PANEL #2: THE JUDICIAL SYSTEM AND RULE OF LAW REFORM IN LATIN AMERICA

Over the past 25 years, Latin America's rule of law reforms have placed a major focus on the delivery mechanisms of justice. This panel—drawn from the leading jurists in the region—will look at the critical elements of these efforts: the creation and maintenance of an independent judiciary, transparency in the administration of justice, the training of judges, and efforts to streamline procedures, as well as efforts to boost citizen confidence in the system and access to the courts.

PANELISTS

The Honorable Guillermo I. Ortíz Mayagoitia, Chief Justice (President), Supreme Court of Justice of the Nation (México) and the Council of Federal Justice of Mexico

The Honorable Francisco A. Távara Córdova, Chief Justice, Supreme Court of Justice and Judicial Power of of Perú

The Honorable Alfonso Cháves Ramírez, Vice President, Supreme Court of Justice of the Republic of Costa Rica

The Honorable María Elena Matute de Hernández, Judge, Supreme Court of Justice of Honduras

The Honorable Peter Messitte, Judge, United States District Court, District of Maryland

Mr. Boris Kozolchyk, Esq. (Facilitator), President and Director, National Law Center for Inter-American Free Trade

DRA. MACARENA TAMAYO-CALABRESA[1]: We shall go on with this panel. This panel covers the Judicial System and the Reform of the Rule of Law in Latin America. In this panel, we will examine the critical elements of reform regarding the rule of law in Latin America,

1. Director, Latin America & Caribbean ABA Rule of Law Initiative

focusing on the creation and sustainability of an independent and transparent judiciary.

With this, it is my privilege to introduce the Honorable Guillermo Ortíz Mayagoitia, who was elected by the high court members to serve as Chief Justice of the Supreme Court of Mexico from January 2, 2007 to December 31, 2010. He studied law at the University of Veracruz, Xalapa.[2] His graduate thesis was entitled *The Interdictions of the Veracruz Legislation*.[3] He held the position of Circuit Magistrate from March 9, 1981 to January 26, 1995. He is also a professor at the Institute of Judicial Specialization of the Honorable Supreme Court of the Nation. Welcome!

I would also like to introduce to you Dr. Boris Kozolchyk. Dr. Kozolchyk is a professor at the University of Arizona, James E. Rogers College of Law and executive director and president of the National Center for Inter-American Free Trade, in Tucson, Arizona. Having studied the common law legal systems, Dr Kozolchyk has law degrees from the Universidad de Havana and the University of Miami. He obtained his Juris Doctorate from the University of Michigan and has a distinguished international reputation as an expert in the area of international commercial transactions, and he has taught in more than ten universities throughout the world. He has written several books and numerous articles in the area of international commercial transactions and he is the prominent president of the Academy of Commercial Consumer Rights.

Also present is Minister Alfonso Eduardo Cháves Ramírez. Actually, Dr. Alfonso Cháves Ramírez is the Vice-President of the Supreme Court of Costa Rica and magistrate of the Third Criminal Court. He has a law degree from the Universidad de Costa Rica and obtained a specialization in Criminal Science at the United Nations's Latin American Institute for the Prevention of Crimes and Treatment of Criminals. He also obtained a specialization degree from the Center for Legal Studies in Madrid, Spain. He specialized in Criminal Law at the Universidad de Salamanca, Spain under Dr. Ignacio Berdugo Gómez de la Torre. He was a professor of criminal procedural law during his post-graduate work at the Universidad Nacional in the administration of justice in the Corte Suprema de la Justicia. Welcome.

We would also like to welcome Judge Peter Messitte. The Honorable Peter Messitte has served as a judge for the United States

---

2. *Perfil: Guillermo Ortiz Mayagoitia, presidente de la SCJN* [*Profile: Guillermo Ortiz Mayagoitia, president of the Supreme Court Justice of the Nation*], EL UNIVERSAL.COM.MX, Jan. 2, 2007, http://www.eluniversal.com.mx/notas/397682.html.

3. *Id.*

District Court of Maryland since 1993. He graduated cum laude from Amherst University and Chicago Law School. He has been analyzing legal projects relating to the rule of law throughout Latin America: in Brazil, Venezuela, Ecuador, Colombia, and Santiago, Chile. And also, he has been working in Mozambique, Angola, Turkey, and Morocco. Judge Messitte has published various articles regarding the rule of law in English, Portuguese, and Spanish.

Also with us is Magistrate Francisco Távara Córdova, the Chief Justice of the Supreme Court of Peru.[4] A lawyer and magistrate of civil and commercial law by way of the Universidad Nacional de Trujillo, he has defended people in this city for many years, as well as taught at the University. He has published many articles about judicial reality of the law. He has received several awards and integrated important commissions on judicial reforms promoted by the judicial branch in his country.

Finally, we are also joined by Magistrate María Elena Matute. Judge Matute is a judge in the Supreme Court of Honduras and has made a career in public administration. She worked for the General Administration of Customs, the Ministry of Natural Resources, the Ministry of the Treasury, and for the Central American Bank of Economic Integration (CABEI). She also litigated in private practice. Welcome. I leave you with this second panel.

DR. BORIS KOZOLCHYK: To clarify the order of the presentation for this panel, we will begin with a presentation by the Honorable Chief Justice of the Supreme Court of Mexico, Guillermo Ortíz Mayagoitia, who will discuss a recent Mexican Supreme Court decision regarding media law[5] that has caused, really, an international turbulence. In the legal center of the United States that I represent and direct,[6] we have received numerous requests for this decision from more than twenty-

4. Mg. Francisco Artemio Távara Córdova, Curriculum Vitae, *available at* http://www.pj.gob.pe/intranet/archivos-subidos/cv_francisco_tavara.pdf.

5. Sentencia relativa a la Acción de Inconstitucionalidad 26/2006, promovida por Senadores integrantes de la LIX Legislatura del Congreso de la Unión, en contra del propio Congreso y del Presidente Constitucional de los Estados Unidos Mexicanos, Suprema Corte de Justicia de la Nación, Secretaría General de Acuerdos, 1 D.O., 20 de Agosto de 2007 (Mex.), *available at* http://www.diputados.gob.mx/LeyesBiblio/compila/inconst.htm (under "No. 96"). A group of senators from the previous Congress brought an action of unconstitutionality against the reforms of the Federal Law of Radio & Television, and the Federal Law of Telecommunications. *Id.*

6. Professor Kozolchyk is the director of the National Law Center for Inter-American Free Trade, http://www.natlaw.com/. The Center is affiliated with the James E. Rogers College of Law at the University of Arizona.

five people, judges, and supreme courts in various countries. Such requests have come not only from supreme courts in the Western hemisphere, but from Japan and China. During a recent visit to China, I was asked about this decision. This case is six-hundred pages, but Don Guillermo will summarize it in his presentation.

We are going to start with this decision because, really, many people see it as a declaration of judicial power in Mexico equated with the famous United States Supreme Court decision of Marbury vs. Madison,[7] which, in reality, established a very special balance of power against the other powers of government. Furthermore, the decision elaborates on matters of great importance to economic development in Mexico. After discussing this decision, the rest of the discussion will be on the subject of judicial reform. This is going to be introduced in a global way, primarily by Judge Messitte, who represents the judicial power of the United States. He will be able to contrast this power with the judicial powers of other countries. In that capacity, he has been able to observe many judicial reforms and he will be giving us a succinct summary of those reforms.

