

Panel Four—In Search of a Gendered Approach to Immigration Law

FIRST SPEAKER: JUDY GOLUB¹

Thank you. I'm very, very pleased to be here, especially so because I think it's really important that lawyers really get involved before a law is made in terms of trying to make good law and trying to stop bad law from being passed. So it's really important. You've probably guessed from what you've been seeing in the paper and hearing on TV that immigration is a very hot issue and it's getting even hotter in the days, weeks and months ahead, and it will most likely be an issue in the 2006 elections. Now, just this week, several House and Senate committees held hearings and a mark-up on one immigration reform bill.

What I'd like to talk about today is what Congress and the Administration have been doing in terms of immigration reform, and what I mean by that is how our laws determine how families come here and how business-based immigration is set. Now, what people have been focusing on in this debate—really, there's three things they're looking at: how to solve the issue of eleven million undocumented here; how to best enhance our security, both at the interior and at the border; and how to deal with employers who are hiring needed workers, many of whom are undocumented. Now, it's clear that the House wants to move ahead and pass a so-called immigration bill. They have indicated that they're going to take one up—I think a fairly bad one—after Thanksgiving recess. They should have been gone—October 3 they should have recessed, and they aren't. And they're going to stay, probably until—I hope they go home one of these days—they get appropriations bills done. At the same time, they're here and they're going to cause some mischief and I'm very concerned about what the House and Senate are going to be looking at and passing. I think it makes it more important for people outside of Washington to know what is going on and to react appropriately. The Senate is going to be taking up immigration reform in February or March. Now, there's two kinds of camps that are looking at immigration. There's the enforcement-only camp: let's enforce current law, but even more. And what you're going to get with that is not more enforcement, but more dysfunction, because our current laws don't work, and I'll talk about that in a minute. Some people understand that if they want enforcement—and enforcement, especially post-9/11, is going to be part of any debate we have—that you can only enforce the laws if you have laws that make sense, and our laws do not make sense now. It keeps families separated, American businesses

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can't get the people they need, and there's no solution for undocumented people who are here. And from my perspective, undocumented people aren't the problem, they're the symptom of a problem. It's an immigration system that does not work.

So what kind of reform is needed? You might have heard the word "comprehensive immigration reform" stated, and it's sort of like a catch-word. It's certainly not comprehensive because it doesn't deal with due process and other issues. But if we're going to recreate the structure of our immigration, what would it look like? It would have to deal with the eleven million hardworking people who are here, a lot of them paying taxes, to create legal channels for people to come here on a temporary basis and remain if they don't displace U.S. workers. And those kind of worker programs need to have family unity, labor protections, portability for people, and the ability to become permanent if they won't displace a U.S. worker. You need to deal with family backlog reductions. We talked about that earlier today, where a legal, permanent resident can wait up to ten, fifteen, even in some cases twenty years to unite with their family members, and that's an incentive for undocumented immigration because blood is thicker than borders and always will be that way. And how do we create effective workplace and enforcement initiatives, which can only be implemented successfully if you have the kind of reforms I just talked about?

So you have the enforcement-only approach—which I think is doomed to failure—and what, for in a bow to political realities, people call the enforcement-plus approach, which is a comprehensive immigration reform. Well, what kind of reform are we going to get? I'm not sure, and I'll talk about that later. If the extremists in Congress, and I don't call them restrictionists, because I think a lot of people who may be able to go to side with us may think of themselves as restrictionists; I call them extremists, because they are extreme. They have, especially since 9/11, attempted to identify immigration with terrorism, and they're drumming up fear in the public about immigrants. And I saw something very frightening about two days ago, where someone was trying to drum up fear of Mexico, and Mexico—because of corruption, and other things they talked about—being the next Iraq. And you could see this now, trying to use that to justify all the ridiculous ideas that they've been bringing up, which I'll talk about later, including the wall from the Pacific Ocean to the Gulf of Mexico. They are trafficking in fear; that's what they're doing right now to try to get what they want. So, much is at stake, and the lines have been drawn, and what is at stake?

