



Border Conversations Project
“Interview with Alan Bersin”
Trans-Border Institute
August 9, 2007

On August 9th 2007, the staff of the Trans-Border Institute met with former-U.S. Attorney Alan Bersin, for a semi-structured interview. As U.S. Attorney, Mr. Bersin served as the U.S. Attorney General’s Southwest Border Coordinator or “Border Czar.” The interview focused on Mr. Bersin’s major accomplishments and experiences as Border Czar, his role in implementing “Operation Gatekeeper” and how that program worked, and some of the recent aspects the immigration debate. The interview also addressed some of the bigger picture issues regarding bi-national collaboration between Mexico and the United States past, present and future. This interview was conducted by TBI Director David Shirk, along with Mr. Bersin’s executive assistant Karen Heinrich and TBI staff members Charles Pope Judith Dávila, Ruth Gomez, and Lorie López in attendance. [Brackets] denote modifications to reduce or clarify content.

DAVID SHIRK: I want to start out with a discussion about your experience as “Border Czar.” The title actually being U.S. Attorney, beginning in 1995. What do you think were the major accomplishments of your service as Border Czar?

ALAN BERSIN: In the twelve years that have passed since I was appointed as border representative, its been an interesting time to reflect particularly in light of the developments on the border since then... There were thee major developments.

First was the notion that the rule of law had a place at the border. We really have to think about the U.S.-Mexican border which was the stepchild of Mexico and the United States; sort of the place were the two nations merge. Nobody wanted to take responsibility about what went on there... This was an agenda that simply had not been part of the U.S.-Mexican discussion, which was mostly —for much of the period since the U.S.-Mexican war in the mid 19th century— an exchange of fairly empty formalisms. Real cooperation was conspicuous by its absence. This became clear in terms of the lawlessness of the border: restoration of rule of law. Not perfect. But there was an effort to bring some order and some justice to a situation that had been basically chaotic.

The second major development during that period was a lot of theories of an intellectual or scholarly manner to think through the border. We began to see that many times along the border [the prevailing wisdom was that you] needed to slow down traffic. That you needed to stop and examine each person or every commercial truck that crossed the border. That you need to slow it down in order to ensure safety. What we learned was

that you, in fact, need a system of security that distinguishes between those people and cargo that you know something about... and in fact was more efficient in terms of facilitating passage. I know, because I've just renewed my SENTRI card after a couple of miserable experiences trying to cross the U.S. border since my return to San Diego that we can have... that in fact when we were operating most effectively we had brought the border wait down to an average of twenty minutes. The amount of enforcement [was] reflected not only in the presence of law enforcement officials but also in the cases that were brought. We had more drug smuggling cases, we had more migrant smuggler cases prosecuted more... more...; and all of that took place in the context of a twenty minute wait.

The third development that for the first time —largely through the work of Janet Reno, Angel Gurria, and Luis Herrera de Lasso here in San Diego— we began to see cooperation between Mexican and U.S. authorities beginning in law enforcement, but going beyond law enforcement. We created mechanisms for regular communication and that paid off in a whole variety of ways... to areas as sophisticated as secret operations — legal, but secret operations— involving U.S. and Mexican law enforcement directed at taking down, dismantling the Arellano-Felix narcotics groups. We saw for the first time the state prosecutorial authorities cooperating. It used to be routine and it is now again that every time there is an incident at the border you have an international crisis... Somewhere in the mid 1990s, when there was superb cooperation, these kinds of matters were dealt with as routine in a bi-national region. Of course at a border your going to have incidents in which there will be criminal violations, but they need not be occasion for shutting down [relations/the border???]. The California Prosecutor and the San Diego County Prosecutor —facilitated by customs and immigration officials on both sides of the border— could handle these things.

So those three I think were the major innovations of the period. Restoring the rule of law, creating a situation in which we learned a lot intellectually about how the border could be managed, [...] and the third was working with Mexican authorities by learning to define problems at the border in ways that [...] found common ground by focusing on public security on both sides of the border, which gave us good common ground in which to act in a collaborative way. That kind of collaboration was the single accomplishment of that period and one that I think needs to be retrieved as we go in the post 9/11 world.