After that, we are going to move on to the Honorable Chief Justice of the Peruvian Supreme Court, Don Francisco Távara Córdova's presentation, who will speak to us about Peru's problems, specifically regarding judicial reform. From there, we are going to move on to presentations about Costa Rica and Honduras, discussing the same theme in those countries. At any time, the panelists can interject about the other presentations and state their own observations. Each of you will have fifteen minutes to present so that we can have time for questions and answers afterwards. With that, I give you Don Guillermo Ortíz Mayagoitia.

THE HONORABLE GUILLERMO ORTÍZ MAYAGOITIA: My fellow panelists, for me, it is an honor to be on this panel with you this morning. I think that you represent the finest judiciaries of the Americas. Dr. Boris Kozolchyk, thank you for the invitation, for moderating, and for suggesting the topic that I now discuss with you.

I was asked to speak about an emblematic judicial issue, which colloquially, we have identified in Mexico as the case of the Mass Media Law.[8] If you permit me, I will attempt to explain to you the most significant information about this subject. To give you some background: on November 22, 2005, the Federal Chamber of Deputies

7. 5 U.S. 137 (1803).
8. Sentencia relativa a la Acción de Inconstitucionalidad 26/2006.

of the Congress of the Mexican Union received an initiative to reform two important laws: the Federal Law of Telecommunication and the Federal Law of Radio and Television. Both of those reforms were approved unanimously and in record time by the deputies, as well as by a simple majority of the Senate. Its text was published in the official diary of the Federation in April, 2006. An important fact that I wish to share is that, since the Mexican constitutional reforms of 1995, the parliamentary minorities, or thirty percent of any legislative body, can bring forth to the Supreme Court of the Nation any law that it considers unconstitutional. These rights of the parliamentary majorities, excuse me, minorities, to insert questions of unconstitutionality is the result of a continuous process of reform and improvement to our rule of law. In this way, through the implementation of these reforms to the indicated laws, forty-seven senators—there are 128 congressmen in total—forty-seven decided to present a claim of unconstitutionality before the Supreme Court of the Nation on May 4, 2006. They were requesting the Court to declare invalid forty-three of the articles that were the subject of the reforms. Because they were dealing with the norms, dealing with the body of law for the mass media industry, the topic was popularly known, as I had previously stated, as the case of the Mass Media Law. The issues regulated by the laws have a high scientific context as well as many references, related practical concepts, and technical definitions beyond the strict scope of the law. This process implied an arduous task for the Supreme Court of the Nation.

Three aspects deserve particular attention: the first, specialized knowledge. In order to take on the subject of telecommunications, radio, and television, the Court deemed necessary to hear the testimony of experts who would bring forth a basic conceptual foundation such that the congressional body would be in a position to adopt a resolution. It was not a matter of a panel of experts being questioned by the opposing sides, but rather it was the case of the experts imparting their expertise as consultants directly to the judges. Many studies and informative documents were presented. Additionally, five hours and fifteen minutes were dedicated to listening to different experts on the related subjects of telecommunications, radio, and television. Three experts each from the National Polytechnical Institute and National Autonomous University of Mexico explained the concepts that were pertinent to this law. During the meetings, these experts presented information, resolved doubts, and answered the questions of the judges. To address the interests of diverse groups and persons and enable them to voice their opinions, public audiences were carried out where all who wished to attend were received, and they were allowed to express their points of view. Those who considered the reforms to

be constitutional were heard as well as those who affirmed the contrary opinion. Of course, a large part of their declarations involved technical considerations on the matter. This is the first case in which the constitutional justice incorporated scientific knowledge as a basis of judgment. The law was enriched by experts, who gave a concrete and practical basis to the abstractions; without a doubt, that basis was fundamental to the making of the law. The technical and legal languages converged to finally reach a constitutional decision.

Another point that I wish to emphasize is transparency. In contrast to a typical controversy, where only the participants have an interest in the outcome, in this case, executives of the television chains and radio stations, parliamentary chambers, social groups, intellectuals, and many other groups of people sustained a special interest in the process. As you must know, the federal judicial branch has a television channel, which has been transmitting all the sessions of the Supreme Court live for more than one year by cable and satellite. Thus, the presentations of the experts and the audiences, where those who wished to speak did so, were public. All the deliberations of the ministers were transmitted in real time through this judicial channel. And, in this special case, which covered such a public interest, a unique one, the channel of the Congress of the Union joined in the transmission. It was disseminated on the Internet by audio and video. The company Terra requested access to the signal to broadcast to various countries interested in this topic. The work product of the case, various documents, and other information that we were going to discuss were published in advance on the Internet so that all interested parties could know the subjects to be discussed by the panel.

The third point to emphasize is the high demand of time that we had to commit. The entire Supreme Court investigates and resolves diverse issues in each of its sessions. Yesterday, for example, we resolved five issues in just one morning. Generally speaking, we carry out three sessions of three hours in a week, on average, in addition to extra sessions to address a number of important matters. But in order to process this case of the Mass Media Law, the Supreme Court of the Nation suspended all other case dockets, and the judges exclusively dedicated ourselves to the attention and resolution of this allegation of unconstitutionality. To give a clearer idea of this, of how long it took us, the court members devoted ten public sessions and thirty hours of meetings for explanations, deliberations, and voting on different topics that were analyzed. And, to all of this, we should add, of course, the time our auxiliary secretaries and other personnel were working in the preparation of this topic, as well as in the systematization and organization of the ministry.

In Mexico, each of the topics is turned over to one of the members of the chamber and he prepares a project of resolution, which includes the discussion of the court. It is he who we call the Speaker, or "ponente." In this case, the judge "ponente" did a great job by systematizing and organizing the different topics, which guided the discussions and voting of the Court. Through this project, we arranged the discussion into points, which generated subsequent discussions and preliminary voting that allow us to gradually advance towards solving the case.

In total, we emitted thirty-eight distinct votes, each minister voted thirty-eight times on this topic and the total of the counted votes of the nine ministers present was 342. These topics are very important. As I have told you, there were eighteen general points that guided the deliberations of the Court. From them, many other points developed, which were able to give a sense of cohesiveness to final resolutions.

In the interest of time, I can tell you that we touched on several topics that we could group into three main categories: the strictly procedural concerns, such as the competence of the Supreme Court of the Nation to resolve this case; the opportunity of the petition and the legitimacy of the proponents of this case; and the promoting persons of the case–the senators that voted on the action in 2006 were no longer senators when the case was discussed in 2007 (the Court determined that even though their terms as senators were over, they maintained legitimacy and interest to continue with the case until its resolution).

The second category refers to issues of constitutional competence and the division of powers. One topic was related to the delimitation of constitutional competencies that were delineated in the debated law reforms. All the responsibility of the regulation of telecommunications and TV and radio are placed in an organization named the Federal Commission of Telecommunications, COFETEL by its initials. This federal commission is designated by the President of the Republic and he created autonomy for this organization through a regulation. In the new Mass Media Law, this regulatory declaration was approved by the Congress, but it added an amendment so that the nominations made by the President had to be approved by the Senate.

