

Borderland Justice: Working With Culture in Courts Along the US/Mexico Border

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March 16, 2007

I. Background

The forces of change buffeting Imperial County, California and communities across the lengthy border between the United States and Mexico are making it more and more challenging for courts and justice systems to provide effective services. Moreover, the increasing interdependency of the US and Mexican economies, and the enhanced opportunities for sizeable populations to split their time living and working on both sides of the border, pose significant problems for communities that pursue traditional service strategies that ignore the symbiotic US/Mexico relationship. In addition, local trial courts are increasingly at the mercy of federal immigration, law enforcement, and trade and labor policies which greatly determine who can work in the United States legally, what happens to those who violate the law, and how difficult it is to move across the border between work and home or from job to job.

In particular, today, the Imperial County Superior Court -- similar to its counterparts along the US/Mexico border throughout California, New Mexico, Arizona, and Texas, and many trial courts in communities across the nation with populations with close ties to Mexico -- is confronted by the need to:

- provide services to a sizeable population of litigants who are not residents of the United States but commute to work in the United States or reside in Imperial County only part-time;
- offer culturally appropriate services – especially probation, litigant self-help, family support, domestic violence, traffic school, and substance abuse treatment services – to a now largely Mexican-American and Mexican but increasingly ethnically and socio-economically diverse population;
- improve the Court's collaborative problem-solving capacity with other local, state, and federal agencies on both sides of the US-Mexico border, including numerous Homeland Security agencies, the US federal courts, and Courts located in Mexicali, Baja;
- improve work process efficiency and effectiveness in light of stagnant state and local government resources; and
- identify additional resources and establish comprehensive community based resource networks.

This article highlights the findings to date of the on-going Imperial County Superior Court Borderland Justice Initiative (BJI). We focus on lessons of significance for courts along the US/Mexico border and courts in jurisdictions with

large populations of Mexican nationals.¹ Our presentation begins with a description of the cultural context of Imperial County and continues with a summary of the four most important cross-border strategic issues confronting the Court and its justice partners. We subsequently conclude with a summary of lessons learned so far during the Borderland Justice Initiative about culture, the intersection of Mexican and US law and legal culture, cross-border problem solving and networking, and the knowledge, skills, and commitment needed for effective justice improvement in borderland communities.

II. Community Context and Cross-Border Issues

Community Context

Although the economy and demography of present day Imperial County reflect many of the opportunities and challenges typical of communities along the US/Mexican border, the community also enjoys unique advantages. With regard to similarities, census data and recent demographic assessments indicate that compared to other communities in California and across the nation yet like many borderland communities, the Imperial County population is far more Latino, faster growing, more rural and agricultural, and more disadvantaged.²

For example, Latinos, for the most part of Mexican heritage, account for just over 75% of the entire Imperial County population of about 155,000. Moreover, even though Latinos have been the numerically dominant population for most of the past century, nearly one-third of the entire current County population was not born in the United States, and English is the language used at home in only 30% of all households. In addition, only about 47% of the Imperial County adult population has completed high school and about 50% of all students in the schools have limited English skills. Family incomes in Imperial County are 60% of what they are in California generally, 20% of all residents live below poverty and, reflecting the seasonal nature of much of the farm based economy, unemployment rates hover between 25 and 29%.

Of special significant for the Court, labor force studies indicate that depending on the time of year, between 30,000 and 50,000 workers commute from Mexico to Imperial County daily to augment the entire full-time resident workforce of just under 60,000 workers. Also note that, consistent with trade and employment agreements which allow workers to commute between Imperial County and Baja, the vast majority of the commuting workers from Mexico are documented

¹ The Imperial County Superior Court Borderland Justice Initiative has been supported in part by the California Administrative Office of the Courts and the State Justice Institute, Grant No. SJ1-05-T-158.

² This section relies heavily on information from the US Census; Imperial County Historical Society (1991) The Imperial Valley. El Centro, CA: Imperial Valley Historical Society; David Nuffer (1992) Saga of Imperial Valley. El Centro, CA: Imperial Valley Historical Society; and Marc Reisner (1986) Cadillac Desert: The American West and Its Disappearing Water. New York: Viking.

workers and thus in the United States legally, although it is likely that the Court's litigants include Mexican nationals of questionable work status too.

