

JUSTICE REFORM IN MEXICO

UCSD - CSIS

July 16, 2004

INTRODUCTION

Armand Peschard-Sverdrup: Good morning, everybody. My name is Armand Peschard. I am the Director of the Mexico Project here at CSIS. I'd like to welcome you all to CSIS this morning for what I think is an interesting event and a very timely one at that.

For us, it's also a real pleasure to be co-hosting this event with UCSD and with my good friend David Shirk.

David, I don't know how I introduce you, because I know you're at the University of San Diego, but you also have, I guess, still an affiliation with UCSD.

David Shirk: Correct. Project Coordinator for the Center.

Armand Peschard-Sverdrup: Project Coordinator for the Center, for the Justice --

David Shirk: Project Coordinator for the Project on Reforming the Administration of Justice in Mexico.

Armand Peschard-Sverdrup: Well, this is the first time that we've co-sponsored an event with UCSD and with David, but I hope it's the first of many in the future, given the quality work that they do.

You know, it's always difficult for us to get started on time. I was telling somebody earlier today that everybody talks that Mexicans have this reputation for always being late, but I think that Washingtonians have surpassed them. I've tried starting events at 8:30, people show up at 9:00. We've tried starting events at 9:00 and they show up at 9:30, but we are going to get started, even though I know that people are going to be coming in and out throughout the day, simply because we have a very busy agenda and we need to stick to it.

David, I don't know, I thought that we would introduce the discussants as they come along in the agenda, just given the fact that there are so many discussants and if I introduce them at the outset we're just going to get off schedule, but I am also very delighted that aside from the discussants we are joined by numerous friends:

JUSTICE REFORM IN MEXICO - 7/16/04

Francisco Guerrero, who is the [in Spanish] chief of staff to the PRI faction in the senate is here with us.

Alejandro Diaz de Leon, who is the former attorney representative of the Office of the Attorney General here in Washington, who is now at the OAS, is here.

William Duncan from the State Department.

So I think we have a good group of people and I know that it's a long event and people are going to be coming in and out.

Why don't we get started, David? And I don't know if you want to introduce -- since you've worked with him very closely, Arturo Arango and Pablo Piccato or if you want to say a few words?

David Shirk: Absolutely. I think I'll start out with just a few words to try to frame the discussion a little bit

First of all, on behalf of the Center for U.S.-Mexican Studies, I would like to welcome all the participants in today's roundtable and everyone here.

I'd like to thank Armand and Sara Rioff and the Center for Strategic and International Studies for co-sponsoring this event. Again, this is our first, I hope, of many collaborations to come.

I would like to also recognize the very generous support of the William and Flora Hewlitt Foundation, the Tinker Foundation and others who have helped to support this event, including UC MEXUS, as well as to support the Project on Reforming the Administration of Justice.

The Project on Reforming the Administration of Justice, which I coordinate, has involved many of the people who are at the table today and I'm very pleased to see that we've been able to bring together many of the most knowledgeable experts on Mexico's justice system, including public officials, academics, representatives from the private sector and from the non-profit sector.

I think all of us here share a very deep interest in promoting the rule of law and the effective administration of justice in Mexico and, as Armand said, this is an extremely timely theme for Mexico in light of recent events.

What we know about the administration of justice in Mexico

JUSTICE REFORM IN MEXICO - 7/16/04

is that there is a tremendous disconnect between on the one hand the demand for justice and on the other hand the response of Mexico's public authorities. Throughout the 1990s, concerns about crime and corruption ranked among the top priorities, actually, as the top priority, of Mexico's citizens, but at the same time this was accompanied by an intense dissatisfaction with and a distrust of Mexico's public officials, above all, law enforcement.

There's an excellent new book out in Mexico by one of our present presenters, Guillermo Zepeda, that makes precisely this point, that effectively there is a gulf between what people want from the justice system and what the justice has been able to provide.

Until very recently, these concerns have been expressed primarily through a kind of apathetic resignation to the state of things, to the harsh realities of crime and impunity in Mexico. All of that changed last month with a huge, major demonstration of public discontent with Mexico's public justice system.

Over 250,000 people marched through the streets of Mexico's capital to demand a more effective justice system. As well, in Tijuana, just south of San Diego, we had thousands of people in the streets marching, particularly responding to the murder of Francisco Ortiz, a journalist in Mexico just a few days earlier.

The interesting thing here is that this public outrage, this boiling point that Mexico has reached on the issue of justice, comes just in the nick of time, so to speak, just at the moment that Mexico's congress is debating a major reform package proposed by Vicente Fox and of which you have a summary very nicely prepared by CSIS as the basis of our discussion today.

So I think our goal today really is to analyze the diverse rule of law challenges that Mexico confronts, but also to really think about what the prospects are for political reform and the improvement of Mexico's justice system.

As I said, much of this discussion and many of the discussants here today participated in a major research initiative that we began at the Center for U.S.-Mexican Studies. We began an initiative that involved scholars from many different disciplines and from many different institutions in Mexico with the idea that the best chance for reform is one that is informed by a multi-disciplinary perspective and that takes on not just one piece of the puzzle.

You can't fix police in Mexico and expect the justice system to start working because you'll be throwing prisoners into

JUSTICE REFORM IN MEXICO - 7/16/04

inadequate penal facilities. You can't fix just the lawyers and expect everything else to work. So the idea of bringing together such diverse perspectives on the issue of justice reform has been to help to provide a comprehensive picture of where Mexico's justice reforms need to move.

So I think today's discussion really will help us to very nicely address a number of key questions:

First of all, what are the fundamental causes of Mexico's perceived crime way and what are the indicators that we have to really evaluate the functioning of Mexico's justice system? I think our first panel will do a nice job of doing that.

Secondly, what are the challenges that they face in Mexico in terms of the legal institutions and the actors within the judicial system, within the legal system and to what extent can their capability be improved?

Thirdly, how do the current reform initiatives help to address these problems and, frankly, what are the prospects for these political reforms, given the state of Mexican politics today in which there is at least the perception of divided government that can't get anything done, where the president's party is in deadlock with an opposition-dominated legislature.

Incidentally, it's important to mention that this legislature has passed more legislation than any other legislature in recent memory. It's one of the best kept secrets in Mexico, that this legislature has been very productive in quantity. The question, of course, is what is the quality of the legislation that's produced and that's, I think, part of what we need to get at today in looking at the substance of the justice reform package that stands before the Mexican congress.

So without any further ado, I would like to introduce Arturo Arango and Pablo Piccato. Both Pablo and Arturo are experts in Mexico's crime -- well, so many of the people here today are experts in criminal issues and criminal justice issues in Mexico, but Pablo and Arturo have the distinction of having created two very interesting and sophisticated databases of criminal indicators in Mexico and I think they will provide us with an excellent perspective on both the trends in crime and also the problem of collecting crime data in Mexico.

So without any further ado, let's begin with Arturo Arango and then Pablo.

Armand Peschard-Sverdrup: Let me just make one quick comment which I forgot is that we do have translation equipment

for those that don't speak either English or don't speak Spanish and the translators are going to be handling both languages, so if you need to get up and get a little handset for the translation, I suggest you do that.

And the other thing is that the format, even though it's not mentioned clearly in the agenda, it is going to be very interactive, for those of you that come to our events. We are going to have the discussants start off the discussion with presentations commenting on each theme, but then we are going to open it up and allow people to participate, either ask questions or make comments, and try to get more of a discussion going.

Arturo, please.

CRIME INDICATORS

Arturo Arango: Thank you. Is it okay if I talk from here?
(Inaudible.)

There's no microphone? The microphone is not on?

Okay. I'll start again. I don't know if you heard what I said. Good morning everyone. My English is not excellent, so I'll be speaking in Spanish and I'll speak slowly for the benefit of the interpreters.

In one way or another, we know that the issue in Mexico is that the measures that have been taken are traditional in the sense that the objective should be to prevent crime, not to prosecute crime. Prosecuting crime is necessary, but it's not sufficient.

We think the only way that crime can be reduced is for the government to reduce insofar as possible the reproduction of the conditions that foster criminal conduct. That's why we need to work with schemes other than the traditional ones. That is to say we should not allow there to be harshening of penalties. We should not allow more police to be hired or more weaponry to be purchased or equipment to be purchased if it's not proven that this is strictly necessary.

Yesterday, I was reading in the newspaper while on the plane that President Fox has just allocated another billion pesos to public security. When we put good money into the bad, to use an expression that we use quite a bit in Mexico, that's just squandering money.

In other words, if we don't have a new preventive method, if we don't carry out profound changes in the way in which we think

JUSTICE REFORM IN MEXICO - 7/16/04

and act or how those in public security at all three levels of government think and act, then the money that we spend on public security is money thrown away.

Why? As David said, and quite rightly so, in his remarks, there is no timely and reliable information. If there's not timely and reliable information at this time, it seems to me that the authorities are like the pilots of an airplane without any instruments, where they're just flying in the fog. They don't know where they took off from, they don't know where they are, and they don't know where they want to go.

And so we worked on the system that David Shirk referred to. I did this with Christina Lara [ph], who is sitting beside me, the two of us came up with this system.

Now, what was the thinking behind this system? Trying to find the rationale for government decisionmaking in public security matters. When we analyzed the information, we realized that there was no rationale and so with support from the University of California and the National Institute of Criminal Sciences, we began to look for statistics and to try to figure out what they were and what they said.

We found that the existing statistics were not concrete, they were irrational, contradictory. One year, there would be information; the next year, there would be no such information; and then the third or fourth year, it would reappear but under other categories and other concepts. And so we set out to put the information in some kind of order and hence the book that was published by the University of California.

So our proposals are very clear and concrete. We have a document that we will be leaving here with David and I'm going to change the order of the recommendations.

Under recommendation 14, we had said that an immediate audit should be carried out and a reliable audit by a non-governmental institution of public spending and public security. In rough data, we found that from 1997 to date, the public security institutions had spent 150 billion pesos. This is a huge amount of money: 150 billion pesos.

Now, if we add it up, we see that this is a bit more than the full raproa [ph] was begun with: 150 billion pesos from 1997 to date.

Now, I would ask has crime gone down? It has not gone down. It has not. In 1997, when money was first spent through the national public security system, 2 or 2.3 billion pesos were

spent, that's what the system started out with.

Now, 2 billion pesos, to take crime from one crime to .9, it required an additional billion pesos, so we brought crime down by one-tenth by spending another billion pesos and then to take it from .9 in 1998 to .89 in 2002 meant going from 1 peso to 6 pesos and 50 cents. In other words, bringing down crime by one-eleventh required spending 4.5 billion pesos. It doesn't make sense.