The Supreme Court of Mexico sustained a very important thesis about the express competence of the legislative body. It may not take up powers that were not foreseen in the Constitution because it could easily overstep its limits of legislative power and encroach upon powers reserved for the two other branches of government. We amended the congressional legislation, explaining that under the ordinary laws, they could not give themselves the power to approve or

disapprove of executives appointments. This is one of the main theses of the case.

Another important theme was the regime of concessions. This was the aspect of the case that required the most technical information for its resolution. The opposed reforms modified the regime of concessions of the radio electric frequencies. In order to analyze the constitutionality of this topic, the members of the Court considered, among other things, the following aspects: first, the constitutionality of the law which allowed the concessionaires of radio broadcasting the presentation of additional services through the bands of frequency that were given by concession and whether this represented an illegal advantage for the broadcasting concessionaires. The law whose constitutionality we examined permitted those that already enjoy a concession in radio electric spaces additional authorization to add services possible through new technologies. The Court considered that even if this is technically possible, and it did not mean greater dispossession of Mexican radio electric space property, this gratuitous permission that incorporated new services to those already authorized in the concession was illegal because it generated a great disadvantage against new potential concessionaires. Another central topic was the technological convergence that would allow the concessionaries to add new added value services through the concessioned frequencies, without paying for additional rights. This deprived the State from creating a new contest and new revenues for the concession of these new services; these goods were being taken away from the direct control of the Nation. It is bound up with the previous topic, but here, what was analyzed was simply the costless nature for the use of information bandwidth by the current concession owners that greatly contributed to generating privileges. The Court had to figure out whether the concession rights for the said new services could be attributed as an absolutely discretionary function by a dependency of the Federal Public Administration and whether the radio electric spectrum could be considered a vehicle for consolidating fundamental rights of expression and information, among others. This topic was fundamental in the resolution.

The Court resolved that the regime of the additional services by the present concession owners was unconstitutional because it established an unjustified difference favoring the present concessionaires of frequency bands of radio broadcasting because they would have the privilege of obtaining additional concessions without the procedure of bidding publicly and because this service would not be obligatory, but discretionary. Of course, many other topics were discussed and analyzed, but which was the concrete result of all this?

Of the forty-three articles that were opposed, eight of them were declared invalid: two of them completely, and six just in certain parts. In the Mexican Supreme Court, we have considered that the body of any law can contain several legal dispositions that we identify as the normative parts, and the unconstitutional portions can just exist in one part of the rule and not in everything. As "negative legislators," we judges have limited our powers of legislative rejection against the portion of the rule declared unconstitutional, and this is what we did in the concrete case. At the end of the day, we left a functional law.

Up to now, there has been no new law that has replaced it, and there has not been any obstacle in regulating this mass media activity of radio communications, television, et cetera, because we only suppressed the parts of the law that we consider unconstitutional.

From the talk that we had before sitting on this panel, I heard Dr. Boris Kozolchyk state that this action was an antitrust holding. Indeed it is, Doctor, because what was declared unconstitutional were those parts of the law that established the unconstitutional privileges that allowed the concentrated exercise of powers by the existing television and radio broadcasters and made it extremely difficult for new contenders to obtain concessions…um…arrive at obtaining them. With all these unconstitutional determinations, the Congress of the Union can reconsider all these topics and are, to my knowledge, in the process of working on creating a new law. I do not want to distract you any more. Our time is limited, and I thank you for having heard my talk.

KOZOLCHYK: We have had the great privilege of hearing the description that the President of the Supreme Court gave us. He was not present this morning when the previous President of Uruguay, Batlle, and Ambassador Cardenas were speaking in a very similar tone. They were talking about one of the pre-conditions of the democratic state: precisely the independence, neutrality, and wisdom of the judicial power. This is an example of what we were talking about this morning. This court ruling was provided as an example in this meeting to emphasize the remedial nature of the rule of public law, the policy, and the various distinct elements that comprise the rule of law and its relation with economical development. We are doing well in explaining this principle from the first presentation. Really, it illustrated what the power of the judiciary may accomplish by taking into account these considerations. We will continue with the theme of judicial reform and, as stated earlier, Judge Messitte will make a general

presentation. Afterward, we will finish with conclusions, or observations on a country-by-country basis.

THE HONORABLE PETER MESSITTE: Your honor, Guillermo Ortiz Mayagoitia, in whose name I compliment all the members of the panel and all those present, I am very pleased to be with you this morning. I would like to share with you some perspectives that I have gained after about forty years of working in judicial reform efforts, and I will get right to those.

Well, in speaking about traditional reforms in Latin America, I would like to mention little about the rule of law. Obviously, the rule of law has been with us as long as we have been civilized societies. That is to say that in terms of mankind, this is obvious. Another point that is perhaps less obvious is that there has been a greater, unmentioned, unspoken rule of law, as in the case of the Greeks and the Romans, who spread their law everywhere. In later countries, such as England and France, the authority of the Roman rule of law is evident, especially in the Fourteenth Century. We observe English laws that had much influence on American legislation or the American Constitution, which is heavily influenced, and has been influential in many countries. Obviously, the French Civil Code also has had an impact in other countries, as well as the German Civil Code. As you can see, there has been a great [global] interchange of ideas.

Nevertheless, nobody really challenges legal imperialism now that we are at a point, I think, in our development where the world has seen what works, but does not apply these principles in full in all situations. Thus, with respect to all the interchange of ideas over the years, people, including the philosophers, have discussed the meaning of the law. Here, we have to recognize renowned authors, like Kelzen in the Twentieth Century, and many others who have been defining the meaning of the law.

Nevertheless, the topic we are speaking of today, the present version of the rule of law, did not exist until after the Second World War, when the discussion focused on using it as an instrument of change with respect to how the law would be applied with intentions of social control. Towards the end of the 1960s, when I was a young university student, there were many American law professors involved with the topic of international development, who began to look at the idea of law as a tool of change. This was the time when the "Law and Development Movement" was created; lawyers were educated with these principles in mind and they would become the critical thinkers that effected this change. The main idea, that the law is an instrument

of change, remains today. Note that, in the 1950s, there were many conferences held in various parts of the world that talked about law being an instrument of change. However, no projects emerged from those discussions. But in the 1960s, projects started materializing, mainly in the study of judicial reform, which reappeared in various parts of the world, including in Latin America.

This Law and Development Movement went through various transformations. Finally, in the last twenty years, it became known as the Rule of Law Movement. The Rule of Law Movement now has gained an incredible amount of momentum, becoming the main force of international organizations. Now, it is here, from the World Bank, the Inter-American Development Bank, and the Asian and African Development Banks. And, of course, it has become a very important principle, particularly as countries have gotten out from under authoritarian regimes, whether it is in Central and Eastern Europe, Latin America, or others elsewhere. Countries that emerge from dictatorships and suddenly form more democratic regimes require a rule of law as a strong foundational principle.

Now, when we talk about the rule of law as an instrument of change, we are also talking about law as an instrument of economic development. This is to say, organizations are focusing on economic rights and laws to improve the economies of various areas.