It's who we are, and who we'll become as a nation, and how policies are developed and debated, and laws are made. Right now, in some cases, you'll have the Senate Judiciary Committee introducing a bill from one day having it marked up in Judiciary Committee, two days later, and then on the floor, and that's not a process anymore that we can be happy with. So the lines are drawn between the enforcement-only crowd and the comprehensive crowd, and much is at stake for everyone. And obviously much is at stake for women and kids because women are family members, they're workers. Under current law, legal,

permanent residents, as I said, can be separated from their family members for up to ten, fifteen, twenty years. In search of work or trying to unify with their families, people will try to cross the increasingly dangerous borders right now, and the deaths at the border, in the deserts now, are at the all-time high. They risk their lives to come here and increasingly because undocumented people are forced to stay in this country because of the law called the bars. They're trying to bring in their kids, so they hire a coyote or someone to bring them in, so you have this increasingly important phenomenon of unaccompanied minors trying to get into this country. At the same time, because the U.S. Labor market now extends into Mexico, you have towns in Mexico that are basically made up of elderly people and kids because the working age men and women are in the United States. Clearly I could go more and more—at the same time, the government is now making it harder, if you're undocumented, to live in this country, because I guess they think it's become a priority to go after janitors and nurses aides, rather than focusing on the people who mean to do us harm. It helps their statistics. They have "X" number of people in detention, and they're going to deport that many. It's harder to go after the terrorists, so they go after the nurses and janitors. Congress at this point has been appallingly silent on this issue, and that's why you see a lot of reactions at the state and local level, where the states are trying to deal with what is a national problem which needs to have a national solution. Unfortunately, it's a very, very bad time, and if I had a better word for "very, very bad," I would use that word, but I can't quite think of it. It's a very bad time in Washington right now.

The Republican leadership, I think, is extremist on immigration. I think that there's a coalition we mentioned before. Representative Tom Tancredo is head of that extremist group called Immigration Reform Coalition. Not that he necessarily has that many people—there are fifty people in that coalition. A lot of them don't vote with him—but he has the threat of bringing them and right now, with Congress so divided, they're scared of that and they're scared of the public's identification with them not being strong on security. So, you have a lot of people, Democrats included, who will go along with unwise enforcement provisions because they want to inoculate themselves from the public. And a lot of them are not looking at the issue. So, they are poised to deliver something in fact, while we thought it would happen in 2006 or 2007, looks like the House will address this issue after Thanksgiving. A bill just passed the Homeland Security Committee which is the old enforcement-only kind of bill. The people in that committee said that that's what their jurisdiction is, and some Democrats talked about the need for reform and that they only had jurisdiction on the border stuff.

So what is their enforcement measure that passed by a voice vote that meant the Democrats and Republicans both supported it? It requires mandatory detention of the undocumented, increases detention bed space, denies admission to legal permanent residents from certain countries if there's not an agreement for those countries to take back their nationals, and increases the number of

border patrol. It's the same old, same old that has failed in the past, but only more of it, and this myopic bill is silent on enforcement; it's because they say that's not their jurisdiction. It's introduced this week; again, no debate. It was introduced, marked up in full committee and two days later—and I suspect it will be part of whatever goes to the floor. Now, there's this guy named Representative Sensenbrenner, I don't know if you've heard of him as head of the House Judiciary Committee. And I guess I would say he's very bad on immigration. I use Lucas's word there, for our view on his views on immigration. He's been silent on it, but I expect that—and I've heard that and people have seen a bill that he has which is an enforcement-heavy bill, and I suspect that those two bills may be merged and go to the floor for a vote, and I don't expect a lot of Democrats even to oppose it right now. Again, their fear of being labeled "soft on terrorism." So the House is an absolutely miserable place.

