At the Border and Beyond: Women Lawyers Defend Unprecedented Attacks on Asylum Law
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At the Border and Beyond: Women Lawyers Defend Unprecedented Attacks on Asylum Law

By Hannah Hayes

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Once you see what is happening at the border, you cannot unsee it. Advocates who come to the border quickly learn this, and it is easy to be crushed under the weight of that knowledge.
—Nicole Ramos, Project Director, Border Rights Project

In Spanish, El Chaparral refers to a dense, impenetrable thicket of shrubs or dwarf trees, which makes it a fitting name for the Tijuana, Mexico, border crossing approached by tens of thousands of hopeful migrants. The final hurdle into the United States is indeed becoming impenetrable.

In the early morning, the plaza immediately west of the El Chaparral crossing comes alive as newly arrived migrants with suitcases and backpacks line up to put their names on the lista, the informal waiting list that determines when they can cross over to request asylum. The waiting list is an unusual—and some say illegal—system spawned by the metering policies in which the U.S. Customs and Border Protection (CBP) decides how many individuals will be allowed to present themselves for asylum each day. The number ranges from 10 to 40, and no one seems to know what determines how many will be allowed on a given day.

Children wrapped in blankets huddle close to their mothers. Groups of men lean against fences or rest with their backs up against the approximately 10-foot-tall colorful letters that spell Tijuana, Mexico. The whimsical marker looms cheerfully above the clusters of weary travelers.

As the line lengthens, volunteers begin circulating among them, handing out flyers urging the new arrivals to attend a “know-your-rights” clinic sponsored by the Border Rights Project of Al Otro Lado.

Since December 2015, Nicole Ramos and human rights lawyers from Al Otro Lado have been documenting abuses on the border. With offices in Los Angeles, San Diego, and Tijuana, they provide direct legal services to migrants and refugees. Al Otro Lado is also the organizational partner in three lawsuits challenging Trump administration policies at the U.S.-Mexico border.

“We provide direct service seven days a week,” says Ramos, project director of the Border Rights Project launched by Al Otro Lado late in 2018. “So on the one hand, we are responding to this crisis. On the other hand, we wear legal strategy hats to think about how we can dismantle systems of injustice that are operating contrary to the rights that are articulated for asylum seekers under the law.”

Since November, Al Otro Lado has trained and employed more than 2,000 lawyers who have arrived in Tijuana hoping to help in what many say is a manufactured humanitarian crisis. Women in particular are flocking to the border. Al Otro Lado’s Facebook page for volunteers shows women outnumbering men four to one. Data from the American Immigration Lawyers Association (AILA) also show that women make up the majority of their members (56 percent) even while, according to the U.S. Census, women make up only 38 percent of lawyers in the profession.
In the early morning on the plaza, these volunteers urgently seek out those whose numbers have been called for a “down-and-dirty” lesson on asylum and what to expect when they cross. Other volunteers hand out warm socks and permanent markers so asylum seekers can write phone numbers on the arms of children in case they are separated. Volunteers tell the migrants to wear their warmest clothing close to their skins as they’ll be forced to turn over all of their belongings—including extra layers of clothes—and spend up to 48 hours in the hielera or “icebox,” a holding cell where temperatures are kept in the 40s.

For migrants, these lawyers represent the last line of defense in a system that has come under attack from an administration intent on dismantling asylum and revamping immigration policies. “All of these things that they’re doing—the Muslim ban and ending of DACA (Deferred Action for Childhood Arrivals) and TPS (Temporary Protected Status), increasing interior enforcement and I.C.E. arrests and expedited dockets of immigration court—the whole way they’ve imploded the asylum system makes it really hard to practice immigration law,” says Kara Lynum, a practitioner in St. Paul, Minnesota, who specializes in family-based immigration law.

“Asylum exists to protect people who have no other options,” says Morgan Weibel, executive director for the San Francisco offices of the Tahirih Justice Center, a national nonprofit that provides services to women and girls fleeing gender-based violence. “You simply don’t walk 3,000 miles with an infant if you have any other option.”