SHIRK: We're going to move onto "Operation Gatekeeper," narrowing in on the bringing of law and order, or as you put it the "rule of law and order" to the border. Certainly "Operation Gatekeeper" was widely viewed as a success in that regard, completely transforming visually not just the San Ysidro-San Diego area but in other U.S. areas along the border where "Operation" Hold-the-Line and other concentrated border enforcement efforts were implemented. However, others, like Peter Andreas take a critical viewpoint, arguing that politicians implemented border security measures in response to political concerns about immigration. But, while these efforts made people see the border as more orderly, in fact, migrant flows continued. At the same time, the [concentrated border enforcement] strategy was criticized because of its significant human cost: an escalating rate, from dozens

of deaths each year to hundreds of death each year, an accumulative total that now approaches 4,000. So I would just like to get your personal reflections on "Operation Gatekeeper," now almost 15 years out.

BERSIN: Gatekeeper, as a major policy shift, had certain successes and certain failures, together with some consequences that were anticipated and some that were not. Here in San Diego [...] moving people further east in the first phase into the mountains of San Diego and then into the deserts of the Imperial Valley and the Sonoran desert in Arizona with the consequences of people being abandoned... I bare responsibility for that portion that took place during my watch... [however] the migration pattern of the twenty-first century and the twentieth century contributed to a highly lucrative criminal enterprise. Smugglers who took people into the mountains and abandon[ed] them. A Mexican and U.S. presence in those areas would have cut down on much of the tragic loss.

I take Peter Andres point; political pressures drive most public policy shifts, so I don't think that that's remarkable there. I do know there was clearly a change in areas such as San Diego and pretty much cross the border, save for some places in Arizona and now in New Mexico. What was understood, I think, by most sophisticated observers and participants was that this would not stop illegal immigration. It was intended to create the conditions for more orderly management of the problem. It was not eliminating the problem, it was managing the problem to achieve the result of less seasonal migration, with a consequence —depending on your perspective— that people didn't come solely for picking, an agricultural picking season. They came and they stayed to keep jobs in what are now six industries basically dependent on illegal labor: construction, agriculture... and textiles (to the extent we continue to have a textile manufacture in the country). We also saw a spreading of immigration [to non-traditional receiving states.] While Texas, Illinois, New Jersey, New York and California remain the main destinations, the whole dynamic of illegal migration has changed because of Gatekeeper. Now is that good or bad? It's a fact. In many ways, I think migration is the critical lifeblood of American society, and it is the driving force. Gatekeeper—with its pluses and minuses— leaves us in a situation completely different from where we were in the early 90s, yeah I think it does. I think it sets the stage for major immigration reform, but it is not something that is going to happen overnight.

SHIRK: Following on that point, talking about current immigration and border security initiatives. Your tenure as border Czar predated 9/11. In what ways have the new structures have the new structures [e.g. Homeland Security] addressed some of the limitations of the border czar model and improved on that, or perhaps not succeeded in addressing issues that you had to deal with.

BERSIN: The fact is that American government is both limited and divided, and political leadership is needed to overcome those differences. And, in part, that's what the Southwest Border Representative job was all about: bringing together agencies within and between justice and treasury, among justice and treasury. 9/11 provided the political energy to consolidate these functions in a matter of theory becoming practice [through the creation of the Department of Homeland Security]. I think the lack of integration, the

continuing cultural differences that exist between the old Customs and the old INS... all of that will be worked over the next decade or two. But I think we need a more rational coordinated coherent policy. I think we have to look at the strategic situation, the bigger picture.

I think two things. One is I think we have forgotten the lesson we learned in the 90s which is that we don't have to open every trunk. In fact, proceeding that way creates [a situation of] looking for a needle in haystack: the paradox is that you end up with less security. You want to distinguish between people and cargo that you know and those you know nothing about. That is something that this administration [has failed to do]... and it has major implications for the border. We cannot have a secure U.S. border without having a secure North American perimeter...

Coming to visit any of the countries that actually deal with an immigration authority outside the country in an airport—in Germany or the Middle East—that would actually represent a North American entry process. Canadian immigration authorities [should be involved] in protecting entry from abroad into the North American context. That will protect from people that would do harm: to be able to protect the U.S. perimeter.