I want to start with a perspective of what is really meant when we talk about the rule of law. There is no fixed or specific definition for the rule of law since the concept emerged from various Western thinkers. Consequently, there are ambiguities on how you define it and how you measure it, so it is best viewed as how far a country has gone with it. I wanted to mention some past ideas about how the rule of law can be defined, which, of course, you can disagree with.

The rule of law means constitutionalism. It means there is a fundamental statement of what citizens of a country believe is fundamental in terms of their values and rules, and they agree to bind themselves to these values and rules. These values and rules are to be applied consistently and thoroughly; that is to say, the government itself is bound by the rule of law. In a regime under the rule of law, the law must be applied in an equitable manner, without favoritism based on religious, ethnic, regional, or personal favors. It must be transparent, as the Chief Justice just mentioned in connection with the case he commented on. The rule of law applies to the entire world.

Laws must be understandable. Individuals must know the limits of the law as well as their substantive rights and the process by which law is made. This process also needs to be transparent. It

should be an open process through which everyone who might be affected by the law has a chance to participate.

The law has to be accessible to all. Citizens have to have real access to courts and legal process in order to vindicate their rights, whether personal or economic. Law has to be efficient and timely. Justice delayed, as we say in the United States, is justice denied. In the criminal case, the criminal instance, for example, it is very important that there be efficient and timely resolution. There has to be a situation in which there is no ground for favoritism. Favoritism can lead to corruption, and of course, corruption leads to further inefficiencies and problems in the administration of justice.

And, of course, to get to the core of where we are this morning, the rule of law also has implications on economic development. Individuals and business entities alike should be able to enter into contracts freely; they should be able to obtain appropriate governmental enforcement of their private contractual commitments. Legal rules have to be established regarding market transactions so that competitive market laws can guarantee transparent activities among different economic and political actors.

Law has to be fair, efficient, predictable, and inexpensive. A mechanism has to exist for the resolution of economic disputes, through the availability at any given moment of good dispute resolution mechanisms. Economic and intellectual property rights need to be applied. We have talked about these rights with a basis in the universal declaration of human rights, where individual rights are recognized. Obviously, if there is a law, there has to be a transparent process for changing the law; the clear evolution of that law should also be evident.

Now, I just want to say a few more words about the rule of law since we are talking about how economics affects the rule of law. Obviously, the economy is one of the dominant influences of politics, which must be a consideration. And, sometimes economic considerations are in conflict with the desire to have quick, timely, efficient resolution of the law.

First of all, of course, to implement fully a rule of law regime of the sort that I have described, it takes resources. Resources are limited. They have to be made available to other objectives of the nation. And so, you have to ask yourself not only what would be an ethical resource allocation in terms of rule of law, but you have to contrast that allocation of resources to the other things that a country wishes to accomplish. Are there available resources to accomplish what you want to do with respect to rule of law, particularly in contrast with an allocation towards economic development? To think about this, for example, a judge who decides a case in a timely fashion makes the

decision with the resources that are available to him. It is fair to say that there is a good chance he will not achieve a timely resolution of cases if there is a lack of resources. Thus, if you want to count on having an efficient judiciary, you need to adequately support judges, to provide them with materials and all the other resources necessary to accomplish their work to the best of their abilities. This implies that it is not only important that countries assign resources, but how they are applied.

So, I would like to share my thoughts on economic issues that I always consider important, given, obviously, that there are many more. The World Bank, as I have mentioned, has adopted as its mantra that there can be no economic development in a country without rule of law. James Wolfensohn, the former President of the World Bank, has said that, "[W]ithout the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible."[9] And indeed, that has been something that the World Bank has sought to accomplish over a long period of time.

And so, I want to say to you a little bit about governmental systems in which a rule of law can or cannot function. Most likely, they are specific perspectives on how a judicial system can malfunction when it does not rely on the rule of law. Today's principal thesis is that rights are not really protected and applied adequately. Economic activity requires people having the confidence to invest, as well as having the confidence to enter into contracts that are carried out. And so a weak judicial system with arbitrary governmental or administrative actions would discourage investment. Especially where questions regarding elections arise, investors may be unmotivated to participate in certain markets. Judges who lack training and expertise in business matters, particularly intellectual property matters, can decrease business confidence. Obviously, there are mechanisms that are put into place so that people do not feel that there are incentives for investing.

I will comment a bit about the measures applied by the World Bank when it comes to evaluating how business is carried out, since I think there needs to be a certain amount of agreement on how laws should affect economic development. The World Bank measures the progress that every country makes annually. I think they reached seventy-five percent in 2006, and they do it on a basis of a number of factors, considering, for example, how easy is it to start a business in a

9. Memorandum from James D. Wolfensohn, President of the World Bank Group, to The Board, Mgmt., and Staff of the World Bank Group, on A Proposal for a Comprehensive Dev. Framework: A Discussion Draft (Jan. 21, 1999), http://siteresources.worldbank.org/CDF/Resources/cdf.pdf (last visited Apr. 6, 2008).

country: how many steps are required, how many days it takes, and at what cost; how easy is it to comply with licensing and permit requirements: how many steps are required over how many days at what cost; how easy is it to hire and fire workers: the days it takes; and the cost of securing credit; the adequacy of the protection given to investors; the transparency of company transactions; to what extent may shareholders sue directors for misconduct; what is the effective tax that a medium-size company must pay each year: how many payments are needed to pay for licensing fees, how much time is required, what percentage of gross profit is paid in taxes; what is the cost of importing and exporting a standardized shipment of goods; how easy is it to sign contracts; is it easy to enforce contracts: how many steps over how many days. In order to resolve a bankruptcy: how much does this cost, what is the cost in terms of the percentage of the value of the estate, how much can a claimant typically recover from an insolvent firm.

So these measures are out there to at least help us to understand in the general way, how easy it is to have a business, to establish a business. We want to see these factors both internally and externally to a business, observing the interaction with economic development. These are not exact measures but they give us a good idea.

I want to finish by saying a few things about what is going on in Latin America based on my observations. There are incremental changes that are going on. This is to say that there is momentum to reform the rule of law, which did not exist so many years ago. I see the glass is half-full and not half-empty. There is still a lot of ground that all of us need to cover, including in the United States, and obviously, that's a topic of conversation for another day. In my present observation on Latin America, there is progress that one can observe. And you will hear from various leaders of the judiciaries of various countries that progress has been made. There are certain things that I have observed happening in various parts of Latin America, not in every country in Latin America, becausee it is a localized phenomena; but a number of these Latin American countries are engaged in rule of law issues, and they are talking to one another. There is a dialogue going on today that was not going on years ago. There is an institutionalization through organizations like the Justice Studies Center of the Americas (CEJA) located in San Diego, California and in Santiago, Chile.[10]

---

10. For further information, see generally Centro de Estudios de Justicia de las Americas, *available at* http://www.cejamericas.org (last visited Mar. 21, 2008). A description of the center in English is available at http://usmex.ucsd.edu/research/research_governance_intl_links.php.