Weibel was one of hundreds of lawyers who flocked to the border in November 2018 and volunteered at the Port Isabel Service Processing Center, a detention center near near Los Fresnos, Texas, after the court ordered the government to reunite families who had been separated because of the zero-tolerance policy. “There are all these layers of illegalities that put these people in harm’s way, and it’s exhausting,” Weibel points out.

Almost all of the Trump administration’s executive orders and policy changes have been met with litigation. Organizations like Al Otro Lado, the American Civil Liberties Union, the American Immigration Council, and the American Immigration Lawyers Association have filed dozens of lawsuits challenging the constitutionality of many of these orders. Most are still pending, which means that immigration lawyers are often racing to keep up.

“Often we’ll look at some new regulation and policy and know immediately it will be enjoined, so we try not to panic our clients,” says Sarah Pitney, an immigration lawyer with the Washington, DC-based firm of Benach Collopy.

Pitney, who took a group of 14 law students to Tijuana last year to work with Al Otro Lado, admits, “Sometimes I wake up and think, Oh, God. What fresh hell awaits me this morning?”

Rapid Response

Shortly before Thanksgiving of 2018, Lorilei Williams, director of immigration and LGBTQ/HIV advocacy at Staten Island (New York) Legal Services, saw a listserv calling for immigration lawyers to volunteer in Tijuana. At the time, some 3,000 asylum seekers were making their way through Central America and were expected to arrive at the border crossing in Tijuana.

Williams says she was not prepared for what she witnessed. “I showed up the day they used tear gas and rubber bullets against migrants. There were hundreds of volunteers arriving daily, and there wasn’t really any structure in place yet to handle it.”
Williams dived in to organize volunteers and is returning a month later to help again.

Allison Spitz-Perry, whose Manhattan law firm focuses on business immigration and naturalization, also felt compelled to volunteer after hearing two women speak about their experience at Dilley, the site of the largest family detention center in the country. “I got physically sick and decided at that point I couldn’t sit still with the skills that I have.”

Through her networks, Spitz signed up with Al Otro Lado’s Border Rights Project and spent a week in Tijuana.

Lynum has made four trips to family detention centers to represent detained asylum-seekers. In December 2018, she traveled to Tijuana to assist as part of the Border Rights Project and was one of several lawyers and two members of Congress who camped at the port of entry for 18 hours before CBP allowed their group to cross. More recently, she journeyed to El Paso, Texas, to observe court proceedings and view the impact of the Migrant Protection Protocols (MPP, or “Remain in Mexico”) instituted by the Trump administration in January 2019.

Along with Denver-based immigration lawyer Christina Brown, Lynum watched two dockets empty out with each petitioner averaging less than a minute before a judge. They also visited a shelter in Juarez, Mexico, where migrants awaited their hearings in overcrowded conditions, often without food and water. “They’re surviving terrible conditions for three or four months only to get a 36-second hearing,” Brown says.

According to the Transactional Records Access Clearinghouse (TRAC), which gathers data and information by using Freedom of Information Act requests, some 12,997 MPP cases were pending as of July 2019, with most migrants waiting in places like Tijuana and Juarez. Only 1.3 percent had representation.

“I think this is as serious or more serious than the family separation of last summer, but people don’t care as much because they don’t see what’s happening,” Lynum notes. “They dump [asylum seekers] on the sidewalk where they are vulnerable to gangs, and kids are living in horrible conditions.”

Other than volunteer lawyers like Smith and Lynum, who interviewed 67 families about their asylum cases in one afternoon, migrants have no access to counsel. What’s more, most families experience assault and kidnappings and are often robbed of their identity papers necessary for the asylum process.

Those who express fear of returning to Mexico are referred for further interviews but not allowed access to a lawyer. Lynum says she feel like people who showed up beat the odds by surviving horrifying conditions, threats to their safety, and other obstacles.

Impact on Lawyers

The ever-changing landscape has impacted how immigrations lawyers practice law, both practically and emotionally. Brown says she’s felt squeezed as her clients are no longer able to work or afford her fees, forcing her to drop them dramatically. Williams points out that “you cannot turn off work anymore because if you go away for one week, something will happen—a policy decision or an executive order—and you have to play catch-up.”