Now, the authorities now decide to put more money into something about which they have no idea what to do, so it's necessary to create -- and this is the proposal -- a system for compiling, managing and analyzing information.

Now, in this regard, and Rafael Scaraga pointed out quite rightly so, that nothing at all can be done to fight crime if a necessary mission is not carried out, which is to study and really understand crime. It's an inevitable step. If you don't know how big a toad is, how far it jumps, where it lives, how it lives, then you cannot figure out the whole history and path. If we don't have a cogent information system, it won't be possible to address any of the other matters.

To have an information system, what do we need? This is our third recommendation. We need to have a regulatory framework that makes it binding on all public security institutions of the country to provide information. At this time, if we ask for statistical information, raw data, numbers that can describe the scale of the tragedy we are undergoing in Mexico, the public security institutions tell us officially that that information endangers national security and that it won't be until 12 years from now that we're going to be able to get that information.

It's not possible. It's not possible for them to ask us to write a blank check to give them more money and that we, as citizens, are not going to be able to know how the money was spent for another 12 years.

So there needs to be a requirement in the law that each public security institution should provide information to anyone who asks for it, whoever that person might be, in proper time and form.

Once the obligation is established that it's required that information be provided, our third recommendation is that an institution be created to centralize all of the information provided.

Why? Well, while the law establishes that the national

public security system is the one in which the information should be centralized, in fact, we find that this doesn't happen with the national system and perhaps that's why they don't provide the information, because they don't have it. They don't have the information that is supposed to be centralized in the national system and we asked for information, they didn't provide it to us, but even so we got information from 1997 to 2002. It's published in the book from the University of California.

We often find that it's contradictory and we carried out a study with the state of Chihuahua to analyze the deaths in Ciudad Juarez and we found something terrible. There are three accounting systems in public security statistics: one provided by the national public security system, another provided to the national conference of attorney generals and yet another which is used for budget purposes. So we would have to take an average.

Now, I don't know as a statistician or mathematician what would have to be done, but what I do know is that order needs to be imposed. There needs to be coherence in the decisions. There needs to be an institution that is not judge and party. It cannot be the INEGI. INEGI has proven that it is incapable of doing so. It cannot be the national public security system. It is has also proven that it is unable to do so. So it has to be something similar to the National Commission for Human Rights which is accountable to the congress and to the citizens. That would be our third recommendations.

It is clear that each and every one of these recommendations can only work if we have a centralized system for the collection of information. I think the other recommendation we have is that each one of the law enforcement institutions at the different government levels should have a system, a small system as it were even, that has to do with the information shared by the parties and also by the citizenry and the government. The information should be collected and that information should not be manipulated in an improper manner.

We would want to avoid all kinds of problems with information and that's the way that we look at the situation. We don't want any loosey-goosey with the information, so to speak. So recommendation number 6 is that on the basis of the information, of this information that we have collected, then we can go ahead and evaluate or assess the actions taken.

The other recommendations I'm going to leave for later to discuss at the table, but we have found right now that President Fox has a 10-point plan. These are 10 points that are quite interesting. He proposes a meeting with a committee made up by governors. He proposes a meeting with the National Council for

JUSTICE REFORM IN MEXICO - 7/16/04

Public Security to see what happens and what are we going to do. He proposes a new meeting and holds it to see what happens. So in the 10-point plan that he has, he hasn't done anything, really.

One billion dollars to create an information system? Since 1997 up to now, 80 billion pesos have been allocated to this system. A communications system should have been created and it's not there. A personnel recording system is not there. So where was the money? Where are the 80 million pesos? Where is our money?

Thank you very much. Thank you very much for you patience. Thanks.

[Applause.]

David Shirk: ... extensive work gathering crime statistics. Pablo is an historian and has constructed a database of the crime indicators from the 20th century, essentially 100 years of crime statistics in Mexico.

Pablo?

Pablo Piccato: Thank you very much. I guess I will just continue with talking about the problems of what we know and don't know. The historical series that I compiled have contained information from judicial sources during the 20th century. That is, all the numbers for people indicted and sentenced in all the states in the country and they are not perfect, there are many problems with this kind of statistics, but I think they are the best we have, at least in terms of the debt, the historical debt or ability to really assess the impact of policies.

This is why talking about statistics should always be considered in comparison with the perceptions of crime. My information shows that the rates are not so high as they used to be in the earl 1930s. The number of people sentenced and indicted for different crimes is not so high as it was after the 1929 economic crisis.

It has decreased for most of the 20th century and it increased in the 1980s and 1990s, but the levels are stable if we look at the big picture. It's not the crime rates are going up in the way we would think just by listening to what people say in the streets. So there's an obvious contradiction between what the numbers show and what the perception of civil society is.

So I think that if we are going to look at the proposals, first, the package in front of the Mexican congress and the other

JUSTICE REFORM IN MEXICO - 7/16/04

ideas that we have been discussing in the context of the project sponsored by the U.S.-Mexican center, the first problem that we should face is how to deal with the obvious politicization of the fear of crime that we are looking at these days, the way in which this is used politically.

I think that all the information we can compile will only be as good as the questions we are asking and if we don't address these obvious political problems and the consequences of this politicization, the information will not be very useful.

What do I mean by this politicization of gun control? First of all, that we see the obvious reaction, increasing penalties. This is something that comes up, the death penalty, 70 years instead of 60 years. These are cheap proposals, effective politically, but not in terms of policy. It's obvious that there's no attempt to rehabilitate inmates any more, that's not just in Mexico, it's an idea that is losing currency and obviously the increase the length and harshness of penalties is not useful if the certainty of being convicted or being caught is not increasing at the same time, so it doesn't matter if I get that penalty if they don't catch me anyway.

So this politicization means that the policies driven by short-term goals and Arturo puts it very clearly, there is no way to evaluate the impact of these policies.

So what do we need to do? I think that obviously like Arturo said, the official data needs to be centralized, systematized, organized. The project in front of the Mexican congress contains the creation of a Central Nacional Informacion de Seguridad Publica that would compile the information from the municipal, state and federal levels and establish four databases, one of law enforcement agents, the other is indicted individuals, the statistical information, and another database with the resources for law enforcement.

This sounds very good. I don't know if it will ever be reality, I guess we should ask other people here, but I think that's not enough. Even if we have that accurate, systematized, centralized, official information, we still need first of all surveys of victims and criminals, systematic, long-term surveys with a broad universe based on interviews, self-reporting, but also victimization. Only if we have that information we can look at the official data and check it for accuracy.

If we just talk about this judicial or police statistics, we are only measuring the state's interest in crime. How can we know that there is really a correspondence between those numbers and what happens to people?

JUSTICE REFORM IN MEXICO - 7/16/04

So I think those surveys need to be funded on a very systematic basis by the state, they need to be autonomous and they need to go on for many years so we can continue to evaluate these policies. How many people are actually victims of crime, even if they don't report it to the authorities, how many people who commit crimes commit crimes again, trying to follow the careers of people. That's been done in other places and I think it would be very useful.

The other proposal very briefly that I think would be very useful to add to what we have is the organization of research projects that combine all this quantitative data that we are compiling and could compile from surveys with a local perspective, looking at places where law enforcement doesn't work, like Mexico City, but also looking at places where it does work, trying to contrast states and localities in Mexico to see what is happening in certain places that explains the fact that crime is not such a central issue there.

This is very important, I think, because the project that is in front of the Mexican congress contains very interesting ideas about what is called *justicia alternativa*, alternative justice, basically trying to find informal ways to negotiate conflict between victims and suspects. What the project says is the law enforcement agents will try to recommend to the victim to have a meeting with the suspect and discuss the issue and try to find first a way to restore the property or the security or the sense of security of the victim, but also to avoid entering into the judicial system with all that implies.

This is a very interesting idea. I think it deserves more discussion because, first, there are examples in other countries where this works, where what is called restorative justice is a very interesting options for certain crimes, usually minor crimes, but the kinds that amount to the greatest number of cases in front of the judicial system; meetings where a professional mediator will try to achieve a solution that will be acceptable for the victim and, this is what is not contained in the project in the Mexican case, the community. There needs to be a representative of the community, however we define it, as part of the process, to make this restoration something meaningful, not only for the victim.

Why is this interesting? Because based on my work as a historian, I see that that is the way things work in Mexico anyway, even if the state is not sponsoring it. We have negotiations between victims and offenders constantly going on before the police are called, before the justice system is involved. Everyone in their right minds will try to avoid the

police if they can solve the problem through a negotiation, by basically usually just recovering the property that has been stolen.

So I think that through localized studies, we can in some way recover this dimension of everyday justice in Mexico and try to apply it to this project that is in front of congress. I think the project mentions the regulations that will accompany the law when this is passed. I think that's the place where this needs to be first of all discussed and then perhaps introduced.

I think that this is important finally because if we are going to find a long-term solution or try to improve the situation of security in Mexico, we have to look beyond the state because the information clearly shows that the more the state spends the more things remain the same, so how to go beyond that simple equation of pouring more money, longer sentences into the problem when we know that civil society has been dealing with this for a long time on its own pretty much.

Again, the information should be compiled, it should include surveys that are not centered in the institutions but go directly to the victims and the criminals to try to find information, and studies that show us how things work in everyday life and whether that can suggest a solution to the problems that we have.

And, obviously, all of this -- and it's something that is not clearly stated in the project -- should be shared between the state and civil society. There should be a way to make sure that the government will show all this information if it's sponsored by the state so civil society can discuss this and we can have greater debate before these laws are voted, which we haven't had yet, I think, in Mexico.

And, I think more important, that could help us educate people about these issues, could help discussing but also sharing with the population in Mexico the reality of crime as a social problem, the reality of everyday life and the institutions that face crime and I think this will be very useful if we are going to go beyond this political manipulation of fear that is taking place these days in Mexico.

David Shirk: I'd like to sort of provoke a little bit of a discussion and get things started by asking really what is the reality or what do we know about the reality of crime in Mexico?

I made reference in my opening remarks to the new book by Guillermo Zepeda, Crimen Sin Castigo, Crime Without Punishment, and I think one of the things that is a consistent theme, really, in all of the work that both Arturo and Pablo have done but also

the work that Guillermo has done is that effectively, number one, we don't really have very good indicators about crime, there is the famosa cifra negra in Mexico, which is sort of the unknown statistics, the huge number of unreported crimes, but according to the estimates of Guillermo Zepeda and the ICESI, the Instituto Ciudadana de Estudios sobre Seguridad, which incidentally I'm sorry I didn't introduce Arturo properly, Arturo is here representing today.