To give it to you straight, the Senate, we have had more optimism in it, but I can't say that's 100% sure either; I can't even say it's 50% sure. There is a good bill—the McCain-Kennedy Bill, S. 1033, H.R. 2330—that includes the kind of comprehensive reform we want. There's a bill introduced by Senator Cornyn, who is head of the subcommittee along with Senator Kyle from Arizona, that they label "comprehensive reform," but it's not. It includes several unwise measures, some really excessive enforcement measures that they don't even pay for in their bill. But it has what we fondly call "a report to deport" provision. If you're here, undocumented, you can stay here for five years. You pay more of a fine the longer you stay, but when you register you have to self-deport yourself. Essentially, I was suggesting that a lot of people won't enter that program willingly, although there may be some who will, with the feeling that maybe the law's going to change before they have to go, and something is better than nothing.

There was a series of bills that was introduced by Senator Hagel, some of which actually had very good provisions. However, he had a deferred departure—again, a mandatory departure provision for those people who didn't meet his criteria for adjusting if you're here in an undocumented status. And I think that group was just too big.

Then, finally, and I'm just telling you about all this so you get a sense of what's going on—Arlen Specter, the chair of the Judiciary Committee, just introduced what is called his "Chairman's Mark," and I have to say, it's disappointing. It includes some of the measures on enforcement, includes Kennedy's bills on the worker program, it includes some of the Hagel stuff and the verification, but it includes the Cornyn and Kyle "report to deport" provisions. Now, he has privately said to other Senators that that's not what he believes. He did that to make sure Cornyn would stay in the dialogue, but I think we shall see if that measure is just an opening gambit for a hopefully intelligent debate, or if it will become the siege for more extremist measures. And I can guarantee you that the House Bill that goes is going to be ripe for a lot of bad amendments, and so will the Senate Bill.

So I hope that you understand from what I'm saying that it's going to be very bad. There is a good bill in the House—the companion to the McCain-Kennedy Bill, the Kolbe-Flake-Gutierrez Bill—but that's not going to be the bill that goes through because of Republican control of the House. Now, there are a lot of other stupid enforcement ideas that have become bills, like the wall from the Pacific Ocean to the Gulf. I mean, I think there's part of the Berlin wall that's probably available that they could use.

There is a citizen patrol and border patrol auxiliary bill based on the Minute Men I think you've probably heard of, which is like the hype and the P.R. I mean, you have to congratulate them for good P.R. They knew damn well that they wouldn't be stopping a lot of undocumented immigration, but it ended up having more reporters there than so-called vigilant minutemen. They have bills allowing the use of the army and air force to secure the borders. Hostettler, who is chair of the sub-committee, has a bill that would expand expedited removal, increase criminal sentences and fines for alien smuggling, mandate mandatory sentences for reentering aliens, and create a bureau of immigration reinforcement. So, there's on and on and on in terms of the enforcement-only, bad idea kinds of bills, and I want to emphasize what a bad idea they are.

We've had a decade to see if these kinds of enforcement measures have worked, and we've had a more than a decade of evidence of failure. For instance, during the past decade, we tripled the number of agents at the border, quintupled their budget, toughened our enforcement strategy, and heavily fortified urban areas. What did we get from that? Record levels of illegal immigration, porous borders, a great environment for smugglers and document forgers, and tragic deaths in our deserts. So, we already have the data that this does not work, and yet, you'll have the extremists pushing more of the same that doesn't work. And the Administration—well, maybe some of you will be talking about that—but the Administration largely has been absent from this discussion. They sort of have put out support of border security in recent testimony. President Bush has talked about a willing worker/willing employer initiative, but has been sparse on the details of it, and they really haven't talked about it that much. They oppose amnesty, and don't appear to offer the undocumented any solution, but they certainly try to be cute about it, really not get into it. They had a briefing in the House, and I got a hold of it, and if you read it, you couldn't understand what the hell they are saying. It made absolutely no sense. The political people drafted it, not the substantive people, and that's where it is. Not interestingly enough, the President's weakened standing right now has positive and negatives. In terms of negatives, less control on the restrictionists, so they're going be out there, hungry to make their mark in this debate.