“Everything is changing, almost every minute,” says Ruby Powers, founder and managing attorney at
Powers Law Group, P.C., in Houston, Texas, who volunteered with Al Otro Lado in December 2018. Powers recalls that, when planning to participate on a panel about recent changes in asylum, she realized that she might as well wait until the day of the event to prepare because so much changes daily.

Powers admits she was a bit traumatized after returning from Tijuana shortly before Christmas. “There was so much food and drink and gifts, and I really didn’t understand why we waste so much of our resources on unnecessary things when people live on so little.”

Compassion fatigue and secondary trauma are commonplace for immigration lawyers. Learning to cope with these and other stressors is key. For instance, at the San Francisco Bay offices of the Tahirih Justice Center, a therapist is available to meet with lawyers once a week.

At a recent session, Rajani Venkatraman Levis, a licensed trauma therapist, shared a Buddhist parable about taking time to notice beauty while being chased by tigers: “I see them dealing with an onslaught of trauma, need, changing circumstances and ever-tightening legal situations, where fear and hopelessness are those tigers. These strong, capable attorneys who chose this work because they care find themselves so weighed down by the heartbreak they are facing on behalf of their clients.”

Morgan Weibel says one way she copes is to focus on the positives. “[Immigration lawyers’ work at the border] has created coalitions that didn’t exist before and strengthened relationships where four years ago we might have known about each other. But now we’re coordinated and plugging people in and lending our skills and expertise in different areas.”

Powers agrees. “Professionally, it allowed me to see what people were going through and gave me a lot of perspective. It also connected me with lawyers in California who are doing a lot of work around the ‘Remain in Mexico’ policy.”

So, despite the emotional toll, chaotic and chronic uncertainties, and volumes of pending litigation, immigration lawyers say there is little choice but to continue. “It’s sometimes hard to feel things,” Christina Brown says. “And as there’s no end in sight right now, I just have to separate myself and continue to do the work.”

Nicole Ramos says lawyers not only are in crisis mode when dealing with individuals impacted by these policies, but they’re also in constant litigation mode.

In a recent Facebook post, Ramos passionately thanked volunteers for their work and urged them to continue. “Once you hear the voices of those who have traveled thousands of miles in search of safety, only to be brutalized by the government to which they pinned all their hopes, you are left with no other choice than to voice these truths, often and through every possible platform to anyone who will listen because you know in your bones that silence signals complicity.”

The American Bar Association’s Commission on Immigration will also be sponsoring trips to the border for lawyers who want to work pro bono at a detention center in Harlingen, Texas or with the Immigration Justice Project in San Diego. The program will run until December and is funded by the American Bar Endowment. For more information, visit the ABA’s Pro Bono and Job Opportunity page. (https://www.americanbar.org/groups/public_interest/immigration/job-and-volunteer-opportunities/)
I recently had a conversation about fierceness with a friend of mine. We are both female criminal defense lawyers, and we were lamenting the overemphasis on “problem solving” in our profession—not that compromise and negotiating aren’t useful, and not that we don’t do them all the time. But they aren’t always the best for clients, and they’re hardly ever as much fun as a spectacular death-by-a-thousand-cuts cross-exam or the definitive sound of a “not guilty” ringing from the jury box. After all, it is good to just win.

As I was evolving from a baby lawyer into a seasoned one, I honed my trial skills, worked my cases, and became a good negotiator. But I never thought of myself as fierce, and I always suspected that people could sense my inner soft core.

That is, until Dawn’s case. I had been practicing a few years, so I was starting to feel competent, but not confident. Dawn had been arrested a few days earlier, just seconds after selling a significant amount of meth to an undercover cop. She was making her initial appearance before a judge we called “Iron Mike.” She had a prior drug felony and faced a mandatory minimum 20-year sentence. Things looked bleak.

By that time in my career, I wasn’t afraid of pressing the long shot anymore, and I asked for a bond hearing. I found a rehab bed for Dawn and laid out all the reasons why she should be out pending trial. The prosecutor stood up and said, in his manly, authoritative twang, “She’s got a prior drug felony, judge. Doesn’t matter if she gets out. She’s goin’ to prison for at least 20 years.”