According to the 2002 study by ICESI, out of every 100 crimes in Mexico, an estimated 25 of those crimes are reported. In other words, one in four crimes is reported in Mexico. Of those 25 out of 100 crimes that are reported, about 4.4 percent are investigated to conclusion. Of those 4.4 that are investigated, approximately 1.8 --

Is that right, Guillermo?

Are sentenced -- or, I'm sorry, are brought before a judge. And then of those that are brought before a judge, 1.6 ultimately wind up being sentenced. In other words, once you're brought before a judge, you have a very high possibility of being convicted. Unfortunately, less than 2 percent of the estimated number of crimes that are that occur in Mexico are actually brought to trial and punished.

That sounds really frightening: over 90 percent of crimes in Mexico essentially then go unpunished.

But how does that compare?

I'd like to provoke Guillermo Zepeda to maybe make some comments. First of all, how does that compare? In the United States, 22 percent of crimes are resolved, according to the FBI uniform crime reports. Only 22 percent of crimes are cleared, and that's the language that's used, either through arrests or through unconventional means, such as shooting the perpetrator, perhaps. But when we break it down, when we look at what kinds of crimes are resolved, the picture changes.

In the United States, although 22 percent of crimes are resolved, over 60 percent, about 68 percent of murders are resolved. And so when we look at Mexico, I guess my first question is, first of all, is the scenario so bad that 90 percent of crimes are unresolved? Are there some crimes that are easier to resolve than others?

And, secondly, is there really a crime wave in Mexico or is it a perception that's generated largely by the inability of law enforcement to effectively resolve more crimes? In other words,

is the perception of a crime wave really just a reflection of the public's perception of law enforcement in Mexico and the high levels of corruption and impunity that we see there?

So hopefully I've provoked Guillermo to initiate the discussion and some of you to join in.

It will pretty much be a free for all. If you are interested in making a comment, put your microphone on or signal and we'll try to keep some kind of order.

Guillermo?

Guillermo Zepeda: Yes. Thank you very much. Good morning, everyone.

Indeed, yes, public insecurity and impunity in Mexico is really a very remarkable problem and I share the point of view of those who spoke before me and CIDAC, one of the institutions that started these surveys a few years ago, since 1994, we see that public security and information are very important topics.

There have been some inconsistencies and we have seen some statistical miracles in Mexico, however, and it is getting harder and harder to validate information when you cross information provided information by the attorney general's office with the information provided by the justice system, two or three thousand people fall by the wayside. So you have to be very careful with the information that you look at.

In a study that we conducted, we actually looked at the numbers coming from a number of states, but we also looked at statistics in a very, very specific manner. I think quantitatively, there are problems when it comes to crime rates.

In 2002, we saw an increase in reported crimes. Seventy-five percent of the crimes reported then -- well, actually, that was 75 percent more crimes reported compared to 1999, so we talked about this black number, so to speak, these are unreported crimes. Also, when we talked about these unreported crimes, when we started saying that in Mexico 60 percent actually of the crimes were not reported, we also knew that 60 percent of the crimes in the states is not reported.

Now, when we look at the responses by the survey takers and we analyzed them, comparing Mexico with the U.S., in the U.S., 50 percent of people say that they did not report the crime because the crime was not important, it was just an attempted crime, so the victim himself decides when to report and when not to report, but in Mexico, people think no, authorities are not

JUSTICE REFORM IN MEXICO - 7/16/04

good, it's a waste of time, why am I going to report this crime?

So when we look at crime rates, this has been recognized both by the authorities and it is the perception of the citizenry.

Now, we have to be very careful with these things. At the international level when we carry out a comparison between countries, we look at an indicator, an aggregate indicator, how many matters come into the system and how many of them are sentenced. We do this because of the different systems that exist in different countries. Some of them resolve their crimes in the police, others have investigative judges, but in Mexico we obtained information in a different manner. It is broken down, so to speak, so everything has to do with the people that end up in jail, so this led us to conduct a study on impunity in a more careful manner.

So 7 percent of the reported cases have to do with cases where the victim was set free and then another number of cases had to do with when the perpetrator was actually caught. And so we look at the cases that start as preliminary inquiries and then we look at the end of the line and then we look at those crimes that were cleared up and those that were not cleared up, so we're looking at 18 percent of reported crimes. So if we look at unreported crimes, then this number increases, so I think 18 percent of those cases are cleared in Mexico. So this is a general indicator that we're using, it's a crime-by-crime indicator.

When it comes to murder, this crime is actually does not really have to do with the complaint put forth by an individual, but the state has a say in it, and so when it comes to intentional murder as opposed to unintentional murder, then there's a variation in connection with the way in which these matters are cleared. So when it comes to intentional murder, 18 percent of intentional murders were cleared and 16 percent of unintentional murders were also cleared, so these are the numbers that we have and we're going to give you more numbers as we go along today, just based on the diagnosis that we have carried out.

Sigrid Arzt: ... for a couple of points that Arturo made, especially with regards to control of information, the creation of databases, the politicization of the use of these databases, the research that at least our organization has been producing, notices that there is no control over who is the one that establishes first line what to classify as a crime or to let out other possibilities as not being a crime. So we are starting with deficiencies from those who are accumulating the data and

then we have all these historical problems that everybody is playing with numbers and they are playing in the agenda of concentrating information.

One of the promises of the Vicente Fox was we are now going to know that federal crimes are going to be public, are going to be put on the webpage and while historically the PGR, the attorney general's office, has always given data on the crime against drugs, well, will that mean that for the first time we will know about the crime against drugs, about the crime against the control over traffic of illegals, about forfeiting? All these other 400 federal crimes that at least the federal level police is supposed to be combatting, no?

There is all this money that has also been put into the system and the unfortunate thing is that we already know all these deficiencies, but we don't see the political cost over those persons that have been historically responsible because many of these figures have transcended the administration from President Zedillo to President Fox and still the level and problem of perception of the problem is tremendous. So we do have to at least set a number of lines from where are we truly going to start because if we as Arturo was mentioning, now we are going to discuss about concentrating a new national public security database, well, we were supposed to apply that since 1997. Where is all that data and who has used politically these data not to work and bring results to the rest of the society?

So we truly shouldn't put aside these firsthand start points over the size of the problem, which we don't really know. I wouldn't say that the authorities are completely blind about the size; simply they don't probably make public the size of the problem because they are already overwhelmed with the political pressure, with the perception of the volume of the problem, but it is a reality that there is a serious decomposition of the security system.

Thank you.

David Shirk: I'm sorry, I didn't introduce Sigrid properly. Sigrid is from Democracia, Derechos Humanos y Seguridad and the study that she mentioned is from that organization.

Ernesto Lopez Portillo from the Instituto para la Seguridad y La Democracia, INSYDE.

Ernesto Lopez Portillo: Thank you, David. I have just two comments. It seems to me that what Sigrid just said is fundamental in terms of the absence of political costs, but if we expand the perspective a bit, we need to relate the lack of

political costs to the lack of checks and balances making it possible to subject to filters of rationality, the different actors' decisions. In other words, the example of two days ago in which the National Public Security Council was seated and there was not a single actor opposed to the decision to increase the funds.

Well, this for me is a new sign that the political actors are reading in this matter in a political code and they don't want to assume or they can't assume the costs of putting the center of decisions up for debate which is tied to resources.

Not only are there no political checks and balances, there are no social checks and balances either. That is to say society has yet to articulate a democratic proposal in terms of public security and criminal justice. Consequently, the circle comes all the way around in that the decisions reflect inertia and there are no costs.

My second thought is that I think that it is important in the course of this discussion that we not identify the problem of insecurity with the problem of crime. Public insecurity and crime are not the same thing. Public insecurity is the result of a whole set of objective and subjective factors, among which crime plays a special role. Proof of this is that society may feel more insecure even when there's a downward trend in crime and society might feel safer even when there's an upward trend in crime.

Some very interesting models for addressing this problem such as the Bogota model have at their foundation the building of a system for social coexistence that would be a very effective force to contain and reduce pressures on the criminal justice system, going back to the first thing that Arturo was saying.

The criminal justice system is a resource or it's the resource of last resort, formally speaking. There is great confusion because Mexican society and the political actors, the media, social actors, have all clearly identified the task as fighting crime, so much so that any preventive policing model maybe called preventive, but it's used to fight crime because nobody knows what preventive police do under democracy. It's not known that preventive police have the potential to build a system for coexistence as happens in advanced policing models, particularly community policing.

So I raise these issues with the possibility that they might be further debated.

David Shirk: What kinds of crimes are we really talking

JUSTICE REFORM IN MEXICO - 7/16/04

about? What are the kinds of crimes that are contributing to, as Ernesto puts it, I think very well, public insecurity?

Mexico in the last ten years has experienced a number of very high profile kinds of crimes, very highly publicized crimes, like the murders in Ciudad Juarez, like the recent assassination of Francisco Ortiz.

Are these the kinds of crimes that are typical in Mexico? I don't think so. When you look at the studies that many of you have produced, that Guillermo has produced, for example, we're talking about large numbers of property crimes, large numbers of not necessarily violent crimes.

The murder rate in Mexico is about 18 per 100,000. That's not very different from many other Latin American countries and worldwide. I mean, it's much less than Brazil.

Voice: Actually, Mexico is twelfth place.

David Shirk: Twelfth place. Okay.

Voice: Very different from Salvador, Guatemala, Colombia and Brazil.

David Shirk: Exactly. Exactly.

Voice: So just to consider that.

Voice: I was just in Ciudad Juarez. We had a lengthy agenda. None of the actors with whom I was talking said that the problem of the deaths in Ciudad Juarez were the problem of public insecurity in Ciudad Juarez. It's extremely complex.

The outside actors say that is the problem in Ciudad Juarez, but if you get into talking with the local people who are involved, some say yes and others no. Some people are very bothered to see that this is identified as the city's problem when they consider the insecurity problem to be something else.

A question was put to a large group, do you believe that resolving the problem of the deaths in Ciudad Juarez is the main problem or is resolving the problem of police corruption the main problem in order for you to feel more secure.

This question has its problems as well, but it leads people to analyze and they didn't say that it was the issue of the deaths in Ciudad Juarez that had to do with their feelings of public security or public insecurity.