So, where does it leave us? Given the high profile of the issue, it's important that members of Congress hear from you. Many organizations' websites have information—American Immigration Lawyer, Coalition for Comprehensive Immigration Reform. It's also important to pay attention to the media because the media sets the terms of the debate on immigration. Op-eds,

letters to the editor, members of Congress from California are very, very important. Diane Feinstein needs a lot of work; she's not a friend on this issue. Nancy Pelosi is really important as well, because she has the opportunity to move the issue forward beyond scoring political points, and let's see if she does. There are other people on the Judiciary Committee that are from California: David Dreier, who's head of the Rules Committee. All these will be important in the debate. You'll hear a lot more from Tom Tancredo over time, and the restrictionists and extremists are better than we are at making noise to the press, making noise in public, and making noise in Congress. So, the battle has begun, and we need to play to win and we need you. So, thank you.

SECOND SPEAKER: DAVID LIGHTHALL²

We were unable to reach Mr. Lighthall to include his remarks.

THIRD SPEAKER: MARIA ECHAVESTE³

Even though my role here is supposed to be to give you a little bit of a government perspective, I can't resist the opportunity to try to put together three things that don't actually connect. First, gender and migration—how these fit together, and there's a whole feminist gender perspective, and then there's immigration law and migration. I was actually having trouble trying to say, well, how does this connect? But I think that David's presentation, in particular, really highlighted some areas that are worthy of more study, and as you all pursue your work, I hope that we stop compartmentalizing—here's gender work and here's immigration work and here's this other work—when the reality is everything's connected. So, here's my attempt at connecting these various trends.

First, the community role and the importance of organizing at the local level to impact state and national policy is incredibly important, and there is no substitute for the really hard work it is. There's a reason that some people focus on national policy-making: because grassroots organizing is really hard. It's almost person by person, day in and day out, raising the level of education and knowledge and awareness to the point that you finally have a cohesive, strong, powerful organization that can go talk to a congressman, a senator, a governor, and so on. For some of us who are at the national level, we are really glad someone else is doing the grassroots work.

I really want to underscore that there is an increasing appreciation for that work, and I remember when I was at the Department of Labor—I was a wage and hour administrator, so I actually got to enforce the laws involving agriculture—*Mujeres Campesinas* was an organization that began in the Central Valley, and I was invited to speak, I think, at their kick-off event. And it was a group of farm-worker women who were trying to organize themselves for their

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families, but also as workers, as migrants, as women, mostly from Mexico. I don't know how they're doing these days, whether they still continue, but it was an extraordinary experience to talk to people who were finding their voice. So I just really want to stress that piece.

The second is: we talk about the migration and one aspect that I think more and more sociologists and others are starting to look at—but ought to look at more—is the impact on families when the family unit has become separated, and the social dysfunction that is occurring in the villages, in particular in Mexico, but also in other countries. Bad enough that the father wasn't around, but increasingly you're having the mother leave because she's able-bodied, and for whatever reason, two incomes are better in terms of remittances. There's a whole aspect that relates to women as mothers, women as heads of household, women as providers, and doing it from thousands of miles away, and what happens to the family unit, what happens to children, what happens to the society. I speak only as a mom of a four- and five-year-old, and I don't know how single mothers do it. So, how do single families raise children in foreign countries when one or more of the parents are not there? And then we complain about, for example, increasing drug use in Mexico, increasing violence. Many of the pathologies that we have looked at and studied in our own country are appearing in sending countries, and so that, to me, is another aspect of migration and gender that we don't look at. We look at, sort of, family, but what's the role that migration plays, and could play? Could it change if you had a different kind of immigration system? And as Judy very well said, the current system is completely broken. So I want to turn to the question that was posed: how would you design, if you could, a program that would try to better respond to these competing pressures and factors? And first off, my personal view is there's no such thing because there is no perfect system. Human spirit, human being—whatever system we design, there will be people somewhere seeking to find a way to move from someplace to someplace else. It's just going to happen. So in the search for a perfect system, open borders, a sort of global community, we may be a global village, but it still has fences and it still has gates, and so long as there are nations, there will be this effort to balance human rights with a nation's interest in determining who comes in and who stay out. So, how can we rationalize this system?