It is foolhardy and foolish to think that building a fence from San Diego to Brownsville is going to protect. In China—in fact, where I just had the pleasure and the interest of visiting—the Great Wall was a 9th century [technology]. One would think, and I believe, that we already have sufficient technology, which is more effective, and less intrusive, and less unsettling to the notion that we are in an integrated and bi-national community with Mexico, and will provide security to the American people, its simply wrong.

SHIRK: Let's finish by talking about the issue you talked about earlier. This idea of finding common ground, redefining the paradigm, maybe you can elaborate a little more on what are some of the best instruments for collaboration in the U.S.-Mexico context, both at the national level and the regional level (here in the border region)?

BERSIN: Personality counts but infrastructure and institutions count more. And what we have found is that when it was left to the SRE and to the State Department, their cooperative efforts went only so far. And that remains the only institutional mechanism for regular exchange of information that was taking place between the PGR and the FBI, between the DEA and PGR. What was happening, if you remember, at that point [was that] we even had the fire departments coordinating on a bi-national cooperation on fighting fires, which paid such huge dividends in the time of the huge Tecate fires. So you have to have leadership that makes it legitimate for people to feel that way. Then you have to build institutions that are nurtured and supported...

We need a similar breakthrough on immigration. And I believe we... have fairly established [that] illegal immigration is really driven by the push and pull of the labor market. It is a matter of labor economics. We attempt in the United States to regulate it by immigration laws, a very clumsy and inefficient U.S.-Mexico labor market. But it is an illegal one, it's one that is in the shadows and governed by the black market. We need

to create a legitimate U.S. and Mexico labor market. [We have] free flow of goods, capital flows in virtually unfettered ways now in the international economy. We have only one area, human capital, which is inefficiently governed by the immigration laws, so I think we should move and recognize that we have to do that.

Bush tried to do it bilaterally. This was Castaneda —the “whole-enchilada”— this was Fox’s “whole-enchilada,” and it all fell apart after 9/11. [The] labor market... has to be coupled and married to an enforcement program both at the border but also in the work place. And the third thing is that it has to take into account the 11 to 12 million illegal workers, eighty percent or more of whom are Mexican. It has to address bilateral discussion between Mexico and the United States, or by a comprehensive bill along the lines of IRCA the reform and control act of 1986. I think the way into this is for both the United States and Mexico to [create] a bi-national company that would be responsible for administrating it. That would use [the] existing visa base to do that and that would give us the experience, the track record that we need to look at that we need to fix the situation through policy, to actually create this labor market, which is going to take twenty to thirty years to do properly. But the best way in my view to start it would be to have this authorized labor program but doing it in a rational coherent way, the potential advantages of that I think are enormous. But it's most important because it would address the largest policy dilemma between the United States and Mexico.

We have to stop looking at the border as something that gets fixed by one policy, but rather as see it for what it is; which is something that will change organically. To actually interact and produce something that's of great value to both countries, but we've got to change one or two major perimeters of the situation. Immigration strikes me as one that would have the greatest impact because it would put all of the other matters in perspective, particularly border security.

What happens at the border is governed by things that happen internally in both countries. The border is just the place where the shocks are felt, and the effects are felt. But the border situation.. of we could change that larger dynamic it would change much of one happens at the.. what is perceived to be happening and that is happening at the border. The same thing is true with regard to most of our bilateral problems. It's by changing.. law enforcement issues at the border.

The dream of a bi-national region is to solve problems that people have in terms of not only their security. [That can] be facilitated in a bi-national region, the creation of credit markets in Mexico. The creation of a real housing market that could be triggered by a bi-national interaction. All of that requires basic security and perhaps we go back to the future starting with law enforcement but moving very quickly to the bi-national water projects, the bi-national environmental projects, the bi-national infrastructure collaboration. Rather than “*la línea*” that divides people, it brings them together.

Count me a optimistic on U.S. Mexican collaboration I think Felipe Calderon and the next U.S. president will be in a position to move U.S.-Mexican collaboration as perhaps

never before. Clinton and Zedillo began it. Fox and Bush had the potential to expand it but was stymied by 9/11.