Alberto Concha-Eastman: My name is Alberto Concha-Eastman. I have an advantage, perhaps disadvantage here. First of all, I don't work in the judicial sector, I am an epidemiologist and physician with the Panamerican Health Organization, World Health Organization, and I'm pleased to be sitting around the table with colleagues from other disciplines to address the same topic.

My first comment is that I find that I share much with what you, particularly the Mexicans, are saying and what the World Health Organization and Panamerican Health Organization is proposing in terms of working on the whole problem of violence and insecurity worldwide. I think many of you know that two years ago we published the world report on violence and health in which we undertook an analysis of the situation, not only on a world scale, we also made several observations and recommendations, some of which go to what has been said today, but I'd like to emphasize it much more forcefully because I think it needs to be understood in those terms and I'm talking about the need for the problem to be seen as an intersectorial problem, a problem in which the judicial system and the police are insufficient on their own to resolve it.

Where it comes to resolving it without the participation of other social sectors, academic, health care, sociologists and so forth, it's quite possible that the solutions won't be as comprehensive as they need to be.

Mr. Lopez Portillo raised the example of Bogota. That's such an example, a very integrated approach in which various strategies have combined to help address the problem.

My second comment is that I am a bit sad to hear about the lack of indicators in Mexico or, worse still, the lack of credibility of what's out there in the way of indicators. We have had information directly from the health secretariat in Mexico and we have been publishing it, but I don't know if I'm going to continue to do this, showing that the homicide rate has been diminishing in Mexico in recent years.

Now, whether that's actually true, I can't say it as forcefully as I had. It's been raised as an interesting example of how one could work to bring down at least some indicators of crime and violence, but now I am concerned as to how objective this might be.

My third comment has to do with why we, as the public health sector, are involved in this issue. We think that insecurity and violence is clearly a public health problem, not because we deal with the burden in terms of wounded and dead and that there is a greater demand on the health system, it's not just because of

that, but rather because the very concept of public health implies the concept of social development.

The idea is to be able to give people conditions for development and in the context of that analysis insecurity has a directly negative impact on people's possibility of development.

We have the case of Colombia, El Salvador, Honduras. All of these cases show that countries face major problems in terms of development and access to development resources when there is major public insecurity and this has a negative impact on the state, society and family, so I think it very important to include in this debate how that relationship can be taken into account in order to improve the work that is done.

My last comment is that even though I am worried about the lack of credibility in the indicators, I do fully agree on the need for an intense effort to bring about a solid, reliable, timely information system that is really useful and that can feed into effective government decisionmaking.

Arturo Alvarado: Arturo Alvarado also from Democracia, Derechos Humanos y Seguridad and also from the Colegio de Mexico.

The first thing is that if you look at some other health statistics from Mexico and Latin America, and this is a main point, because we're just talking about we have a situation where crime is completely out of control, et cetera, in Mexico and it looks really bad, but if you go to several comparative analyses, then you see that the patterns of crime in Latin America are similar to what we are leaning now in Mexico, this is the first thing, but with very important differences.

The first one is if you go through external causes of mortality, which is one of the statistics that are strong studies, they tell you more or less exactly what is going on at the level of society with health and human conditions and these are not so -- these are statistics that are very -- I mean, they are available, they are more or less reliable, they are constant, and they give you long-term patterns of problems. And if you go to that, as Alberto mentioned, the homicide rate is around 18 and it tends to be reducing during the last six to eight years.

And it's not just that -- of course, they are always clean up the statistics before they send it to someone else and the publish it, that's the job of the bureaucracy, but then after all you cannot just jump -- I mean, the homicide rate does not jump from one year or two years from 18 to 25 unless you are in the presence of either a civil war, a civil uproar or a real conflicting society. So this pattern is really an important thing to consider in Mexico.

JUSTICE REFORM IN MEXICO - 7/16/04

If you go to statistics in Colombia, the Colombia rate during the last five years was like around 65 but now the most worrisome statistics are from Salvador, it's around 67 or 68. It's going down. And then you go to Brazil and then you go to Venezuela and to Peru and then Jamaica and Guatemala and then Mexico is just right up there at the other end of this trend, so this is the most important thing.

Second, if you go to the statistics of crime reports in Latin America, the trends are very different and then you can see -- I mean, you can even compare crime trends in the world and precisely the world report from the World Health Organization about that gives you a real interesting picture of this thing. The more developed the country, the higher rate of reported crime and vice versa. You can go to Russia, you can go to Mexico, you can go to -- I mean, Mexico has had the other end of the crime wave in the world health statistics, but the first thing is that the perception is very contrasting, it's really -- you say something is going on.

I mean, either the government is lying and something is going on in the streets or we have to really think about what is happening with the statistics and with real trends.

For this, I go to the problem of the external process of death because this is related also to police and other public health works and several other social workers in the federal and local bureaucracy. If you go to this thing, external causes of mortality in Mexico has come up during the last 20 years from the place of the fourteenth or the fifteenth place of causes of death to the twelfth and in some states even to the eighth cause of death. So this is an important issue.

This is becoming a major problem. After heart attacks, renal failure and several other diseases or deaths, they just start having this problem. And what is interesting in this statistics is that almost 40 percent of these statistics of external causes of death are produced by accidents. I don't remember the exact proportion, but one important proportion is about traffic accidents.

So we are having a public health problem related to traffic accidents and homicide rates in Mexico City, for instance, more than one-third of the total statistic of homicide rate, external causes of death, is homicide because of traffic accidents, so this is not a police or judiciary problem, this is a problem that is clearly preventive and it's a problem of social interaction. When you don't have good transit rules, when you don't have prevention rules, then you start having these problems. This is

JUSTICE REFORM IN MEXICO - 7/16/04

one thing that has to be addressed, as he said, in a more comprehensive program as public health.

And second, just to finish, just to start putting some issues on the table, we have been discussing that crime statistics are important, police work is important, the judiciary is important, it's like pieces of a puzzle. And if you go to the judiciary work, it looks like it's pretty bad, I mean, there's a lot of impunity, a lot of the crimes go unresolved, et cetera. But if you go to the statistics, the judiciary really works. When it comes up to the judge, it's whether it is good or bad, he just does his job and says this is right, this is wrong and he puts someone in jail, he says someone is innocent. But it is very little from the big picture, as we have been talking about it.

What I think is the major problem here is that we are in a period of time in Mexico -- I mean, together with the democratization period, where the problem of access to justice and the conception of justice is changing and this is the main issue that I think has to be addressed with this thing.

If we consider justice as a public good, what we are having is a crisis of the government performance on providing you access to justice, either from the beginning, from the actions of police, to the other end, which is the judiciary performance.

So what we have to understand is this issue of a changing justice system with a double change: a changing in the patterns of government, political competition is also producing a lot of pressure on criminality and you can see this debate between Mexico City and the president is just one of the issues; but on the other side, at the level of society, you can see that they are confronting conceptions of justice that are undergoing now in-depth proposals of judicial reforms, police performance, et cetera.

You can go from one end like prevention policies to the other end of punishing policy. I mean, someone is proposing the death penalty and they want to do a referendum on that. This is the other end of the discussion of justice. So this is also going on in society, too, and it has to come up in the major picture. That's it.

Voice: The problem, as we've seen in Mexico, is major impunity. As David and Pablo Piccato just said, more than 90 percent of crimes remain in impunity. In our statistics, in our calculations, we found that just less than 2 crimes reported end up in a verdict and the problem is how does the impunity take place.

JUSTICE REFORM IN MEXICO - 7/16/04

We focused in the known crimes on the actions of the public ministry, so what actually comes before judges was already prejudged by the public ministry. As the public ministry exercises a monopoly over the decision to bring a criminal action, they are the ones who decide who will or who will not come before a judge.

In Guillermo Zepeda's initial remarks, he said that he had seen cases in which it had been decided not to bring criminal charges. In several studies, we found that this is the favorite means of spurring on impunity, which is to say the public ministry acts improperly in criminal investigations, deciding not to bring criminal charges or it carries out a criminal investigation and it turns out that it wasn't properly carried out. So since there's no statistics, we don't know how many inquiries there were that were sent back because they weren't carried out properly and we don't know how many of the inquiries that are filed because no criminal charges are brought, we don't know why that was the decision.

In addition, as Arturo Alvarado mentions, much of the violence is due to accidents, but, unfortunately, there's no statistics. We have found -- we did a study with Elena Azaola and we found under recording of homicides. How did we do this? We were looking at civil registry records on deaths due to violence and we saw that there's a difference of about 3000, which is statistically significant. We have 15,000, they show 18,000, so the question is what happened to those 3000? Where did they come from?

Finally, I'd like to point out that in Mexico, for example, what's being proposed does not have to do with access to justice, it has to do with legal reform. In Mexico, there is never justice for victims. Victims don't exist for the judicial system.

Now, there is a call for the death penalty. There is call for the death penalty when authorities don't know what to do or policies of saturation are proposed such as those that are now being carried out where Mexico City and the five states bordering on it are surrounded. They're surrounded and there are violations of the law every day when criminals or citizens who are not criminals are arrested without any judicial warrant and it's said that 25,000 police surrounding the city Pueblo Guerrero and the other states, 168 people arrested.

I'd like to know if those 168 persons who were detained, how many preliminary inquiries are carried out, how many of those are filed, how many of those go before a judge.

JUSTICE REFORM IN MEXICO - 7/16/04

The head of government of Mexico City, Manuel Lopez Obrador, has issued a report where he said our goal is to arrest 18,000 people. We have arrested 7000.

Now, how many of those 7000 are really criminals? And, of those, how many were just people who were being bothered by the authorities who needed to meet specific quotas?

So as Arturo Alvarado says, we need to promote justice, not promote the law. The victim is not interested in whether the person who hit him with a car, to cite the clearest case, goes before a judge. What the victim is interested in is reparation of the damage by the person who hit him and this does not exist in Mexico.

Voice: I am currently a CSIS fellow. Thank you. I guess I'm going to use Spanish just because it seems to be the lingua franca of the meeting, if people don't mind.

One of the complaints that we've heard is that we need statistics. I agree. I think that the most reliable statistics are those on homicides, even though Arturo is telling us that the homicide statistics aren't 100 percent reliable, either, but certainly as a homicide is clearly perceived, we're generally going to have better statistics on them.

The other crime that is relatively well recorded is car theft. There is not clear discernment in the Office of the Attorney General for the Federal District, there are records of car theft, but no distinction is drawn between the car thefts take place with and without violence, which is one of the keys for figuring out just what is going on in this respect.