There is a lot of talk about a guest-worker program. This is really radical. You have, for the first time, even people on the left swallowing, holding their nose, but saying we have to have some kind of system to bring people in to work on a temporary basis. And we can have a discussion about even having put your foot or toe in the water, whether you can ever pull it back, and whether you've actually opened the door to more horrific, worse things. And what Judy has described in Washington as we were talking before the panel began—at the moment, I'm really concerned that we put our toe in and the craziness that is going on in Washington may very well result in something far worse than even the current status quo, which is pretty hard to imagine, right? It's really hard to

imagine that things could get worse than the fact that we've got eleven million who are undocumented, we have people dying along the border, and the list of things that are the current state. But I'm saying what's being described and thought of in Washington may actually be worse. But a temporary worker program for those of us who finally said, maybe we ought to look at it—and I say this as a daughter of *bracero* who grew up on the stories about how bad the program was, about how you could not rely on the Mexican government to protect your interests, about the fact that the employers always sought a way of using you and treating you as really nothing more than a serf and indentured servant. The list goes on and on. We have a guest worker program right now—it is the undocumented. And that is my analysis. And so the question is, do we keep tolerating that workforce that has absolutely no rights?

How do we design a temporary worker program? I want to just give you two things that I think are particularly important from a women's perspective. One of the issues is that under current programs, you're assigned to an employer because you work for an employer; there's no portability, right? Your right to be in this country is really in the employer's hand. So, women often, in the workplace, are extremely vulnerable, especially in low-wage jobs. California Rural Legal Assistance has brought some cases involving sexual harassment. I mean, the list goes on. So the question of portability, of really making it possible for a person who is here working temporarily to walk with her feet, to move if the job becomes so untenable, is absolutely essential. That's one.

Two is to insure that a temporary worker program actually has a path to permanence for those who choose and who wish, for reasons that they develop over time, to stay in this country more permanently and legally. And that is because unless you have a path to permanence that is in the employee's hands, you will subject the worker to, again, opportunities for exploitation and vulnerability. We already have many, many cases of workers in temporary worker programs who, at some point, are led to believe that if they continue to accept the current conditions, that employer will eventually sponsor them for a legal, permanent visa. I believe that unless you take that out of the employer's hands, we won't be able to really investigate all the possibilities of abuse and exploitation and we need the path to permanence. We don't really know at this point how many people would actually do the circular route. We don't know. I always love to joke and say I've got it from all the angles; I've got a father who was in the *bracero* program, but also parents who worked here for 40 years and then went home. Exactly what Bush wants: work here, give me your prime, and then go home. Of course, in the process they raised a family who then became American and also became citizens, but they chose to go home for lots of reasons, including the fact that a Social Security check goes a lot further in Mexico than it does here, right? But you need a path to permanence, and it has to be in the hands of the worker, and you need labor protections because, while most of the past guest-worker programs have always focused on male labor, the kind of service sector jobs that are increasingly the future will require women.

And whether it's childcare providers, nurse assistants, home healthcare providers—if you look at where the job growth is going be twenty years from now, it's in the service sector. So unless we design a program that can pay special attention to the vulnerabilities that women have, by virtue of being women in the workplace, Congress is contemplating and is likely to design a program that will, yet again, be a response to the business community's needs without any consideration or real addressing of the violations that we know exist in these programs. I'm particularly concerned about what that impact will be on women, women as workers, women as head of household, and women as community organizers, so . . . I'll stop there.

FOURTH SPEAKER: LUCAS GUTTENTAG⁴

We were unable to reach Mr. Guttentag to include his remarks.

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