At the same time, Imperial County is the only rural US County along the entire 2,000 mile US/Mexico border located next to a major metropolitan region on the Mexico side. Neighboring Mexicali, the capital of Baja California Norte, with a population approaching 900,000 is a major industrial center in Mexico, a burgeoning high-tech power-house, and one of that nation's most prosperous regions. The impact on Imperial County generally, and the courts in particular of the Mexicali giant next door will be examined in detail in the next section but for now as a preview note that purchases by shoppers from Mexico in El Centro, the Imperial County seat, likely account for about 35% of the community's sales tax revenue. Indeed, early reports indicate that a large regional shopping center recently opened in El Centro depends on buyers from Mexico as much as it does on local shoppers.

Further, a unique combination of geography, climate, and public policy has long been the major force driving the Imperial County economy and social fabric. With regard to geography and climate, the 4,175 square miles that make-up Imperial County are among the hottest and driest yet inhabited places on earth. Daily high temperatures typically exceed 100 degrees from May through September, with 110 degree highs routinely exceeded during the warmest months, and 115-20 degree days commonly recorded during the hottest months. Average annual rainfall is just 2.96 inches, with totals ranging from .01 to .06 hundreds of an inch during the driest months of April, May, June, and July.

Despite the limited rainfall and abundant heat, agriculture has dominated the local economy since 1901 due to irrigation. The development of Colorado River water storage and irrigation systems resulted in 15,000 cultivated acres in the Imperial Valley by 1905. Soon public policy, geography and climate converged with dramatic results when catastrophic flooding along the Colorado in August 1905 and subsequent efforts to maintain irrigation systems led to formation of the Imperial Irrigation District (IID) and, ultimately, the massively federally subsidized Colorado River control effort with its twin jewels, the Boulder Dam and the All American Canal. Imperial County's current 500,000 irrigated acres, about one-fifth of all the land in the County and the largest single operating irrigation project in the United States, is a direct legacy of the 1942 completion of the All American Canal.

Finally, as will be shown in detail in the next section, federal and state immigration, labor, and land ownership policies have been, and will continue to be, a major force in shaping the economy and demography of Imperial County. In particular, even though immigration, labor, and land ownership policies targeting people from Mexico have been an obvious force in shaping Imperial County, historically these policies also have greatly contributed to the overall community ethnic mix and social structure.

For example, between 1900 and 1940, rapid development of an agricultural based economy and the infrastructure needed to support it, such as canals and railroads, encouraged many Lebanese, Filipino, Punjabi, Italian, Swiss, Portuguese, Chinese, Japanese and other immigrants to make new lives in Imperial County. Yet laws excluding Asians from owning property also resulted in a complicated social structure characterized by contract labor, and employment and social stratification along ethnic lines. Perhaps most dramatic, and certainly most egregious, ethnicity-centered public policy choices resulted in a thriving Japanese community of farmers and merchants that at one time numbered 2,000 prior to the World War II, leaving the Imperial Valley permanently, following forced removal and a long period of internment during the War at the Colorado River Relocation Center located in a remote portion of neighboring Arizona.

Borderland Justice Issues

Today, the geographic, demographic, economic, and public policy forces at play in Imperial County and the larger Imperial County/Mexicali Baja borderland region have resulted in the Imperial County Superior Court having to address four fundamental borderland strategic issues centered on:

- establishing a regional service network to provide assistance to a majority Spanish and limited English speaking litigant population which also includes numerous people with limited reading skills in any language, and numerous people who work in the United States but live in Mexico either part or full-time;
- providing culturally appropriate services, especially in cases involving families and children;
- establishing forums and processes for effective cross-agency and cross-national, regional planning and problem-solving; and
- anticipating and accommodating federal and state policy.

With regard to ***regional service networking to provide litigant assistance***, borderland communities need to develop creative approaches which both recognize and build on the unique challenges and opportunities that emerge from the symbiotic US/Mexico relationship. To do this, the Imperial County Superior has been developing a four-fold approach that builds on the Imperial County/Mexicali Baja regions strengths. The first component in the approach is for the Superior Court to be the hub in a comprehensive community network of providers who have the materials and training needed to provide assistance to litigants. Participants in the network include representatives from health, social service, education, farm, church, and numerous other organizations potentially in contact with court users. The roles of network members include:

- helping to triage litigant assistance needs;
- providing basic information to litigants;

- providing research assistance to litigants;
- assisting litigants fill-out forms;
- helping to identify and maintain an inventory of litigant assistance needs;
- identifying additional network partners;
- making referrals to assistance resources; and
- developing, attending, and conducting litigant assistance training programs.