There is a perception among those of us who live in Mexico that we are experiencing greater violence and I think this is partly through anecdotal evidence. Before 1995, I was never assaulted and from '95 to date, I have been assaulted six times. Now, looking at Mexico City, the experiences have been more or less the same. Everything seems to indicate that one of the reasons why there is a perception of heightened violence is because there have been more and more armed robberies.

Now, what's the difference between assaults or muggings in 2004 and in the 1980s? Well, there were very little use of weapons in robberies or muggings in the 1980s and today it's quite common. That's why the Office of the Attorney General for the Federal District doesn't draw a distinction between armed robbery in car theft and mere car theft. The ability to just make your way into a car and get it started to take it is not

very common and it's very easy to have an armed assault.

So there are certain elements that are going to allow us to have better statistics at a given point in time. Evidently, there are many psychological factors in the perception of crime, but we in the media have also been called into question for bringing about a sense of paranoia, but I think there's a response as well as to what's going in society. Let me cite one example.

In 1997, due to pressure brought to bear by the government of Zedillo, the Nota Roja or Red Note programs began. One was called the Naked City, Televisa had another. We all had these shows that had very high ratings.

Now, when these programs were taken off the air, I said, well, I don't agree with taking the program off the air, but at least since we are the ones who are promoting crime, that was President's Zedillo's argument, now we need to promote programs that will reduce crime. The President didn't look favorably on the observation, but the fact is that the perception of crime hasn't gone down, nor have the indicators of crime gone down. We're clearly experiencing a situation in which with greater or less reporting of crime we are undergoing a situation that we didn't know in Mexico City or other cities of the country in the 1980s and the 1970s.

Now, within this perception, we need to be very careful. I have been four or five times in Ciudad Juarez in the last year and I continue to be surprised at the number of business persons who tell me I dare to go out walking alone at night in Ciudad Juarez but not in Mexico City, even though Ciudad Juarez is known as the most violent city in the country, which is the result, once again, of a misperception on our part.

So I go back to what should be the main issue. We have bad statistics but they are examples that we can follow. If we look at intentional homicides, then we will have better records because that has to be recorded or tends to be recorded sooner or later. Car thefts with violence should be the other indicator.

And I agree with Arturo Arango. If we don't know where we're headed, if we can't gauge the problem, then it's premature to propose measures to resolve the problem.

Voice: I just wanted to make a brief comment. Arturo's and Pablo's remarks I thought struck me because in the discussion there's a sense that clearly there's a lack of credibility and there's a mistrust in law enforcement institutions in Mexico.

JUSTICE REFORM IN MEXICO - 7/16/04

In the case of data collection, Arturo pointed out that they've received all this money for years and have been saying repeatedly that they're going to create -- and Sigrid and I have talked about this for years -- databases. For example, keeping a number or identifying, for example, the number of police officers that work for the various law enforcement agencies or in reporting of crime.

And one of your recommendations was that we stop throwing any money at the problem, right? And that instead, insofar as the indicators, keeping a database with the indicators, that that responsibility be given to an independent entity separate from an official body within the law enforcement system.

And I can appreciate the recommendation and the frustration in that in fact the federal government hasn't proven to be effective in doing so. From one administration to another, more so from one attorney general to another, that's been said to be one of the missions and nothing has ever happened.

The question that I have is how effective do you think an independent, autonomous body mandated to keep the database on indicators, how effective do you think it can be given the fact that you still need the cooperation of law enforcement?

I mean, at the end of the day, you still need the policemen on the beat in Tepito or wherever kind of reporting crime. I mean, I know that it can't be any worse than it currently is and anything would be an improvement, but I'm trying to get to the bottom of your recommendation.

I can appreciate it, but do you think it would be more effective and would it be seen favorably by the law enforcement establishment and would there be a willingness to cooperate with the law enforcement establishment with this autonomous entity?

Or do you think you will just be basically blackballed in that the law enforcement establishment won't necessarily cooperate with you? I mean, you have the model and everything, but you still need that cooperation at the law enforcement level.

I ask this question because in my office, I have a shelf of publications written by every former attorney general, when they leave the post they write a book and detail all the reforms that they would have put in place but they never did while they were in there because for some reason the attorney general himself, being the attorney general, can't impose reforms within the establishment.

So my question is how effective do you think an independent

body can be, given the fact that the problem is still within the law enforcement establishment and you still would require a certain level of cooperation from the establishment?

Voice: If you will allow me, when we look at this, right now we think that by putting money into these institutions the institutions are going to work. What is the paradigm behind all this?

We think that institutions are effective as they were created. However, the way they were created and the money poured into these organizations, well, these things are going to be used for specific programs, programs that actually fit the budget. I have to buy more cruisers, I have to get more policemen, but there are no specific programs for crime prevention.

There are no specific programs that actually say let's bring down the crime rate right here and right here.

Why? Because that's the way the authorities explained the problem. Authorities think that going after the criminal is an end in and of itself and not part of a process.

They were talking about the World Health Organization. If we think of this as a medium, we are going to look for security, we are going to find security and safety. If we only look at institutions from an administrative viewpoint and if we think that they are going to work properly, by looking at them that way, they're not going to work because we're not going to have all the tools that we have for us to solve the problem.

If we don't understand the problem, we are not going to find any solution to the problem, so therefore we think that we have to change the paradigm. If we don't have checks and balances, we don't have a manner of evaluating or assessing authorities, so we need to take them out of the picture. We need to look at a new paradigm, we need to recreate the system.

We talked about this briefly amongst ourselves, not within the institutions. We need to look at these things again. We need to recreate the district attorney's office because the way the institutions are created right now, well, they don't work.

The administration of Vicente Fox passed a ley de transparencia, but what's the problem with the ley de transparencia? It doesn't apply to law enforcement statistics. And part of the problem, I think, is also creating access for non-governmental organizations and researchers who are trying to get access just to the data that exists.

I'm sorry, I'm going to try to get back to some of the people who wanted to intervene.

Ernesto Lopez Portillo from INSYDE.

Ernesto Lopez Portillo: The observations made have to do with something else. They have to do with the process of change, something that's quite complex.

This proposal of changing the paradigm, just like Arturo has said, is marginal in nature in our current system. The proposal that has to do with the building of indicators related to objective assessment, that is also a marginal proposal in our system.

These are proposals that are not based on policy and they're not based on our society, so we need to look at this and we need to look at structural change first and the actors that have to do with structural change.

Now, there's a new debate. It's not a new debate, really, but it's a debate that's become ever more evident and this has to do with those institutions that started the demonstration in Mexico.

Now, there is this difference made between the attention that's put on the victim and the attention that's put on the criminal. There's this idea that the victim has gone unsupported and now we think that the victim has to be supported fully and the criminal has to be left without any kind of support, so this is a difference that has existed for some time, but now this has become a political thing where the criminal has no rights and the victim has all the rights.

I think this is a question of where the system has to go. That's my comment so far.

Voice: The microphone, please? Can you turn on the microphone?

Voice: (In Spanish; no translation provided on tape.)

Voice: Elena Azaola from CIESAS.

Elena Azaola: Good morning. I did not want to reiterate what other people have said, I just wanted to say that I share the thoughts that were put forth here in connection with the fact that there is a lack of information in Mexico and also a lack of good information and data in Mexico and also the problem connected with crime. I agree that we need to have better

information and better data.

I think there are other things that sometimes we lose sight of. I have been working in a number of institutions of this nature. I have been working in prisons, in public security institutions. Sometimes we look at the way the data is prepared and we look at the way in which the data is manipulated and the data is put makeup on, like we say in Mexico, so I think that we need a scheme of priorities, a scheme of priorities that will allow us to find out which is the information that we need.

And we need to ask the right questions on the basis of bad information and we need to have some kind of guidance that will enable us to analyze the data.

Not only do we need data, but we also need some kind of guidelines, some kind of strategic objective, so that we have the correct data and also we have the correct way in which we interpret the data. We cannot be lost in a sea of information.

I just wanted to point out a number of issues that are causes for concern in my view. This is the first issue, the issue of data. I think in our country we have very few experts on these issues. I think this is a new field. We are starting to carry out better investigations, but we need to improve, we need to build specialized bodies that have a strategic and analytical vision and we still have a long way to go in that regard.

I also think that there is another problem that is very important and that has become apparent in the past few years and I am very concerned about that has to do with what Sergio Sarmiento said in connection with the media.

I think the media sometimes has an infelicitous intervention in these topics. I know that the media has a mission of making these things seem, but sometimes they take things out of context and sometimes you have heinous cases, horrible cases, and the media are actually looking at these cases for weeks, two or three weeks.

The Narato case, for example, and we have cases that have to do with marginal cases, cases that happened like once in a blue moon, but this, the fact that the media is going on and on about them, distorts the reality of crime.

And the other issue that I wanted to raises as a cause for concern has to do with the fact that there are a number of players that are coming into the picture. For example, the players that were the ones that called the demonstration that was

held a few days ago. Of course, it's important to listen to players or actors such as these. The authorities have to listen to what these actors have to say.

One thing is to listen to what the actors have to say and a different thing is to give the actors the capabilities for deciding the policies of the country. I think this is really great, really serious, and it's very unfortunate. I held a number of meetings with representatives of these organizations and sometimes these are crime victims.

Of course, we have to listen to what they have to say, but they have no authority, for example, a person that has been the subject of a rape or kidnapping or whatever, these people cannot be authorized to design policies. They have no knowledge to become specialists in crime matters, so we cannot leave the design or the building of these policies in their hands. We cannot do that.

So all these things lead me to believe that there is this lack of clarity. There is no strategic vision in connection with public security in Mexico.

David Shirk: We really do need to move on.

Please introduce yourself.

Charles Kendall: I'm Charles Kendall, International Business Consulting. Primarily, I work in business and government consulting, but I have a separate responsibility and have for decades, it's official, along with 49 colleagues in looking at corruption within federal government and most especially in the judicial branch.

I'm just asking to put out for consideration during the day with the distinguished panelists here behind this would one or several of you discuss or define your definitions of the rule of law? I know our two constitutional systems have differences, but what moral authority and what is the rule of law?

And secondarily, how do the citizens of your country hold accountable judges, attorneys and other government officials? On paper, we say we can in the U.S.A., but in reality we can't.

Thank you.

David Shirk: That's actually a perfect segue to our next segment, which looks at legal actors and institutions in Mexico's public security system.

PUBLIC REFORM

David Shirk: We have with us, as I've mentioned, a number of distinguished experts on police and policing in Mexico.