I had heard that same hopeless song of failure for too long. With a clap of my hand on counsel table, I stood back up to be heard. My scalp tingled, and I could feel my voice rising in my chest. I didn’t wait for an invitation because the moment was mine.

“Your Honor, it matters a very great deal if she is out, and everyone in this courtroom, including the prosecutor, knows it. All she needs is a chance to prove herself.”

I did not sit down. Something about the certainty that came out of me changed the atmosphere in that courtroom, and Iron Mike said yes.

Then Dawn had to wait it out, letting the busy docket clear up until it finally got to her, almost two years later. She stayed clean. She got a job. She passed every drug screen. She never missed an AA meeting. She stayed positive, even with 20 years hanging over her head. It paid off: The prosecutor offered a lesser offense, and Iron Mike miraculously gave her probation. Dawn wept as we walked out of the courtroom together.

A few years later, Dawn called me. She was still doing great, and she said she couldn’t have made it without me. I declined the praise; I had just borrowed some time for her, after all. But it wasn’t that, she
told me. It was that bond hearing, when I stood up for her, when I publicly and loudly believed in her. It made her believe in herself.

That hearing was the first moment I thought of myself as a fierce lawyer. Being able to stand up for someone without a voice is why many of us became lawyers. So many of us are passionate about serving the greater good, whether it’s fighting for someone to have a second chance, or for a child at the border, or for someone to be able to march or work or pray or vote.

But being adversarial isn’t something that is always valued in women. I had to learn how to be fierce—not only by learning my craft, but also by trusting myself and my instincts enough to stand up when the moment requires it.
Clear and easy to follow, readers will find *The Shield of Silence* a well-written and useful guide to the current state of workplace sexual harassment. But the book is also one of big ideas. The author, Lauren Rikleen, is well qualified to advocate an end to workplace discrimination against women. An experienced attorney, she has written numerous books and articles about women at work, and her efforts have earned many awards, including the ABA’s Margaret Brent Women Lawyers of Achievement Award in 2017.

The author presents a number of causes contributing to the pervasiveness of workplace sexual harassment delving into reasons why victims and witnesses of sexual harassment and gender discrimination don’t speak up. She also identifies factors contributing to why workplace cultures tolerate sexual discrimination. Laying these foundations, Rikleen hits her stride with a comprehensive discussion on effective solutions to bring about change.

Although Rikleen identifies why workplace sexual discrimination exists—to support the social status of those who do it, as expressions of bias, particularly unconscious bias, against women or others in marginalized communities—her main interest is why the misconduct remains pervasive despite laws, institutional rules, and moral strictures that condemn it. She answers with an extensive and nuanced analysis of the dangers and difficulties of speaking up, resulting in a “pervasive silence steeped in fear” from victims and witnesses. Accordingly, within—by my count—some 22 ideas for making cultures more supportive of a respectful workplace environment, she devotes particular attention to taking down this “shield of silence.”

Although not focused on sexual discrimination law, *Shield of Silence* hardly neglects it. In fact, the inspiration for the book came from a sexual harassment study Rikleen conducted for the Women’s Bar Association of Massachusetts. She shows how few types of sexual discrimination risk formal punishment under civil or criminal laws, including Title VII of the federal Civil Rights Act of 1964. She also describes measures that compel silence, such as the widespread use of nondisclosure agreements when complaints of discrimination are settled, and various impediments to victims’ legal recourse, including Supreme Court decisions hampering Title VII enforcement.

What distinguishes *The Shield of Silence* from the vast literature on sexual discrimination is Rikleen’s sophisticated perspective. While fully acknowledging the ills of workplace sexual discrimination and noting famous recent incidents of it in many fields, including law firms and the judiciary, Rikleen shows that sexual harassment is but a flagrant form of the pervasive sexual discrimination that she addresses. Indeed, she cites various academic studies, concluding that sexual harassment is not about sex, but rather it’s a use of power to demean women, whether overtly as in sexual misconduct or unfair treatment, or more subtly as in social behavior. It’s not about law, either, because most sexual discrimination is beyond law’s reach.