And this also allows us to see that what is happening today and consider the possibilities for the future. Constitutional reform has supported the development of legislation concerning the market, mercantile laws, the civil code, and areas of criminal law. We have learned that Chile is another good example where there have been reforms to the judicial system, adapting them to the necessities of the adversarial system, the judicial profession, judicial ethics based on different available programs, this is to say, the modernization and standardization of the process. There was a time in which there was not a way to pursue and follow-up these programs, but based on what I have heard, the Supreme Court has improved many of these procedures. There are also alternative dispute resolution centers, specialized courts or tribunals where the system can send judges and clerks to various geographical areas to make justice more accessible to people who do not have access to courts. There is the emergence of the different organizations that help, such as in Peru. Legal education is improved.

So, there are many things that are happening. It is not the time to be hopeless; many things are happening. The momentum has really picked up since World War II. In my opinion, based on my experience, it will go a lot faster in future. We are talking to one another now. We are not inhibited as far as saying something just for us but to a greater audience. So, as I told you, I want to end on an optimistic note. There is a long road to travel to traverse yet, but we are on the right road. And I hope we will continue this dialogue. Thank you very much.

KOZOLCHYK: Following our agenda, we have already heard a good description of Judge Messitte's theories regarding the elements for the rule of law, the history of how this movement took place, as well as the role of judiciary in the rule of law and an assessment of it. I thoroughly enjoyed listening to him as he is pretty optimistic regarding what is happening now. Now, we are going to shift gears somewhat from a macro view of the rule of law to one that is more of a micro view. This will be presented by the Chief of Justice of the Supreme Court of Peru, Mr. Francisco Távara Córdova.

THE HONORABLE FRANCISCO TÁVARA CÓRDOVA: Good morning, or good afternoon. I would like to give you my warmest greeting to all of you. Congratulations to the organizers. I must confess, the conference has allowed me to get to know the beautiful capital of Mexico, a truly cosmopolitan city, as well as enabled me to

reconnect with some of my colleagues and friends. Congratulations, too, to the previous speakers, to Mr. Ortiz Mayagoitia and Judge Messitte.

I would like to talk mainly regarding the problems with the judicial power and the judicial system in Peru; what are the main problems, what we are doing, and what we are thinking about doing. In general terms, I could say that the fundamental, almost endemic problems that oppress the judicial system in my country and are common problems among all Latin American nations, are lack of procedure, procedural slowness, manifestations of corruption, and administrative inefficiency. Therefore, the measures that we are implementing are primarily directed at combating these endemic vices that are affecting our judicial system, its lack of process, its slowness, the manifestations of corruption, and the inefficient administration. But, at the same time we need to work in order to update this judicial system and provide transparency within the jurisdictional environment as well as within the administrative environment.

Well then, my country, Peru, can be considered as an emerging, inchoate democracy, a democracy still in its formation stage. It has had seventeen constitutions in its 186 years as a republic. In all that time, there has existed a notorious predisposition towards military governments, and the formative democracy that has been established has had to make huge efforts in order to be able to consolidate its power.

These periods between the military governments and democracy, military dictatorships, and sometimes civil dictatorships, have not allowed a sustained growth of our judicial systems. The auto-coup d'état on April 5, 1992 that was directed by our ex-President Fujimori, who is now going through an extradition process from Chile,[11] obviously signified a clear constitutional breach. In this auto-coup d'état, Fujimori kicked out more than seventy percent of the justices of the judicial system and magistrates of the public ministry. This was a pretty offensive interference with the institutions of the justice system, judicial power, and the public ministry. The Congress of the Republic and the Court of Constitutional Guarantees were dissolved, which virtually meant a step backward for the judicial system. The,n laws were enacted that placed the control of the judiciary to the executive.

---

11. For further reading on the "fall" of the former president of Peru from the perspective of the United States Ambassador to Peru from 2002 to 2005, see John R. Hamilton, *The Fall of Fujimori: A Diplomat's Perspective*, 30 FLETCHER F. WORLD AFF. 191 (2006).

After a number of years, the constitutional courts are up and running; this step constitutes one of the pillars needed to consolidate the democratic system. In my country, and I am sure this applies to other countries of our region as well, democracy has not been able to reach a level of needed maturity and strength. However, what has been achieved is having many sectors of civil society assume an active role in controlling public powers in general and in encouraging tasks linked with the indispensable reforms of our judiciary. These tasks by the civil society are plausible positive actions when they have been carried out seriously, independently, and responsibility. These civil associations, which tend to collaborate with international entities, perform a valuable function.

Poverty and extreme poverty are the face of the country. This is the image we want to change within Peru and the judiciary is pledging to assume a fundamental commitment to contribute to change the reality of poverty and extreme poverty. It is possible to understand how the problem within the judicial power or justice system is linked to the structural problems of the country. Therefore, it is not an isolated or insular problem. The deficiencies of the justice system can explain the secular problems of the state and those problems of the Peruvian society in general.

I have a hypothesis, just a hypothesis, that the condition of a country's judicial system affects the country's democratic development. I ask myself if we know of an underdeveloped country, a third-world country, now known euphemistically as "emerging" or "developing" countries, that has a timely, trustworthy, reliable, and predictable judicial system. There might be a couple of exceptions; that is true. But, what we see is that the more reliable judicial systems belong to well-consolidated democracies, such as the U.S. or France in Europe, et cetera, et cetera. And extraordinarily, within our Latin American countries, we have Chile and Colombia, who are above the international standards and well above the standards of other Latin American countries. I say this with the utmost respect to the circumstances of the judicial system of each country.

I will provide a brief overview of the justice system here in Peru for all those who are not familiar with Peru. The justice system in my country empowers the judicial branch with ordinary jurisdiction; the public ministry, the prosecutors, are in charge of orderly peace, criminal acts, and defending society. We also have a functioning independent constitutional court of the judicial branch. There are excesses sometimes, jurisdictional conflicts between the courts of ordinary jurisdiction and the constitutional court, but, I must confess that the constitutional court is better legitimated than the judicial

branch, obviously because they are in charge of defending fundamental rights, for example liberty. We also have the National Council for Judiciary. Today, this is a very positive experience in regards to the questionable Peruvian judicial system. Why? The National Council for the Judiciary is an autonomous constitutional institution in my country. One of its main responsibilities is to conduct the processes to select and to appoint judges at all levels from the judicial branch and the public ministry, which consists of prosecutors, without any kind of intervention of the executive or legislative branches. This is pretty important. Why? Because this helps contribute to the consolidation of those principles; one of the main principles of a functional judiciary is the independence of the judge and the prosecutor. There is no umbilical chord that politically binds a magistrate when he is named judge or prosecutor, neither from the executive or the legislative branches. This is what I refer to as having been a positive experience in my country. I believe it is fairly uncommon when compared elsewhere.

If it is necessary, I will continue to explain all the functions and tasks of the National Council for the Judiciary. The Justice Ministry is part of the executive branch and serves as the nexus between the executive and all the institutions that we have mentioned. It is in charge of the National Penitentiary Institute, which deals with the penal system. The Magistrate Academy is in charge of educating judges of the judiciary and the public ministry and is until now appointed by the judiciary. This was a brief description of the justice system.

