed from the federal government. She discussed the 287(g) Program in which the ICE deputizes jail officials to interview prisoners while they are incarcerated at the local facility on an ICE hold. She stated that the Corrections Department will be instituting this program shortly. Ms. Diaz discussed the distinction between an undocumented immigrant and a criminal illegal alien and declared that many individuals in the system do not meet the definition of a "criminal illegal alien". She also mentioned problems with the system, including the ICE detention center and individuals being discouraged to post bail.

Members of the committee asked for points of clarification and information and engaged in rigorous discussion and questions about border issues with the panel.

Proposed Legislation on Local Enforcement of Federal Immigration Laws

Senator Martinez discussed the history of the bill and explained the intent of the bill.

Greg Solano, Santa Fe County sheriff, emphasized that this is an important bill, and in order for law enforcement to be effective, it cannot arrest people solely on immigration status. He discussed the public safety concern when victims of crimes or witnesses to crimes do not come forward due to a fear of being deported. He explained the importance of trust between law enforcement and the community in the reduction and prevention of crime.

Diane Wood, policy director, ACLU of New Mexico, stated that New Mexico cannot afford to divert state and local resources into enforcement of federal immigration laws and should be wary of the racial profiling that could occur if such laws are enforced locally. She feels this bill allows victims to report those crimes committed against them.

Members of the committee asked questions, discussed policy options and gave suggestions on the bill.

Public Comment

Leo Mihas, a member of the public, brought forth his concern regarding the bill draft. He expressed concern about what encourages illegal immigration and that the legislation at hand may make New Mexico the preferred portal. He is concerned about the issuance of driver's licenses to illegal immigrants and about the bill making it more difficult for law enforcement personnel to do their jobs.

Approval of the Minutes

The minutes of the previous meeting were approved by the committee.

Travel and Tour of the Management and Training Corporation (MTC) Otero County Processing Center

Recess

The committee recessed around 6:10 p.m., after the tour of the MTC Otero County Processing Center.

Friday, September 24

Committee Business

Representative Cervantes gave a brief background on allegations of voter fraud in Dona Ana County and mentioned that the claims were given to the local attorney general's office, the district attorneys' office and the United States attorney general. He emphasized that the individuals and organizations that made the allegations were invited to appear at the meeting today, along with Representative Dianne Miller Hamilton. Representative Park added that the aforementioned parties initially accepted the invitation but notified the co-chairs last week that they would be unable to attend due to an FBI investigation.

Allegations of Voter Fraud in Dona Ana County

Lynn Ellins, Dona Ana County clerk, was elected in the 2008 general election. He stated that he will be addressing Representative Hamilton's and Dona Ana County residents' concerns in regard to voter fraud. He explained that these allegations have been brought forth by individuals in favor of photo voter identification cards. He warned that hasty accusations and unverified claims promote needless skepticism. He assured the committee that the allegations were investigated and no voter fraud was found, and he also stated that where substantial and credible concerns of voter fraud are raised, the Dona Ana County Clerk's Office will take the appropriate action.

Mr. Ellins expressed his concern over the lack of standards or requirements for third-party registration agents that gather voter registrations. He clarified that he is in favor of third-

party registration, but standards are required. Mr. Ellins briefly discussed a proposal for election day vote centers, which are centers that serve as voting locations for all individuals on voting day, despite where their precincts are.

Daniel Ivey-Soto, executive director, New Mexico Clerks, discussed the investigation conducted in response to the allegations. Representative Cervantes asked if anyone from the public would like to speak on the issue, and he noted that the *Las Cruces Sun-News* was also invited to substantiate these claims. Nobody in the audience was present to bring forth the allegations.

Members of the committee engaged in a conversation with Mr. Ellins and Mr. Ivey-Soto on voter fraud and elections.

Legislative Proposals from the Attorney General and Update on the Border Violence Division

Gary King, attorney general (AG) of New Mexico, began by discussing how the AG's Office is responding to border violence and about the Rule of Law Program in Mexico. Concerning the office's response to border violence, he mentioned sources of information and funding for the Mexican government in dealing with border violence and drug cartels, including a grant from the United States Agency for International Development and the New Mexico AG's Border Violence Division. He added that the office has also developed advanced training for law enforcement agencies for human and arms trafficking as well as a public information campaign.

Regarding the Rule of Law Program, the AG's Office is helping the Mexican government evolve its judicial systems to one based on trial and advocacy. One aspect of this program showing success is the Article 4 prosecutions. Article 4 prosecutions are those that occur if a criminal is in Mexico and Mexico will not extradite the criminal. In that case, the criminal can be prosecuted in Mexico for the crime committed in the United States. The information for the trial is assembled in the United States and is sent to the prosecutors in Mexico. Attorney General King stated that these have been very successful and feels this process will aid in relieving border violence in the long run.

Attorney General King addressed his 2011 legislative priorities, which include bill drafts on border and drug enforcement issues; ethics and campaign finance reform; DWI and underage drinking prevention; domestic violence; criminal laws; the environment; and miscellaneous civil matters. Members of the committee asked questions and discussed the proposed bill drafts.

Proposed Legislation on Animal Cruelty

Heather Ferguson, legislative director, Animal Protection of New Mexico, briefly discussed changes in the bill draft from last year's version, which includes adding bestiality as a crime of animal cruelty and taking out the provisions on leaving pets in hot cars. Members of the committee asked for points of clarification.

Public Comment

Rich Ferrari, a member of the Mesilla Valley Resource Center, which is the successor of Mothers Against Drunk Driving, feels that if underage drinking is approached in the same manner as underage smoking, the state would see better results. He stated that research

illustrates that no safe level of underage drinking exists because it impacts the development of the hippocampus. Mr. Ferrari would like to see a civil administration process developed to deal with underage alcohol users.

Joan Ferrari added that the course of action should not simply be preventive, but should also include enforcement of rules and getting underage alcohol abusers the treatment needed. She would like to see a change in the law for consumption of alcohol, not just possession of alcohol.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee adjourned at 1:25 p.m.