Editor’s Note: The Editorial Board of *Perspectives* would like to thank Keith Roberts and *The Judges’ Journal* of the American Bar Association Judicial Division for contributing this article.
By Mattie Stepanek offered great wisdom when she said, “Unity is strength . . . when there is teamwork and collaboration, wonderful things can be achieved.” Too often we lawyers go it alone—possibly because that is the default mode of work after getting through law school by our own efforts, or we feel in competition with our colleagues, or for any number of other personal and workplace factors.

In an increasingly specialized and globalized profession, going it alone is not the ideal way to serve our clients or ourselves. Heidi K. Gardner's 2015 article in Harvard Law School's *The Practice* makes the point that “when lawyers do work across specialties, their firms earn higher margins, clients are more loyal, and individual lawyers are able to charge more for the work.”

Collaboration can improve a lawyer’s well-being by breaking down the barriers of isolation, which are so common in our profession. Matters on which lawyers need to collaborate are typically more complex, require knowledge of multiple areas of law and business, and benefit from more creative problem solving. Practicing law is an ongoing learning process, and one of the ways in which we learn is from our colleagues and a broad range of others in and outside our workplace.

We know that collaboration is not always positive and not always efficient. It can be scary, it can be annoying, it can be stressful, and it can take a lot of time. It may not have a payoff. It requires more patience than many of us routinely give to a process. But if done well, collaboration can get tremendous results—results that one person alone could never get on her or his own.

Collaboration can yield many rewards. In the legal profession, collaboration is an effective way for a lawyer to establish herself as a rainmaker. The positive link between collaboration and revenue may be counterintuitive. But rainmakers who collaborate, and share origination credit, can end up with larger books of business than their siloed peers.

Think about it: What is the reputation you would like to have—someone who shares knowledge and contacts, someone who gives back and pays forward, or someone who “you cannot work with because she does not share”?

Between the development of more complex capabilities, the greater possibility of referrals, and the social capital that comes from getting to know one’s colleagues, I believe that the benefits of collaboration greatly outweigh any concern about the downside.

In a profession where women still have difficulty getting selected as first chairs at trial or leads on corporate deals, becoming top rainmakers, or even having their ideas heard in meetings, why not use collaboration to to grow your career and lift others as you climb? Pick one project where another’s viewpoint would be valuable and experiment with collaboration. Your professional stature, your sense of self, and the profession as a whole can reap the benefits.
The newly formed ABA Commission on the Nineteenth Amendment, chaired by the Hon. Margaret McKeown of the Ninth Circuit Court of Appeals, will embark on a range of activities in the coming year to celebrate 100 years of women’s constitutional right to vote, educate the public about the Nineteenth Amendment and the battle for women’s suffrage, and promote laws that ensure women’s full and equal exercise of their right to vote and to participate in our democracy. The 2020 Law Day theme, “Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100,” will provide an opportunity for state and local bar associations to explore the legacies of the Nineteenth Amendment while also encouraging everyone to exercise these rights and fulfill our responsibilities as voters and participants in our constitutional democracy. Digital toolkits featuring lesson plans, information on coordinating student and public programs, and voter education information provide bar associations with a range of resources to support partnerships and programming.

In addition, the ABA Standing Committee on the Law Library of Congress has created a Nineteenth Amendment traveling exhibit, “100 Years After the 19th Amendment: Their Legacy, and Our Future.” The six-banner exhibit features historic photos and artifacts and details the story of the battle for ratification and outlines the challenges that remain. If your bar association is interested in displaying the banners, contact Anne Brown at anne.brown@americanbar.org for information. To access the digital toolkits and view updates on commemoration activities being planned by the ABA, outside partners, and state and local bar associations, visit the ABA’s Nineteenth Amendment website at ambar.org/19th.

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2019 Brent Awards Luncheon Honorees

The Commission on Women in the Profession’s Margaret Brent Women Lawyers of Achievement Awards Luncheon, which took place on August 11 as part of the 2019 ABA Annual Meeting in San Francisco, attracted approximately 650 attendees.