Now I can give you an overview or, as we say, a "bird's eye view," of the structural diagram of the judicial branch. We have the Chief Justice of the Supreme Court, who runs parallel to the Executive Council of the judicial branch. What is this Executive Council? It is the governmental body for judicial excellence in my country. The Executive Council is conformed the same way that the Supreme Court is organized. My country has about twenty-eight million inhabitants and is divided into twenty-nine superior courts/judicial districts. These twenty-nine superior courts, or judicial, districts are integrated by approximately 2,200 judges who provide justice to the entire twenty-eight million inhabitants. We also have the justices of the peace, lay people who do not have law degrees; we can find them throughout the republic, and this group is very diverse, multilingual, multi-cultural, multi-ethnical, et cetera. There are more than 5,000 justices of the peace that administer justice in their communities, utilizing their own knowledge and understanding of justice to create law. Although they only use their lay skills, they are more accepted by the population than

the ordinary judiciary. When we judges go out to train these justices of the peace, it is we, the ordinary judiciary, who have a lot to learn from these justices of peace, from the way they implement justice face-to-face and within their communities. I truthfully believe that these justices of the peace administer justice with much more impartiality and independence than sometimes the way the ordinary justices do.

We have many things to talk about, right? However, I have to hurry because they just gave me the yellow card, telling me I only have a few minutes. So I am going to focus now on what we are doing and what we are thinking of carrying out in my country. We are working mainly on the strengthening of the role of the Supreme Court of Justice, access to justice, a policy against judicial corruption, a policy of transparency within the judicial branch, updating of the management of the Judicial Department, and a qualitative fortification of the human element, as well as management and judicial budgeting.

What is happening with the Supreme Court of Justice in my country? It is essential to seek out a redefinition of the role of the Supreme Court when undertaking the transformation of the justice system. Our Supreme Court is formally composed of eight supreme justices. But due to the excessive caseload, over 20,000 dockets reach the Supreme Court annually. With this caseload, it is impossible for the Supreme Court to fulfill the role of setting judicial precedents. Thus, we are working on fundamental measures to limit the flow of cases in the civil, criminal, and labor, et cetera, sectors to the Supreme Court so that it can assume the corresponding role of setting legal precedents, to direct the judiciary, the general judiciary in its totality.

We are also working on modifying the extraordinary/interlocutory appeal process that has been set up since July 28, 1993. But because of its complexity, for example the way Article 400 of the Civil Process Code established that the Supreme Court to set up jurisprudence, jurisprudential doctrine, should meet in full with all the civil courts, the criminal courts, the constitutional courts, labor, et cetera, to set precedent on any specialized matter; truly, this is crazy. All agree that this article was poorly written, but it has yet to be changed. We are about to present a law proposal to the legislature to improve this situation. If you look at our case load, it has increased from 2,281,071 dockets in 2004 to close to 3,000,000 in 2005, and the load has gone over 3,000,000 dockets in 2006. It is truly impossible to work in these conditions. Well, we are working on a plan to optimize the case docket process and hope to achieve positive results.

However, not everything is negative, and we can point to a commercial sub-specialty judicial system as a positive example. As Judge Messitte said, when the judge has the necessary conditions in

order for him to perform, he responds and the process creates better outcomes.

What happened here? There was international aid for this commercial sub-specialty. They gave a new building, technological resources, human resources, permanent training for both the judges as well as the assistants; the court started with an empty case load. This commercial sub-specialty court deals with commercial issues: secure interests, collateral warranties, contracts, et cetera. It works. These judicial cases performed by regular civil courts without this special training would take months or years, four to five years. In this new sub-specialty court, these dockets are being now decided in four to six months. This specialized institution, to date, thankfully has avoided any acts of corruption. This has been accomplished in such a way that this year, the judicial branch has received two prizes from an NGO known as Citizens' NGO, one for the reforms that I mentioned before, and the other one for a group of judges agreeing to publish all the resolutions on the website of the Judicial Branch.

This year the Supreme Court made a decision, on its own accord, that would have been unthinkable several years ago. The court will immediately publish decisions on the web page upon culminating a case and getting it signed by all of the participating Supreme Court justices. In addition, it has been decided that all of the courts of the republic will publish their decisions immediately on the web pages of their corresponding judicial districts. The only limitation we find now is the limited access to technology resources. Another thing that was unthinkable in my country is that the Supreme Court is proposing an initiative of legislative reform to fight judicial corruption so that financial, tax, and other information can be utilized in disciplinary proceedings against a judge or an assistant to a judge. In this area, there was internal opposition, but then the majority of the Supreme Court adopted this initiative and the proposal has been brought to Congress. This is truly an innovative and effective initiative to fight corruption and a truly needed initiative. This would have been unthinkable a couple years ago.

Altogether, we are working to increase access to justice and I would like you to see briefly, I know that time is running out, but I would like you to see these slides. My time has been exhausted, but I would like you to see the conditions under which we, the judges, work in this country. Courts that are literally collapsing, especially now after the earthquake on August 15, 2007, makes it urgent that there be financial support to the justice system. This slide shows the main facade of the Supreme Court of Justice; it is being held-up by posts and beams. That is the reality for the judiciary in certain districts in Peru.

The judges work in leased areas. Compared to the experiences of other countries I have visited countries such as Costa Rica, Chile, and Colombia, where the executive has truly invested in its judicial branch. Chile had invested $750 million dollars just to implement its procedural criminal system.

In Peru, we've received $10 million dollars towards creating a new procedural criminal system, which is only in use in two judicial districts. Sincerely, I prepared a presentation that would last forty minutes or one hour so that you could have a complete overview of the problems faced by our country. However, I am respecting the time limit and I hope that I will be able to broaden this overview during the Q & A so that you could have a better idea about the Peruvian Judicial System. Thank you very much.

KOZOLCHYK: Thank you very much for this presentation. I would like to say to Chief Justice Francisco Tavara Córdova that everything will be published in Lexis Nexis. The Law Faculty will publish this discussion session so that everything will be available, including all of your presentation. Unfortunately, the Chief Justice of the Mexican Supreme Court, Guillermo Ortiz Mayagoitia, must leave. He has a meeting that he has already postponed and, unfortunately, since we had to start this panel late, he will have to go. So, we thank him for his presence. Don Guillermo Ortiz's portion of the discussion will also be published.

MAYAGOITIA: Thank you, Boris. I would like to close. Indeed, in addition to this very important meeting and a ceremony in which I participated this morning, I have a full schedule of commitments. I request your understanding and thank you very much for the friendly reception. I leave you with warm wishes for everybody and I hope that this encounter has been fruitful and beneficial for everybody. Thank you very much.

KOZOLCHYK: The Vice President of the Supreme Court of Justice of Costa Rica, The Honorable Alfonso Eduardo Chaves Ramírez, will begin the discussion of judicial reform in Costa Rica, but he will also refer back to what has been discussed previously. And I give the floor to Don Alfonso.

THE HONORABLE ALFONSO EDUARDO CHAVES RAMÍREZ: Good afternoon. Thank you very much. I thank our organizers for allowing us to explore some these of the ideas.

The Costa Rican judicial branch is conscious of the important role that it has in the rule of law. With respect to the economic development of the country, there has been a process of modernization of the administration of justice with the ultimate goal to rejuvenate the process, provide more effective protections of all social sectors, and establish a climate of public confidence, stability, transparency, and respect for rights, each one of these values establishing the framework of a democratic state. Under this premise, we have been trying to consolidate a more equitable, accessible, efficient, and predictable judicial system that reduces judicial rejection and judicial congestion.