I would like to introduce for brief comments in this order:

Arturo Alvarado from the Colegio de Mexico;

Sigrid Arzt from Democracia, Derechos Humanos y Seguridad;
and

Ernesto Lopez Portillo, Instituto para la Seguridad y la Democracia.

Unfortunately, in order to keep as much information in the content of today's program we've had to avoid the standard coffee breaks, et cetera, so if you do feel the need to move about the cabin, please feel free to do so, of course, trying to minimize the distractions and so forth of the discussion, but we're going to charge ahead until our working lunch at noon.

With no further ado, Arturo Alvarado, por favor.

We're going to go in the order of the presentation, unless someone else --

Arturo Alvarado: Right. Just five minutes, right? I have five minutes? Five minutes, is that what I have?

Voice: Well, supposedly, yes. Supposedly, it's five minutes.

Arturo Alvarado: I just wanted to talk about -- we wanted to talk about, actually -- about the role of police and the role that the police plays within the justice system. The police has two duties: prevention, according to the constitution, and also persecution of crime.

So what is the role that the police has played in the political system and in the judicial system? We know that the police has had a number of political functions and also the way the police developed historically in Mexico was quite authoritarian because of the authoritarian kind of regime that we had in Mexico.

Then the police was in the past controlled by the opposition, but right now we have a number of police bodies that

JUSTICE REFORM IN MEXICO - 7/16/04

are coordinated by political parties and other entities. For example, the presidency, other parties and the PTR.

For example, the police has to be under the executive branch of government and this the way things work. We have to bear this in mind. The police is a public entity that reports to the federal executive branch or to the state executive branch, so the police rather reports to the governor or to the attorney general of the republic or the states and the district attorney's office has a direct relationship with the way the police works.

So who are the police in Mexico?

If you look at the federal statistics, you look at a problem. If you read the speeches by President Fox in the past few weeks, he talks in one speech, he talks about 5000 preventive federal police, in the other one, 10,000 preventive federal police. In the other one, 3000 of the preventive police. So how many are there?

Well, we don't know exactly. If you look at the Internet and you go and look at the annual report, you see that in the federal police you have between 5000 and 15,000 federal police officers.

How many exactly? Well, we don't know. I have asked a number of times, but nobody has given me a specific answer. They never told me the attorney general's office has so many, the special police has so many and what for.

So how many police officers do we have in the City of Mexico? Well, we have the federal district with 8 million people and also we have the metropolitan area of the City of Mexico. You can say, okay, we have 19 million people, taking one or two people that you know that may not live there or whatever. But anyhow, many police are there in the City of Mexico, in the federal district? Well, that's what we're trying to find out.

Now, we have a list of 37,000 people. Out of those 37,000 people, less than 8 percent are officers, are administrative officers. And then the rest, well, are just police. So we decided that we have about 18,000 and 35,000 under the public secretariat. This is what we call the preventive police.

Then we have what we call the industrial and banking police, about 17,000 officers there, and then the auxiliary police, that we have about 18,000 people. Apparently, the auxiliary police is under the secretariat. So we have a number of policemen in the City of Mexico.

JUSTICE REFORM IN MEXICO - 7/16/04

Now, I don't have the statistics for last year, but the PGR has about 3500 police officers in Mexico City, so we have about 48,000, right?

So let's go back to Mexico City. You see a lot of policemen in Mexico City when you go there, so the preventive federal police has operations within the City of Mexico and if we look at the Internet and things like that, you see that in the metropolitan area you have about 1500 and 3000. And then we have the AFI police, the special police, and that's where the seat in Mexico City, the seat of AFI is in Mexico City. Then you have the military police.

The military police is really important, very interesting. If you look at Mexico City, you have seen military operations or rather military troops that have worked there and they have carried operations. Since 1995, we have had important military interventions in the City of Mexico and the military has been used as a police force in Mexico City. So we just wanted to know how many military personnel, how many military officers have worked as policemen in Mexico.

And then we have the municipal police and the State of Mexico police.

Now, of the 39 municipalities in the metropolitan area, or that are considered in the metropolitan area today, we know of only 12 major ones. Of 12, there's 5000 municipal police. Now, moreover, if we consider that the State of Mexico has 14,000 police -- what's the new police force called? I don't remember the name of new police force in the State of Mexico, it's 14,000, but 70 percent of the judicial problems in the State of Mexico occur in the metropolitan region. One would think that a large number of these police are located there.

So this brings us to about 85 or 90,000 police and then we can add the private police forces to this.

Now, the private police registered with the Secretariat of Public Security number from 13 to 20,000. The problem is one year they say 13,000, then they say 17,000, then it was brought down to 10,000 or 3000 were let go, but the estimates are that there are about 20,000 private police in the Mexico City area.

So this takes us to about 100,000. And there are two or three small private police forces that are not registered, the embassy police, those who contract to others, so in all we have about 110,000 police in the metropolitan region.

Now, to compare this, how many police does New York City or

JUSTICE REFORM IN MEXICO - 7/16/04

Los Angeles have or how many military are now occupying Iraq?

It's a lot, it's a little, 110,000 if you look at it by population. Well, if you look just at the metropolitan region, 110,000, you would have the notion that there are a lot of police, but there are different levels. Each one does his or her own work and there's no combination or coordination, so that's the first point.

Second, budget. Public spending on security in Mexico can be seen in many different ways. I'm going to focus on just two aspects. We're going to look at federal figures. In the expenditures budget for 2000, the administrative branch that is the federal judiciary, 352 billion pesos.

Well, how much is that? Public education, as we know, takes the largest single share, 113 billion based on the payroll for teachers. That's the largest single payroll in the country. So there are two ways of understanding public spending on security. One is considering the Secretariat of Defense as part of this, the other is considering that it's not part of it.

Now, if we set it aside, if we don't consider defense, then you would just add up PGR, Secretariat for Public Security, the Court of Justice DF, and some other courts because you recall there are many dimensions of justice, it's not just the public ministry that prosecutes criminal actions, we have five or six types of justice. There's agrarian, labor -- labor is a disaster, it's way behind in terms of its work -- administrative justice, tax justice, which is another major area.

But if we add up the budget, we would have that per capita spending. For 2004, it's about 190 pesos per person, if we add in the army, this would make it 420 pesos per person, per capita, that is, in this area.

And what is all that for? Well, we'll discuss that in just a moment.

Now, what's happening in Mexico City with the same spending? Spending in Mexico City, the total expenditures budget for Mexico City, and here I would just like to make a clarification, this does not consider various categories of what are in the federal government, it's 76 billion pesos.

Now, this would seem to be very little compared to the federal budget. It's not even the size of the federal education budget, but if you compare it to the various states, it's a country within a country. It's the largest single public budget in the country after the federal government budget and that's

JUSTICE REFORM IN MEXICO - 7/16/04

important. Vera Cruz doesn't have such a budget, the State of Mexico doesn't have it, Jalisco doesn't have it, those are the three largest populations apart from DF.

So without additional subsidies from the national public security system and education, which is the other aspect, it's very important to recall that Mexico City to this day does not pay its teachers. Education expenditures for Mexico City or the DF continue to come directly from the federal budget, which is very important because it has the largest single number of schools.

Of this spending, well, two interesting things should be said in this regard. If you just look at the Secretariat for Public Security of Mexico City and the Office of the Attorney General for the Republic, we find the following:

About 35 percent of total spending goes to these two offices, so there is an important thing to consider: the government of Mexico City does spend on security, if you compare the public security secretariat budget with the health secretariat budget, which would be the second largest one, well, what would a government do that is supposedly a leftist government that wants to provide general access to health, education, and security for all? Well, it spends on this.

On average in the last seven years since the PRD has come in, the leading category of expenditure has been public security. If you add up the Office of the Attorney General DF and the prison system, it accounts for about 10 percent of the interior and security budget of Mexico City, there is a clear problem with the prisons. Then there is a program and a budget for crime prevention, believe it or not. There are other programs for victim assistance and there's monies assigned in the 2004 budget or allocated. And I also looked at who covers security and I'll explain this, but I added the human rights commission into the budget. And that's how it all adds up to 35 percent. So today, 35 cents of every peso spent by the government of Mexico City is on public security.

Now, what's the result? Well, for the federal government, we know. For Mexico City, also mediocre. We know that, too. But let's see just what's happening here.

First, in terms of per capita spending, it's being said here that Mexico City would be spending about 800 peso per person on security. I already told you that the federal government, even adding in the army, it's 420 per person. So it's a two-to-one ratio.

JUSTICE REFORM IN MEXICO - 7/16/04

Then, I did a test. Well, there is no public security secretariat, but there is the Office of the Attorney General at the DF level and the State of Mexico's Office of Attorney General is 40 percent that of Mexico City's attorney general's office. Nonetheless, in the metropolitan region today, 60 percent of the crimes reported are in the metropolitan region, but in the State of Mexico, not in Mexico City. Nonetheless, the public ministry has a 40 percent smaller budget, so the situation is a bit more complex in this respect.

So how is the money spent? It's spent on police, offices, equipment, and so forth.

Now, what accounts for the largest sum of money? Well, as we all know, and this is the problem, it's the payroll. The payroll of the Secretariat for Public Security of the Office of the Attorney General DF, prisons, human rights and so forth, accounts for 70 percent of the total payroll in Mexico City today.

Now, this is important to note and this is the net payroll. This is public data, it's on the Internet, it's clear. So the government of the federal district is spending all this.

Now, who is the beneficiary? If it's not the victims, if it's not the assailant, then it's the bureaucracy. What's happening here is that someone is working quite well and is making a lot on this and that's the bureaucracy of Mexico City like the bureaucracy of the Office of Attorney General and the public ministry.

Now, what do they say when there's a need to fight crime? More money needs to be spent.

And who says it? It's said by the offices in charge of this. So a system that works very well within the bureaucratic framework.

Now, what's the effectiveness? That's the problem. If it's very few, very many, what is the actual effectiveness of police work in Mexico City?

Well, they say only 10 percent of crimes are punished, but if you look at the work of the preventive police and the judicial police, you get a different picture.

What does the police do in Mexico City? Well, you think that the police arrest murderers and so forth. Well, yes, it does that, but that's not all the police do. The police also takes care of drunks. It takes care of restaurants. It makes

JUSTICE REFORM IN MEXICO - 7/16/04

sure that the restaurants and cafes can operate safely, it goes after kids in the street, it extorts merchants in the street, it extorts prostitutes, it takes care of wounded persons in the street. It tries to find runaway children and get them back to their homes and so forth.