SHIRK: Thank you very much I'm going to move onto, essentially a larger conversation and I'm going to give some of our fellow audience members here in our small interview an opportunity to gather their thoughts and ask some questions. Regarding the idea of a bigger picture for Mexico and United States relations even opening that up to Canada and thinking about a North American Security Perimeter. Some scholars like Robert Pastor have talked about other regional governance and regional security mechanisms. My question is how viable, how politically viable is that approach especially when you have people like Lou Dobbs fiercely averse to notion of surrendering in any way U.S. sovereignty to a North American, European Union style conglomeration. What are the ways that we can get there. I think you hinted at some of the ways that we can —doing policy in the executive branch— but could you maybe expand on the political viability of getting to the big picture by baby steps.

BERSIN: Creating the conditions for a broader consensus I think is going to be crucial. For every Lou Dobbs [in the U.S. there is someone like him] in Mexico and that's what stymied the kind of steady progress we need to build. We need a matter of experience and not ideology. This is not about ceding sovereignty in which there is at least as much sensitivity in the Mexican context as in the U.S., this is about smart cooperation when it makes sense to cooperate. It seems to me both sides need to be prepared to act in parallel, that is, separately but with the kind of knowledge of what's happening. [That is what we] established here in the San Diego, Tijuana, Baja California context. And the national authorities on both sides are saying you're violating U.S. or Mexican sovereignty. We acted in parallel form, parallel fashion and then were eventually able to [work together.] The lesson is incremental, build the existence proof of the benefits of cooperation and over time you create the conditions for expanding it.

CHARLES POPE: I have a question, you had mentioned security in the North American context and we've heard speakers like Robert Pastor talk about immigration in a economic context and do you think that's a good idea or desirable solution that would address the heavy immigration flows from Mexico to the U.S.?

BERSIN: He's also including the common market feature of the development funds, so... you don't have the uneven development and you would help Mexico develop the kind of infrastructure that needs to be built in Chiapas, Guerrero and Michoacán. So that you could see that by building the roads and the schools you would end up creating the conditions for industrialization. And, theoretically, professor Pastor may be right. But politically and practically I think the situation is such that we will never see that. In fact, I think the great challenge that awaits president Calderon and his successor is to create, is to act on the inside... [T]he creation of an internal market in Mexico requires to major investments. One is an investment in roads and in education.

Greater equality in Mexican society is what Mexico needs in my view. And I say this respectfully is what Franklin Roosevelt did in this country in the 1930s, and [for] my father and mother. And what we learned in America was [how to achieve] that spreading the wealth somewhat for everyone. Now, we're in a reversal of that at the moment, but generally the history of the United States since the New Deal has been to create [greater] equality and the consequences you see are a growth in the whole, that was then complimented by Eisenhower's [administration]. [Mexico requires] a fair amount of resources to accomplish that on its own, but certainly would find support not only in international agencies, but I think also from Europe and the United States and Asia to do that. Calderon has a challenge too, actually. It's much easier to focus on road construction then breakdown the inequality that's built in to the DNA of Mexican history, but we had plenty of inequality built into the DNA of American history.

SHIRK: The United States in 1995 appointed, effectively, a border czar. In 2000, when Fox became president he also appointed a well-known personality —Ernesto Ruffo— to be a border czar. Yet even strong personalities are not sufficient: institutions are needed. What are the specific institutions we ought to be thinking about in the next five to ten years? Had there been a border czar counterpart for you to work with or for Ernesto Ruffo to work with, perhaps those would have developed certain synergies? Is that something we ought to consider in the future? Are there other ideas about how to coordinate policy along the U.S.-Mexican border, and more generally in North American cooperation?

BERSIN: I think I would first start off with parallel positions. Ultimately, what will bring results is a combination of U.S. and Mexican civic and commercial interests that create and institutional framework that works in the two governments, but will have an institutional memory. So, for example, one of the frustrations is the reinventing of the past. We are reinventing the wheel in saying we need to put in methods of border surveillance and examination that a focus on people and goods that we don't know. That would have been part of the discussion that permits us from constantly sliding back, so I think yes, in order to trigger this formation we would have to, but not centralizing the function. In fact, this would be a perfect position to do the job and then sunset, but sunset in the wake of the development of regional councils; best exemplified I think by the San Diego Dialogue and business leaders in Tijuana and San Diego. But I've seen the same in Laredo. I've seen the same in Arizona. [We need] an office that permits to exist this public/private institutional web —or web of institutions— to have the institutional memory and be the forum for the kinds of discussions that generate support but also intellectual capital.