The Court's role as the hub of the network includes:

- preparing self-help materials which can be used by network partners as well as court personnel in helping self-represented court users;
- training network partners to use self-help materials and provide assistance;
- maintaining the litigant assistance network;
- providing electronic links to litigant assistance services;
- monitoring service provision; and
- obtaining resources to maintain the litigant assistance network.

The second component in the Imperial County approach to litigant assistance is to develop a comprehensive partnership with Mexican organizations to leverage resources in Mexico and from Mexico to:

- establish service locations convenient to Imperial County litigants who live in Mexico;
- help develop litigant assistance materials which target the needs of litigants who reside in Mexico but have dealings with the Imperial County Superior Court;
- help train US litigant assistance providers about Mexican culture and how perceptions of the Mexican courts and justice system might shape litigant assistance needs;
- help develop and provide training programs that address the needs of Mexico based Imperial County Superior Court litigants;
- provide infrastructure -- such as television production facilities in Mexico with established programs including the legal education program "Estas en Tus Derechos" -- that can be used by Imperial County Superior Court judges and staff, and Mexican and US network partners to provide information about the courts; and
- provide law school interns from the Universidad Autonoma de Baja and the privately funded Cetys University, and personnel from other organizations, including Mexican legal service organizations and the Mexican Consulate, who can help provide services at the Superior Court's main courthouse in El Centro, California and other locations across Imperial County, and in Mexicali.

The third litigant assistance component is to create a self-help center located in the main court-house law library. When fully operational, the scope of the Imperial County Superior Court self-help center will encompass:

- providing the equipment and materials litigants need such as word processing equipment, research materials, forms, and paper;
- holding workshops for network partners and litigants about particular aspects of the law that litigants find challenging;
- assisting people to fill-out forms;
- providing samples of properly filled-out forms;
- maintaining research materials;
- maintaining quiet work spaces; and
- offering staff to assist litigants.

The fourth component is to institutionalize the role of inter-mediators in all aspect of litigant assistance. To effectively serve many litigants in Imperial County and other borderland communities, assistance providers need the authority and tools to take on an assertive role as a mediator between cultures, counselor, educator, translator and interpreter, spokesperson and guide. In addition to providing assistance about forms and processes, this more assertive role includes:

- helping litigants to understand and navigate the justice system;
- helping to define for people what is acceptable behavior and what is not; and
- promoting litigant self-esteem, motivation, and communication so that they can have if not a positive, at least a productive, experience with the courts.³

Finally, it is important to keep in mind that the questions confronting litigant assistance providers -- and in turn the knowledge and skills needed to provide adequate service -- in Imperial County, as in most borderland communities, can be extremely challenging. For example, as shown in Figure 1 which summarizes but a few of the many types of problems routinely presented to the Imperial County Superior Court family law facilitator, the types of litigant assistance needed often encompasses a very complicated mix of culture and law from both sides of the US/Mexico border.

Providing culturally appropriate service, especially in cases involving families and children is a second fundamental issue the Imperial County Superior Court must address. In any community culture plays an extremely important role in cases involving families and children because culture profoundly shapes fundamental assumptions and expectations, values, and behaviors about everything from the meaning of key concepts such as spouse, family, discipline, health, well-being, abuse, neglect, compliance, and treatment, to what is and is not acceptable behavior, and what are appropriate solutions to problems.

³ The role of inter-mediator in described in greater detail in Steve Weller, John Martin, and John Paul Lederach "Fostering Culturally Responsive Courts: The Case of Family Dispute Resolution For Latinos" 15/2 Court Manager (2000).

In borderland communities – as illustrated in Figure 1 -- the already difficult task of effectively working with families and children is further complicated by concerns about:

- legal status to work or be in the United States and the potential for there to be different legal status among members of the same family, including spouses and children;
- mistrust of court and justice authorities; and
- work and living arrangements that make it difficult to maintain contact between litigants and the court.