Nevertheless, the attainment of these objectives has been met with difficult obstacles to overcome. Among those that can be mentioned are the high level of litigation and a budget that does not cover the needs of our judicial branch or what it has been charged to do. The judicial branch has been currently charged to do more work than what was originally corresponded to them when the constitution established a minimum allocation of six-percent of the national budget. We must try to challenge the historical reality of the judicial branch, which reveals an endemic problem of bureaucracy and delay. This is why it is necessary to believe that we need to build a new model of justice, and this is what we are intensely working on.

We should not lose sight of the fact that justice reflects and is affected by the tribulations of a society, which is a difficult and uncertain process for constructing a new identity amidst a sea of changing circumstances, equally external and internal. The administration of justice is reflective of each country's national reality. And this, actually, forces a shift from a model that once served a purpose that has been exhausted towards a new one that is about to be discovered in all its dimensions. This new model should have a firm commitment to a justice that respects the most sacred values that inspire the most noble of ideals of the human civilization: a justice system that is independent internally and externally; justice system that is guided by the respect for the dignity of human beings; a justice system that has a clear view that human beings are and must be the central axis of its acts; a justice system that is not a slave to formalism, but rather is aware of substantive issues; an impartial justice system for everybody without any distinctions of race, sex, or other conditions; a justice system that supports the marginalized and that incorporates the ethical dimensions into its function; and, of course, a timely justice system that is accomplished and upholds the political constitution of

our country; in the end, a justice system that is credible and accessible. In sum, the change should be directed towards a judicial branch that extends its hands to citizens, to human beings, that does not hide behind bureaucratic formalities to avoid resolving a conflict or to avoid confronting the work before us.

The search for a system that offers us these guarantees is not accomplished overnight. And our job is, without doubt, the continuous search for these ideals. But this change, which must be taken on by the justice system, must be sustained in a congruent, systematic, and coordinated process that will consider some fundamental focal points.

We can start outlining some of these fundamental ideals right now: the ethical dimension and transparency. It is necessary to signal through judicial ethics, conflict resolution, and priority setting within the institution, apart from the necessary attachment to legality, the various values that guide our society, especially those that should be set as the standard of the judiciary.

As always, as gatekeepers of authority and law, we, the judicial system, are called on to respect the laws with relation to the regular citizens within the basic values of a democracy, among those impartiality, transparency, and the needed legal technical rigor acquired through study. This has been the preoccupation of the courts of all countries and that's why the Inter-American model of judicial ethics was established.

In Costa Rica, [the model] is already law, just like the statute for the users of the judicial system. It has also caused transparency in judicial branch activities. This is why the institutional webpage includes all of the judicial tasks of each of the courtrooms, tribunals, and also administrative tasks that are carried out. One can see everything regarding litigations, adjudication, et cetera. Also, the judicial branch should submit itself to performance evaluations and accounts rendering. We are working very hard on this. Other components include simplification and acceleration of the judicial processes. Evidently, we are touching on a theme of legislative reforms that has been promoted by the court itself, such as criminal matters and contentious administrative areas like the law of the republic, the penal law of 1996. Also, although there are state mediation centers, the judicial branch has its own mediation center, something we call "Center for Conciliation or Mediation of the Judicial Branch," which promotes not only the already contemplated penal matters, but all other matters contemplated by new legal projects. We believe that one of the manners to avoid litigating all human tasks is access to the processes of alternative conflict resolution. We have also made important technological investments. We have communications, notifications by

e-mail, and developments of activities based on technology such as training. Technology investments are very expensive, so it is imperative to fully utilize these investments to be able to develop our effectiveness. Now I'm moving along quickly because they flashed me the paper that I am running out of time.

And then, I also believe that we have to implement and create efficient models of management and administration in the departments. Previously, the judge was the administrator of all the people working under him; the judge controlled the general functions of the court and this makes no sense. In reality there are judges that make for good administrators and ones that make for bad administrators. Really, what we are trying to do is create a system with professional administrators. We have administrators in the departments that are in charge of those functions, whereas the judges are responsible for resolving cases, or to judge, which is more or less what we know how to do.

Well, we think that we cannot leave out, apart from the four that I already mentioned, the absolute need to have the judicial training. In Costa Rica, I do not know if it is the case in all countries—I know that it is true of some—we have had to supplement judicial training at the judicial schools because of the educational deficiencies at the law school level, which, although they are very good, they do not prepare judges. So, at the moment, we must "lead" potential judicial candidates along. And I say, "lead" not in the way you are thinking about. Good. Well, I do think that we must be clear in establishing the concept of a judicial career and train for it. Ideally, those who obtain the position of judge should be those who have obtained the job through objective selection criteria. This process can also be used for magistrates and ministers of the court. It is true that in Costa Rica the magistrates and judges are named and voted upon by the legislative assembly. But, we should try to minimize the potential political problem by requiring a two-thirds majority of the total number of deputies for the nomination of a judge. In Costa Rica, there are fifty-seven deputies. Never in the history of Costa Rica, except in 1949, has there been a party with over thirty-one deputies, or, that is to say, a two-thirds majority. Every other time this has not been possible. This two-thirds requirement would at least minimize the issue of political patronage and cronyism in the appointment of judges. The main advantage of this proposal is that each one of the appointed magistrates would be appointed for eight years and then subject to reelection. Each judge would complete the term on an individual basis so that it is not possible to dismiss all of the magistrates at one time and by the will of a single political party. The reappointments would be spread out in a temporal manner so that they would be performed throughout a number of different administrations.

I end by saying that we must take the subject of judicial reform seriously. And I, at times, think that we are not taking it as seriously throughout the world. Nowadays, nobody doubts that justice has an impact on all the functions of the state, obviously including economic development. Given that the judicial branch is essential for implementing the rule of law and social, political, and economic development of our towns, it is absurd and tragic that our people do not seek out the judicial branch or that they are not granted the central role that they deserve in the process of reforming the state. Without an efficient and independent judicial power, there is not a rule of law. Without the rule of law, a market economy cannot function efficiently, nor can conditions be created to guarantee a secure and transparent judiciary and political system. The task for a quality judicial system is, well, a central topic and a shared responsibility. Naturally, we are obligated to generate a long-term solution and a new model of justice in accordance with the present internal and external reality of each country. The cost of not acting, and in this there is a consensus among experts, is the creation of a void and a weighing down of a country's development of dimensions difficult to revert. This historical error will be unforgivable; the cost of not acting will be paid by all of us in the present and the future. Thank you very much.

KOZOLCHYK: Can you hear me? Last but not the least, as they say, my dear friend, the Honorable María Elena Matute, the magistrate of the Supreme Court of Honduras, with whom I am very connected to, not just by a great friendship, but by a strong professional cooperation. Our center of investigation has been working closely with the Supreme Court of Honduras. She now has the floor.

THE HONORABLE MARÍA ELENA MATUTE DE HERNÁNDEZ: Well, I will try not even to say hello, because I want to be brief because I imagine that we all are waiting for lunch. I will tell you about–can you hear me? I will tell you in a summary manner about the judicial branch in Honduras and what are we doing to improve it.