The role of the police is very important. It's the first line contact that the general population has with the authorities and it does much more than just prosecuting crime and this is important to understand.

Now, what does the police do in Mexico City? It does two types of work. It has referrals to the public ministry or to a civic judge. That yields an interesting figure: 78 percent of those who are referred by the Secretariat for Public Security from March 2003 to March 2004 went to a civil judge. Administrative breaches, violations of the civic law judge are what is called today the citizen coexistence law.

Now, the other 21 percent are arrests that go to the public ministry, so the preventive police are the first ones -- it's not the judicial police, it's the preventive police who have the leading role in arrests, so this means that most cases, most arrests along these lines, have to do with the work of the police in the streets and this is the largest share of the work done under the public ministry because the public ministry makes other use of the judicial police. So it is important work, even though from any angle it's insufficient, as we've comment.

And, finally, two issues to put into the debate. There is a problem of effectiveness of police work here: is it good, is it bad? It's true that it's insufficient. It's there that there's a lot of corruption. There are problems that are to do more with corruption and violations of the law, but we don't want an inefficient police. What we don't want in particular is a police force that violates the law. This is the main point.

If you analyze the statistics from the human rights commission for the federal district regarding complaints lodged last year, there were 4348 and 48 percent of these were referred to some police entities of the capital. That is to say one in every two cases brought before the human rights commission in the federal district are human rights violations committed by the police, 49 percent. The human rights commission upholds human rights, but it's also a sort of internal audit body for the police. If half of the cases are problems coming from the police, then there is a serious problem in police action.

Now, what are the effects of this or what is important about this? What is important about this is that practically one in

ten police actions in terms of referrals, arrests and so forth end up with a right being violated. Ten percent of the cases or ten percent of police conduct is violative of rights. This is well documented, it's a clear pattern over the last five years in Mexico City. It's a problem that needs to be addressed. The police must not violate the law or violate human rights.

Now, what should the direction of a police reform be? That's the first problem. Do we want to get rid of the police? Well, that's not so easy. Imagine a payroll such as this, once you get rid of them and you put them in the street, you know what's going to happen.

And from that point of view, the second problem is how should it be handled? If the police are capable of arresting a good part of criminals, then we need to step up the capacity of the police, but not the capacity for prosecution, but rather the capacity -- and this is what I was raising going to Alberto's argument -- it's the preventive capacity, the capacity to have a police force that makes it possible to enhance citizens' ability to get along with one another, that is in contact with the citizenry so as to be able to solve most of the problems that people have in their day-to-day lives.

David Shirk: Five, ten minutes, just so we can maintain the discussion.

Voice: Ten?

David Shirk: Closer to five.

Sigrid Arzt: Well, I won't take this as a gender matter. I'd like to thank the coordinators of this conference for this opportunity to raise these discussions and concerns and I would quickly talk about the work that we have been doing on democracy human rights and security.

Our organization was created just over a year ago, Arturo, and in an activity together with INSYDE, we've come about as to chime in on the debate on public security in Mexico. But let me talk about the context in which I think the transformation of the police is taking place.

My study is of the federal police today known as the Federal Investigations Agency or AFI and this is important because the current administration cannot refer to an issue that goes back to a longstanding police structure that has to address three issues.

First, the constant and systematic lack of professionalization on the part of the police and the public

JUSTICE REFORM IN MEXICO - 7/16/04

ministry. There is no permanent plans and project. Every time there is a new administration, there is a new set of rules and new types of operations.

Second, the politicization of the Office of Attorney General.

Third, limitations and shortcomings in the legal framework for guaranteeing adequate operations. It would seem that we have any number of new laws, particularly at the federal level: federal law against organized crime, the federal law on secured goods, on chemical precursors, but in several of these laws, there is no regulation to systematically organize the work that should be done to implement them, particularly the federal police, to carry out these laws or parts of these laws.

What's important for me is that we're at a moment of democratization in Mexico, but this moment is constantly complicated because what we see is the organizations that should provide security are overwhelmed by organized crime, whether an express kidnapping, international trafficking, trafficking in weapons, drugs, undocumented persons, all of these are interconnected.

Now, this doesn't mean that the administration has not tried to one way or another to bring various projects to the table. The first one has been the creation of this Federal Investigations Agency. It began its work in November 2001, but this administration once again carried out an in-depth restructuring of the Office of Attorney General.

I have been expressing concern about this for some time and we've seen the cost of creating a new internal reorganization, new command structures, new bureaucracies, and, as of 2002, we had the organic law of the Office of Attorney General but now great uncertainty has been brought about in the wake of the proposal by President Fox and made public in March because this is another alternative to something which two years ago had been described as the restructuring for the current administration.

Now, as regards to the Federal Investigations Agency, I have to note there have been some qualitative and quantitative changes. I would outline just some of these which were also systematically organized or had their foundation laid in the past administration. For example, the requirement of a series of exams, to have a profile of federal police members, toxicological exams, exams on social milieu, psychological, there's an examination of their assets, they have to have a certain age.

I won't want to compare income to federal police in the

JUSTICE REFORM IN MEXICO - 7/16/04

United States, but an agent can go out, begin his or her work with a salary of 15,000 pesos and the institution says that's not a bad salary because we're giving work to young people and, moreover, it's required that they be single and that they still be living with their families. So their expenditures are not as demanding, they don't have to support a whole family and this was a good starting point, twice what it was ten years ago.

If these are police who are in the federal district, there's not much you can do with 15,000 pesos because the cost of living is so high in Mexico City. Efforts have been made to recruit university students. In the last recruitment drive, they were seeking young people who had completed at least 50 percent of their university studies and this is nothing new.

When a study was undertaken at the federal judicial police in 1994, it was found in their ranks there were many young people, others who were no longer so young, that they had had university studies and the reason they were in the police is because they had another job possibility. So even though individuals are being invited into the AFI from the universities, it's not that these people are going into it because it's the job they want; rather, they see a job market that isn't up their aspirations.

There is also the issue of whether the institution allows students to complete their studies. There have been some fellowships through agreements with private universities, but it's not all that much of an effort that's underway in this regard so far.

Now, we are observing a more systematic application of career civil service. Today, the federal police is not a responsive or reactive federal police force. Rather, it seeks to undertake investigations and it's laying the basis for labor certainty and creating esprit de'corps in an institution that has been tarnished to say the least by political issues because there is a profound culture of politicization of these institutions and this is also inherited from how things operated under the previous regime but we also see that there has been more of a technological platform put in place, greater recognition which was totally novel in the case of the AFI having a special social recognition for those who lose their lives in the operations. This hasn't had that much impact in the media, but it does reflect effort by the institution to give those who are working with it a sense of ownership.

I would like to quickly go over what we are identifying as the major shortcomings and challenges in our study being faced by the police reform in this area that I've been studying.

JUSTICE REFORM IN MEXICO - 7/16/04

First of all, the lack of credibility of the PGR, the Office of Attorney General. It does not enjoy credibility or trust and this constantly subjects it to much higher standards through the media as to the real capacity of the Office of Attorney General to carry out its work.

There is no guarantee today that this work, which was begun in 2001, is not going to enter into a conflict with the new project of unifying the national police because President Fox today is proposing to merge what is the Federal Investigations Agency and the Federal Preventive Police.

Now, these are two entities whose names clearly describe their difference: one prevents federal crimes as indicated by its name and the other one investigates crimes that have already been carried out. So in the new proposal, it is proposed that these two entities be merged and at least in the public dialogue no consideration is being given to a transition period or a grace period to adjust the operations to ensure that there is clarity about the new arrangement.

And there are differences in that the AFI has been moving forward but it's hard to know what the results have actually been because it's a small police force and this stands in contrast with the federal preventive police, which is much more reactive, and we don't have other police entities which should be included such as the immigration police and the customs inspectors police. So once again, we are dealing with just one part of the police and so the question is, well, there it seems we're going to have conflicts once again because the immigration police is going to take a special role in this new arrangement so there is overlap of functions and this does not guarantee that even with the restructuring that there won't be a new government in 2006 which comes in with new ideas and new plans.

There is no institutional continuity to ensure that the changes, were there a debate, which is very difficult given the divided structure of government in Mexico at this time, that there could be the sort of changes that's established in a political pact where all parties would say this is what will be useful for the next ten years independent of there being a new party coming to power in 2006, independent of there being a new attorney general and so forth to keep the criminal justice system working in a continuous line.

So while the system is subject to the politics of whatever administration is in power, it's difficult to talk about results at a ten-year horizon. We are not going to see changes for another ten or 15 years. The PGR has been restructured any

number of times, most recently in 2002, yet it's about to be transformed once again, the structures are to be separated out, supposedly in order to give the PGR autonomy, there's going to be greater impartiality.

Arturo had mentioned that while there's discretion in terms of the public ministry making decisions about when to press criminal charges, we'll have to be much clearer about what it is that we are seeing laid as a foundation at this time.

Thank you.

David Shirk: Ernesto Lopez Portillo, after which we will open it up to discussion until the presentation of Alejandro Ramos.

Ernesto Lopez Portillo: Thank you for the invitation. Good afternoon. I would like to start off by making reference to the health of the Mexican police because the Mexican police is physiologically unhealthy, it's ill. About 70 percent of the Mexican police officers are ill and this has to do with a condition, the stress condition, a very severe stress condition, and we are dealing with the human aspect of all this. We're talking about a very drastic experience, a very dramatic experience, they lead a very dramatic life.

An anthropologist working in Guadalajara said that there is a lack of institutional protection for the police and also there is social isolation of the ordinary police officer in Mexico. The ordinary police officer in Mexico is isolated and it's actually confronted by society. We are dealing with individuals that are subject to contradictions, subject to pressures and this leads to health issues.

I want to talk about two things. First, the change in the rules that govern the police is not police reform. Changing the rules of the police is not a change of the police institution. Legal reforms have shown in this regard that the police has not changed, that police style has been kept the same, and the public life in Mexico has not had any problems in Mexico.

So the access to public information is limited by the actors in the public security arena. They interpret and re-interpret the system and they decide when information can be accessed by the people and when it cannot.

Access to public information is being restricted in the areas of public security. Some criteria were established. I think these criteria are not the appropriate criteria and we are witnessing a very authoritarian state and when you talk in

JUSTICE REFORM IN MEXICO - 7/16/04

private with the police the police sees itself as an actor that may make decisions in connection with what the citizen can have access to and what the citizen cannot have access to.

The citizen is not the bearer of rights until the police decides that the citizen has this or that right.