For example, there is considerable risk for courts to rely on postal services for the timely exchange of correspondence between the courts, probation departments, service providers, and litigants across international borders generally but especially so for correspondence to often mobile litigants, such as seasonal workers or long-haul truckers exchanged in cross-border commerce. Similarly, acceptable forms of correspondence vary between the United States and Mexico. For example, service of process in Mexico is accomplished only by a government official (actuario), never by a private individual. Also, phone service from one side of the border to the other is expensive compared to service within the United States.

Regional planning and problem-solving is a third strategic challenge confronting courts in communities along the US/Mexico border. By now it should be apparent that a vast number of regional, state, national, and international forces play a significant role in creating both demands on the Imperial County Superior Court and the opportunities for effective responses to those demands. As one result the Court has learned that it must work with an extensive number of governmental and non-governmental groups on both sides of the border, as well as with the local justice partners typically engaged in problem solving efforts.

At the onset of the Borderland Justice Initiative, the Imperial County Superior Court recognized that existing regional planning and problem-solving efforts tended to be focused on a few topics, such as water policy, border security, and economic development and trade, and thus it needed to create an efficient regional planning and problem-solving network that more closely targeted the needs of court users and the courts. While creation of a regional planning and problem-solving forum and network is a work in progress, the Superior Courts current strategy emphasizes:

- establishing person-to-person relationships among judges, court personnel, and service providers on both sides of the border;
- establishing institutional ties with key support agencies, such as the Mexican Consulate and justice agencies in Mexico, such as the courts, the law school, Facultad de Derecho of the Universidad Autonoma de Baja, Cety's University, the Baja courts, and legal service providers; and

- expanding the scope of the Imperial County/Mexicali borderland justice planning and problem-solving effort to include partners in other border communities, such as Yuma County Arizona, and other communities with strong population ties to Mexico, such as Maricopa County Arizona.

Anticipating and accommodating federal and state policy is the fourth and likely most difficult strategic challenge facing courts along the US/Mexico border today. There are three reasons for this. First, federal and state policies shape both demands on the Superior Court and court and community capacity to respond to demands. Second, often times, the impetus for state and federal policy are political and economic factors that support state and federal agendas as much, if not more, than they support local needs. Third, it is difficult for the Superior Court to effectively engage state and federal policy makers on its own; the Imperial County Superior must built strategic alliances with similarly situated courts and justice systems.

In particular, as suggested previously, in Imperial County and borderland communities across the Southwest, federal and state trade, employment, and immigration policies largely determine how easy or difficult it is for people to move across the border to not only work, shop, and play but to do business with the courts and service providers. For example, in addition to litigants, law school interns from Mexicali need to be able to move across the border in a timely manner to serve people at the main Imperial County Superior courthouse in El Centro.

More broadly, for borderland courts to work efficiently and effectively, policies in the United States and Mexico regarding everything from appropriate border identification – e.g., passport, drivers license, or other form of ID -- drivers licensing, vehicle safety and Insurance regulations, to treaty agreements about parental access to children and the status of undocumented domestic violence victims, must be mutually supportive. Even safety and security policies regarding movement of judges and court staff back and forth across the border for meetings can play a role in how effectively the courts can do their work.

Finally, state level language and practice of law policies can be major factors shaping the quality of justice in borderland communities. For example:

- Is it permissible for Spanish to be an unofficial language of business, along side English, for most aspects of court service, including workshops, information exchange at traffic and other walk-in counters, and for other types of litigant assistance?
- Can the courts use Spanish as well as English versions of critical forms?
- Can assistance providers help litigants, including large numbers of litigants with limited reading ability in any language, complete forms?
- What level of Spanish language, as well as English language, proficiency should be expected of court personnel for various jobs?

III. Conclusion: Three Essential Lessons Learned About Borderland Justice

Three essential lessons for courts have emerged so far from the on-going Imperial County Superior Court Borderland Justice Initiative:

- it is important to know the professional and organizational culture of your court;
- it is important to know, care about, and make honest efforts to accommodate the cultures of the populations the court serves; and
- courts must build regional service networks that recognize both the realities of people's lives and the potential abundance of traditional and non-traditional resource available to address those realities.

It is important to know the professional and organizational culture of your court because effective justice in the borderland requires considerable organizational self-awareness, particularly awareness about:

- organizational and professional values regarding the purpose of courts and how they should work;
- fundamental assumptions made by the court about people, especially about what shapes people's perceptions, their forms of communication, and what motivates them to change;
- what is appropriate behavior for court personnel and court users; and
- what resources might be available to the court.