This year’s honorees are:

• **Raquel Aldana**—associate vice-chancellor for academic diversity, professor of law; University of California, Davis; Davis, CA

• Michelle Banks—senior advisor and executive coach; BarkerGilmore, LLC; San Francisco, CA

• Kelly Dermody—office managing partner (San Francisco) and employment practice group chairperson; Lieff, Cabraser, Heimann & Bernstein, LLP; San Francisco, CA

• Hon. Judith McConnell—administrative presiding justice, Court of Appeal; Fourth Appellate District; San Diego, CA

• Julie Su—labor secretary; California Labor and Workforce Development Agency; Sacramento, CA

Video introductions for each honoree, as well as their acceptance speeches from the Brent Luncheon, can be viewed at [https://www.americanbar.org/groups/diversity/women/margaret-brent-awards/pasthonorees/](https://www.americanbar.org/groups/diversity/women/margaret-brent-awards/pasthonorees/).
Where Are the Women of Color? Experiences of Women of Color in the Legal Profession

The Commission on Women in the Profession sponsored a standing-room-only CLE program on August 10 at the 2019 ABA Annual Meeting on the experiences of women lawyers of color. Paulette Brown, past president of the American Bar Association and senior partner and co-chair of the Diversity & Inclusion Committee at Locke Lord LLP, and Eileen Letts, partner at Zuber Lawler & Del Duca LLP, led a candid panel discussion of national bar association leaders. The panelists included Cyndie Chang, NAPABA; Alfreda Robinson, NBA; Mary Smith, secretary, ABA; Aracely Munoz, HNBA; and Bill Neukom, past president, ABA. Results of a study conducted with women of color lawyers from around the country as part of the ABA Achieving Long-Term Careers for Women in Law Initiative were previewed. Excerpts from the program can be found at


This program was co-sponsored with the ABA Office of the President.
The Commission on Women in the Profession held a second CLE program at the ABA Annual Meeting to present research conducted by the American Bar Association to further understand and address biases experienced by women, minority, LGBT, and disabled lawyers in the legal workplace. Speakers included Paulette Brown, past president of the American Bar Association and senior partner and co-chair of the Diversity & Inclusion Committee at Locke Lord LLP; Michele Coleman Mayes, vice president, general counsel, and secretary at The New York Public Library; Dr. Peter Blanck, professor and chairman of the Burton Blatt Institute at Syracuse University; Joan Williams, distinguished professor of law, UC Hastings Foundation chair, and director of the Center for WorkLife Law; Kelly Dermody, partner at Lieff Cabraser Heimann & Bernstein, LLP; and Joseph West, partner and chief diversity and inclusion officer at Duane Morris LLP.

This program was cosponsored by the ABA Commission on Disability Rights, Commission on Racial and Ethnic Diversity in the Profession, Commission on Sexual Orientation and Gender Identity, and Section of Labor and Employment Law.
Resolution Passed Aiming to Reduce Gender Compensation Gap Among Lawyers

At the 2019 ABA Annual Meeting, the Commission on Women in the Profession sponsored a resolution that went before the House of Delegates with a list of policies and practices aimed at reducing the compensation gap between similarly situated male and female lawyers. After intense discussion, the resolution passed with minor language changes. More information can be found at https://www.americanbar.org/content/dam/aba/images/news/2019/08/am-hod-resolutions/106.pdf.
CWP NEWS

CWP Continues Men in the Mix Project

The Commission on Women in the Profession completed its Men in the Mix Project focus groups on August 12 in San Francisco at Latham and Watkins, LLP. Ray Marshall, partner, Sheppard, Mullin, Richter, and Hampton LLP; Wayne Stacy, partner, Baker Botts, and author; Miguel Molina, litigation counsel, Hewlett Packard Enterprise; and Hilary Ware, vice president and associate general counsel of litigation and regulatory affairs, Netflix, served on our distinguished panel. Katherine Larkin-Wong, associate, Latham and Watkins, LLP, moderated, and Alan Bryan, senior associate general counsel, Walmart Inc., gave an introduction. Anne Collier of Arudia facilitated a series of small focus groups with the audience after the presentation.

The findings from the three Men in the Mix events are being analyzed and will eventually be used as the basis for a toolkit that women and men lawyers and their institutions can use to engage male colleagues as partners for women’s success.