SHIRK: Just a comment... I do think is important that —even when you have those communications across border communities— there is not a well-developed network along the border... whether it is government agencies or entities that work along the border, nobody talks to their eastern or western counterparts, so there isn't a sharing of best practices, or institutional knowledge.

BERSIN: Just let me say in reaction to that last comment David, I think that's right. I think that's why border regions, most local communities are very resistant to national policy: the notion that you can spread [across an area as] variegated as the U.S.-Mexican border, one set of policies. I believe there is a certain nonnegotiable core of principles and standards that ought to be adhered to. Matamoros, Prieto, Aqua Prieto or Douglas and San Diego. Having said that, the purpose of the Office of Border Affairs would not be to promulgate [national policy], aside from these basic standards to be applied in each of these localities. That's why I said that it seems to me that this office could accomplish its task and then sunset... View the discussion, and institutionalize the memory, and develop [...] policies that are best suited to the circumstances of the community. The other initial purpose would be, precisely as you suggest, simply to facilitate meetings... Coherence building that then gives way to local preference.

SHIRK: One of the things that I think is difficult is knowing where, from an administrative point of view, to place such an entity. The U.S. Department of State won't touch anything on this side of the border, so you really couldn't have an Office of Border Affairs there. Perhaps now that there is a Department of Homeland Security there would be some room there. So where would you place it?

BERSIN: I'd put it at the White House and Los Pinos, particularly since its not going to exist, ideally, longer than it takes to fulfill its purpose... this is going to take the power of U.S. and Mexican presidents, and it might be the subject of the meeting that takes place in January 09' with President Calderon: to create an office, and perhaps create a specific term, four years.

SHIRK: Well that a good place for us to bring it to a close do you have any final thoughts or comments about U.S.-Mexico collaboration, immigration, the border region or...

BERSIN: There is a piece I did for the USD law review which had to do with the prosecution policy, which changed dramatically here beginning in 94', away from prosecuting economic migrants as misdemeanors to focusing in on committed and convicted of crimes being convicted and deported and then came back across the border. I always thought that one of the benefits of that program was that it took a lot of thugs off Mexican streets. That's something we may look into further in future discussions. It's time for us [to understand that] the dialogue itself is of great utility; the Trans Border Institute has accomplished that along with other mechanisms. Places for incubation of projects as well as the need to be carefully evaluated and studied, because without the kind of institutional continuity that a university brings in concert with COLEF or other partners south of the border, we are likely to experience... you know the Mexican aphorisms that says "Mucho ruido y pocas nueces," you know, "A Lot of Noise and Few Nuts." Sacrificing the academic, the primacy of the academic mission.

SHIRK: Thanks for your comments and hopefully we will continue this conversation in other ways in the future. Thanks again!

Alan Bersin Biography: Born in 1946, Alan Bersin grew up in a traditional Conservative Jewish family in Brooklyn. He went to Hebrew school four days a week and was bar mitzvahed. Bersin was an outstanding student. He studied at Balliol College, and graduated magna cum laude from Harvard in 1968, where he was also an all-star linebacker. He was a Rhodes Scholar and studied at Oxford University from 1969 to '71 (where he became personal friends with Bill Clinton). In 1970, he spent six weeks on a kibbutz in the Galilee while rockets rained down from the Syrian-controlled Golan Heights. He received his law degree from Yale Law School in 1974 (where he befriended Hillary Rodham).

He was a practicing attorney from 1975-1992 with the law firm of Munger, Tolles & Olson in Los Angeles. In the '70s, he defended Alaskan Native Americans' claims to property illegally bought by the U.S. government a century earlier. While traveling from L.A. to Alaska, he often made pitstops in Hawaii ("it was always the same price to take the triangle flight," he says), where he picked up scuba diving. In the late '80s and early '90s, he represented the government of the Philippines in a massive racketeering case against former dictator's wife Imelda Marcos.

In 1992, he took a sabbatical from the prestigious Los Angeles law firm Munger, Tolles and Olson to teach law at the University of San Diego. Less than a year into his tenure there, his friendship with Clinton paid off: he was appointed U.S. Attorney for San Diego despite having no previous experience as a prosecutor. Mr. Bersin served as the United States Attorney for the Southern District of California for five years, during which time he also served as the Attorney General's Southwest Border Representative, beginning in 1995 a three-year tenure as "Border Czar."

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