Moreover, organizational self-awareness needs to encompass a detailed understanding of how organizational and professional culture impact not only the structure and organization of the court generally and the preferred styles of service delivery approaches, but also the details about the design and use of work processes and the infrastructure required to support work processes. This includes fostering capacity within the court to understand where and how comfortable and familiar ways of doing business might be altered to better serve culturally diverse populations while strengthening essential notions of American justice.

With regard to knowing, caring about, and making honest efforts to accommodate the cultures of the populations the court serves, over the past decade, a lot of conversation about being in touch with stakeholders and the public has accompanied court community-focused strategic planning, litigant surveying, diversity training, performance measurement, access to justice, and a long-list of other court improvements. Making the effort to understand and embrace the particular features of the potentially diverse cultures of the peoples the courts serves to create stronger courts, is one way to turn the rhetoric of diversity and access into the reality of improved service for all court users. In particular, the critical work and outcomes of courts – such as case processing,

case resolution, compliance with court orders, and enhanced individual and community safety and well-being – can all be advanced by increased understanding of how the ends of justice can be obtained using a variety of culturally appropriate means.

Building regional service networks that recognize the realities of people’s lives and the potential abundance of traditional and non-traditional resources available to address those realities requires:

- patience to learn about and with people both dissimilar and similar to one’s self;
- courage to move beyond one’s own culture and the culture of the courts;
- passion to advocate with and on-behalf of all court users; and
- willingness to trust, reach-out for help, and experiment with partners typically not considered official justice actors.

We anticipate that as the tools and techniques of the Borderland Justice Initiative are experimented with and improved over the next months, and the work of the Initiative becomes more visible, state court administrative offices and national and international court and justice support organizations will follow the lead of the Imperial County Superior Court and the State Justice Institute. We look forward to them becoming active partners in expanded planning, problem-solving, and capacity building for borderland justice.

Figure 1: Example Imperial County Superior Court Family Law Litigant Assistance Requests

- Husband currently resides in Imperial County, and wife currently resides in Mexicali, but previously resided with husband in Imperial County. Wife cannot legally enter the U.S. at this time. Husband intends to file for divorce in Imperial County.
- Wife filed for dissolution in Imperial County, and listed two children as having been born from the marriage. Husband presents to self-help staff two Mexican birth certificates for each child, one naming him as the father of each child, and another naming another man as the father of each child. Judgment entered in Imperial County Superior Court, establishing the children as children of the marriage.
- Husband and wife were married in Mexico. Wife currently resides in Imperial County, but is contemplating filing for dissolution. The parties acquired real property in Mexico which would be quasi-community property under California law. Mexican law provides that a person can be married in a manner that makes all property acquired during the marriage by that person, the separate property of that person. Wife was married in this manner, and for this reason, decides not to file for dissolution in Imperial County.
- Mother and children live in Mexico, but father lives and works in Imperial County. Mother obtained an order for child support in Mexico that provided for a much lower amount than would be available in California. Mother wants to open a child support case in Imperial County.
- Father has entered into a voluntary agreement with the court in Mexico (comprobante) to pay child support. Mother wants to receive child support according to California's guidelines.
- Following a judgment (sentencia) of dissolution in Mexico, with all parties living in Imperial County, the parties want to enforce the Mexican judgment in Imperial County. Similarly, they may wish to modify child or spousal support, or child custody or visitation.
- A judgment of paternity was entered in Imperial County by the local child support agency, after which mother registered the birth of the child in Mexico, naming a different man as the father. Mother marries the man named on the birth certificate. Bio-dad has no rights in Mexico to the minor, but is required to pay child support in Imperial County based on the judgment of paternity.
- Dad files a custody action first in Imperial County, and then while that is pending, files another for custody in Mexicali. Dad gets an order for 50/50 timeshare in Superior Court, but children go back and forth across the border all the time. Dad loses interest in the Mexicali case, and Mom obtains a judgment giving her complete custody and control, with no access to Dad. In contravention of that order, Dad brings the kids to US, and then Mom files a Hague Abduction case in Superior Court. Ultimately, after extensive hearings, including hearings involving Judge experts from Mexico, the Imperial County Superior Court rules that the children should be returned to Mexico.