When I became a judge, I arrived with great illusions, and I think it is the illusion that we all carry when we start a new job that provides the challenges. The judicial branch was very much discredited when I arrived, you cannot say today that it was not. I said to myself, "We can do something. We can do something for Honduras. We can do something for the judicial branch." In the course of five-

and-a-half years, from that original enthusiasm, from that illusion, I did not accomplish all of these objectives but only some of them.

One of these goals that I did not accomplish, I want to tell you, was that I thought that if the people held the opinion and the image that the judicial branch was corrupt, then we would have the opportunity to make a change. To make these changes necessitated kicking people out of the judicial branch and replacing them with other people who would work to benefit Honduras and the judicial branch. My frustration, it could be said, was that we were not able to, either constitutionally or legally, find such a solution. It was not possible because you cannot summarily fire these suspected corrupt individuals, but rather, you need to have proof of their shortcomings. Other people may have told me things about these individuals, but if there is no solid proof or sworn testimony, I cannot do anything. Rather, we can only work in trying to improve those people that are newly arrived in the system. Because with the corrupt people that we already have, we will have to fight with them, try to accommodate them, but it is very difficult. Then, with that problem, we can say that we have worked and we will continue to work.

But one of the other issues that has frustrated me a bit, revolves around the effect of judicial elections on judicial independence. We have made strides. Congress used to select the Supreme Court; it was simply the people that the political parties selected. They got together and reached an agreement and then they selected the Court. But our court was different. A reform was made in 2001. And from that reform, other parts of society were given a voice in the election of the Supreme Court; the civil society participated as well as the College of Lawyers. I was proposed by the College of Lawyers. There were seven organizations that participated in the selection process such as private enterprise, law school faculties at the university, the workers, and, well, I do not remember, but there were seven, seven organizations in total. These seven organizations formed a nominating committee, and this committee examined us. They even published our names in the newspapers to see if somebody had a complaint or an accusation against us. The nominating committee looked over the potential candidates and selected forty-five. Of those forty-five, Congress elected fifteen. To tell you that the political parties do not participate is a misstatement because they do. Because in the end, the political parties are the ones that decide in Congress and they decide on the basis of a two-thirds majority; the parties do agree among themselves on the final outcome. Now, there is a limitation on this power, since the candidates now come proposed by other entities, and

even some of the candidates were self-proposed. And, it turned out that at least one of the candidates came from the self-proposed group.

Now, the Supreme Court of Justice can be placed through another model, with a different term limit of seven years. What happened before? Before, we had four-year terms, and these coincided with party elections. Now, we have seven-year terms; these do not coincide with party elections. We finish our term within a year-and-a-half of the election cycle, and then there is a party election two–and-a-half years after the selection of the justices. The next court is selected after three government cycles, which accomplishes increased judicial independence.

Judicial independence is also achieved through judicial communication safeguards. There exist laws that if individuals try to communicate with judges in untoward manners, they can be denounced by the judges. This is Section 11 of the Law of Organization and Attributions of the Courts.[12] Individuals can also denounce magistrates if the magistrate suggests some kind of extrajudicial compromise regarding a judicial order. Thus, people are fearful to talk to a judge. Only if one has a previous friendship with a judge, can one safely interact with them in a limited friendship basis. I do not think that even friends of judges can interact with the judges in any other sense, because in addition to my impression that they would not do it, they would run the risk of being denounced, and that would be terrible for them. So they cannot do that.

With respect to judicial organizations, the judicial branch has been given so much freedom that there's a constitutional disposition that says that judicial members cannot strike. The judicial branch may not strike. They did strike prior and that did not sit well with me. I think that if we have laws and constitutional dispositions, we should comply with them and it does not matter the consequences; these anti-strike dispositions must be complied with. We have improved the training and the quality of the judges. I understand the complaints of the attorney litigators because I was a litigator. They complain often because there are not enough judges to go around, because they are being trained. So, we are suggesting that judges do this training on the weekends, for example, but the weekends are not a popular alternative. However, we must see how we can get them to do it on the weekends.

So, regarding judicial independence as it currently stands, I think that it does not depend on the system. It does not depend on others. It now depends on us, the judges. I must tell you that I have

12. Articulo 11 de la Ley de Organización y Atribuciones de los Tribunales.

been on the Supreme Court six years, five-and-a-half years. Never, never has anybody suggested a certain way to vote on an issue or intervened in any way about my behavior as a judge. And I think that is the same for others. But it seems to me that is more related to the person and than the system, although the system does helps. We have also made progress in the proposal of some new laws. We have a new civil procedural code that we are going to implement in 2009. We recently implemented the new criminal procedural code. We have a new notary code, which we were working on with the College of Lawyers and the Institute of the Notary Law. Some of these proposals addressed off-loading responsibilities from the courts to the notaries in an attempt to decongest the court system. We also have some mobile courts of peace. And, well, we already have the buses and the personnel ready and everything. We are in the stage of implementing them because we want to get closer to the people – not them coming to us but us going to them. So, we are already working on that.

There are other laws in the reform of the criminal procedural code that we are also working on. We already sent them to the Congress. We already have pending in Congress the Law of the Judiciary and of Judicial Careers. We have pending the Organic Law of the Judicial Power. Other countries that have a Law of the Judiciary implement, a Judiciary Council. We also have a Judiciary Council, but what happened is that in all previous administrations, it was not implemented. The Honduran government only used it when it was convenient to justify something with the Law of the Judiciary, but in reality, they did not apply the law and constitute the tribunal. Thus, when we arrived, we were faced with that problem. We were not able to apply the law and choose judges, because according to the law, we needed to propose judges and magistrates to the Judiciary Council. Because the Judiciary Council did not exist and was not constituted, we could not implement it. Nevertheless, we created a number of selection panels; for instance, we included the university in the selection process, which is not included in the law pertaining to the Judiciary Council. We included the university, civil society, and many people for the effect of incorporating them because we believe this process must be inclusive. Until we accomplish getting the entirety of the Honduran people to come and to incorporate into the process, we will not have greater results and success. We think that we are moving in that direction and that we can accomplish more with these legislative steps.

With our judicial independence and our desire to accomplish what is best for our country, the best for the judicial branch, we can do something. Nevertheless, I have already told you what we did but I want to end by telling you that the perception of the judicial branch has

improved a little bit, not much. So, we also have to work; I think that that is what we should all work on, not only on what the judicial branch does, but on how to improve the perception of the judicial branch. We can work all our lives on improving the judiciary, but if we do not also work on image, we are never going to accomplish anything. Image is very important and we should give emphasis on working on that aspect.

So, that is the Honduras perspective. There are advantages and disadvantages of being the last speaker, but I think that I have been able to communicate to you, even if just a little bit, about what we do in the judicial branch of Honduras.

KOZOLCHYK: Really, I ask for forgiveness from all of the participants, but I had a very imminent order from the organizers, who wanted to end at 12:45 sharp for lunch. I think that judging simply from the quality of the presenters, that this is an excellent example of why Judge Messitte has such optimism. I will say that, with such participants like the ones we have, the future of the judicial branch in Latin America is in good hands and there is good reason to be optimistic. Please, applaud for all of the participants. And everybody has told me that if anyone asks, they, individually, at the end of the session, they will attend to your questions. So, thank you very much. Lunch will be served at the end of the hall. The next session will start approximately at two o' clock in the afternoon. Thank you very much.