I talked with the members of the Mexico police, I have been doing that for 15 years, and every time I talk to a police officer, he tells me that the police institution does not tell the truth and this happens with officers coming from the state police, the local police and the federal police. And I have been doing this for 15 years.

I talked about social abandonment and also I talked about the stress levels and sometimes the actions and the statements by the police are not backed by written statements, but there is a question that has to be dealt with and it has to do with incentives.

When we look at the incentives to become a part of the police institution, I don't think that the support of the citizenry and the support of the society is actually something that is an incentive to become a policewoman or a policeman.

The police are actually linked to informal chains of command. The policemen are interested in knowing what their boss thinks about them and sometimes there are links with criminal institutions and organizations.

In connection with the political actors, every political actor recognizes the institutional crisis of the police. However, no politician wants to assume the costs of a substantial reform to the police institution.

I don't think people know exactly what a substantial police institution reform means. Ireland and Peru and South Africa have had substantial political reforms in connection with the police, but those are unknown to Mexico.

So the political actors have decided to link all the political aspects of the reform of the police system with the political institutions.

Now, we have had no experience in the legislatures in Mexico where a legislator has looked at itself and said I am actor that needs to bring about a reform in the police system, so the legislative branch of government is not charged with the reform, so when a public security official comes and gives a statement, people think that this person is being accountable.

So there is no accountability requested by the legislation branch, but the police does not actually offer any accountability or some kind of revision or power of review. The police does to look at itself from a technical viewpoint, so they do not have a method for accountability. The police looks at itself as a political actor subject to political pressure and they respond in a political manner.

The lack of results, according to the police, are the lack of political support and resources and also the lack of understanding and cooperation by the public.

The reform by President Fox of the creation of a federal police implies that there is going to be a change in only 30 percent of the police officers in our country, so this is a matter that is based on the empowerment of the police, so here the political side of things is what counts. So the president of the republic has brought about this change. This is actually a leap towards an empty pool and there are no new innovators, no new incentives.

I just wanted to quote a document by Samuel Gonzalez-Ruiz and the Center for the Study of Political and Criminal Matters is involved with.

There are risks that have to do with the prosecutor and the police. For example, how to investigate and what to investigate. Sometimes the arbitrary discrimination of the objective application of the investigation matters and also quantitative aspects of the investigation against the presentation of evidence, probative value of certain elements, instead of just carrying out an investigation.

There is no objective information that shows that the police is ready to have autonomy in connection with the investigation of crimes.

What is a modern democratic police? Well, I just wanted to mention some elements of a democratic police. When we have an investigative policeman, we have 11 preventive policemen in Mexico, so should the police have investigation powers? Well, actually, we can look at the consequences and see what the change will bring about. From my viewpoint, the police is an element that has to bring about coexistence. Arturo said that, too.

The consequences of the transformation from a traditional police to a modern police have to do with a number of things. They have to do with the design of the police, where the police is to become more involved with the society. The consequences

JUSTICE REFORM IN MEXICO - 7/16/04

have to do with the administration, whether change has to do with a transformation that will bring about new management for the police. And we talk about consequences that have to do with a broader viewpoint that has to do with the problem resolution power of the police.

There are other consequences that are important and none of these important consequences is being studied or understood by the actors.

The reform put forth by Mr. Fox has no empirical or theoretical ground that states why the police needs to be reformed and it even says that the more investigative police we have the more capacity the state is going to do to perform investigations.

The future doesn't really look very bright. In 1990, I wrote an article in connection with a convergence, what I called an authoritarian convergence of the different actors in demonstration and in the police and I think there are many reasons for this. There is no objective reason that's going to show us that the police is going to undergo a deep reform. This is what's going to happen in Mexico.

So the name of the game here is to try and have new agendas for change. We have to look for projects where the police is targeted and the traditional systems come down and new changes take place, especially in the internal side of police.

So we look to build civil society. We need to build capacities in civil society. We need to have the citizens make reports and present reports and perhaps then some of the sectors are going to come to the police and present modern techniques of problem resolution to them.

We are talking about 300,000 police officers in the country. A municipal police may have a very, very dramatic and very different experience, an experience that is far away from institutional reform, and then there are other experiences such as the federal investigation agency that has a very, very different kind of situation.

So we have a very, very broad spectrum of experiences. We can find police officers that want to change but do not know how to change.

We have seen over and over again that the police officer, as an individual, has no right to speak. There was a police officer that wanted to start a conference, that wanted to do an international police conference, he wanted to host it, and they

decided that they were going to fire him. Well, actually, not to fire him, but they decided that he was going to be sanctioned, although he was still collecting his salary.

So this is a very broad field. There are many incentives that we need to look at. Sometimes the media also reproduces some of the incentives that we have talked about.

We reached out for a number of media, the press, and the media, of course, has its own agenda, it's a business, and that agenda is very profitable. We know that very well. So what we have here is this democratic reform based on incentives that are actually marginal in nature.

David Shirk: The first topic of discussion, onto someone who doesn't realize that they're going to be commenting, I'd like to actually bring initially Robert Varenik into the discussion on some of these points, but I wanted to get this discussion started by going back to Charles Kimball.

Is that correct? Your question?

Charles Kendall: Kendall.

David Shirk: Kendall. Pardon me. Pardon me. To Charles Kendall's question about what are the basic concepts of the rule of law in Mexico and how can the police as legal actors and as part of legal institutions within Mexico that are charged with promoting the rule of law be held accountable?

I think it's really important to emphasize in partial response to those questions that Mexico's system is one where the rule of law is effectively legislated, it is not generated through common law interpretation of some grand principles established by the constitution. And yet, as we know, it is a system where effectively neither the legislature nor the judiciary has traditionally been a driving force in providing the checks that help to balance executive power.

As Arturo Alvarado points out, police functions are essentially an extension of that executive power, so it is, I think incredibly important to point out that the process for justice reform in Mexico is indeed a fundamental part of the process of consolidating Mexican democracy and strengthening the checks and balances, et cetera, within that system.

Secondly, I want to point out that throughout the project that we've conducted through the Project on Reforming the Administration of Justice, a number of key themes and concepts central to the ideals about what the administration of justice

entails have consistently sort of risen to our attention:

One is just the notion of due process, the idea that there are procedures that are followed and applied.

Another is the issue of transparency and that comes again to these points about having access to information and having clear indicators, et cetera.

Another is efficiency, that the institutions for the administration of justice, whether they be the police or the judiciary, et cetera, they must be essentially efficient in order to achieve the rule of law.

Fourth, accessibility, the accessibility of victims, of society, of civil society to the mechanisms of justice.

But, lastly, and I think most importantly, and this is where I'd really like to ask Rob Varenik to come in, most importantly I think the issue of accountability and this is the point, again, that was brought up earlier. How do we hold actors within the judicial system, how do we hold the police accountable? How do we police the police in this system? In particular, in a society where we're really just starting to develop the mechanisms for accountability in the political process.

So what structural or procedural changes do we need to see? If it's not sort of centralizing the AFI, all police forces, et cetera, what can we do to promote that kind of accountability above all in the police?

So I'll start with Rob Varenik because Rob, who works with Human Rights First -- not any more. Let's just say Rob is one of the foremost experts on legal reform, he's the author of Institutionalized Injustice -- am I getting that -- Legalized Injustice, a book that basically documents many of the abuses in Mexico's police system and has written also extensively on the issue of accountability.

Robert Varenik: David, let me thank you for springing on this me, then I'll have the excuse of having had less time to prepare an inadequate response to your question.

Let me start with what Mr. Kendall asked about the rule of law and see if I can bring that to the discussion that you wanted to instigate.

I remember sitting not too far from here several years ago, Tom Buergenthal, at one time president of the Inter-American Court of Human Rights, gave a definition which I thought was kind

JUSTICE REFORM IN MEXICO - 7/16/04

of odd at the time. He said, well, you know, Nazi Germany had the rule of law because the rule of law simply means that the decisions you make are based on preestablished rules, norms, legislated regulations, and as long as you make those rules apply as opposed to political decisions that are spontaneous, then you've got the rule of law.

I thought that was pretty odd coming from a human rights background, it seemed to me that you had to add the notion that consensualized ideas of human rights as we progress in the development of international norms that your national system of norms also has to be consistent with the international notions, customary international law, international treaty law and that seemed to me to be a more sort of closer proximation of what the law rule of law ought to be in practice.

Not simply because of my time in Mexico, I have now come to think of this in what I think is a more practical sense. I would say the rule of law is generated by institutions that generate expectations. And when I think of Mexico, I think what's going on in the institutional sort of ambit in Mexico that doesn't generate for us the rule of law.

And I mean that in two senses. That doesn't encourage people, citizens, to act as responsible citizens and not break the law, not offer bribes, and at the same time what would impel public officials not to break the law or to ask for bribes.

And it seems to me that one of the fundamental problems is not simply in the area of public security and criminal justice is that institutions don't internally generate expectations of their members that say, well, you know, the formal rules we have, our mission, our value statement, the criminal code, et cetera, we believe in those and we're going to apply them to you guys internally, you have to apply them in your jobs, you have to abide by them in everything you do, and the mission's formal structure and mission's informal rules, to use the concept that Ernesto brought up, are going to be aligned in a way that means to you everybody from the guy on the street to the chief of police, you have the expectation that you're going to do your job and you're going to do it within the formal rules and that is going to be generated by a system of review, supervision, discipline, incentives, prizes, et cetera, all of which is going to create the expectation within that we're going to work as we're supposed to.

And that over time doing that, and being seen to do that, generates that expectation with all the consumers of institutional behavior, the people on the street who get stopped by a cop, et cetera, or make a complaint about a crime.

JUSTICE REFORM IN MEXICO - 7/16/04

So it seems to me that's fundamentally the challenge in Mexico in many places to create and sustain that mutual set of expectations so that we can start to deal with our institutions as institutions.

So kind of my take on what our three presenters said, Arturo talked about the amount of money and the sort of macro results we haven't seen; Ernesto talked about sort of the interior life of the police; it seems to me that the problem with the reform that's on the table is that we are rearranging deck chairs on the Titanic.

We are talking about changing the names, we're talking about changing the functions, but we're not talking about doing anything on the inside to change the way we perform those functions. As Sigrid said, the worst part of it is we have rearranged those deck chairs a million times.

So that, to me, is the difficulty and I would sort of bounce back to you, David, and to other people around the table the question of, well, if we are at least somewhat agreed that high on the list of priorities is this creation of -- and I would say accountability, there's a lot to be said about it, but one of the key elements of it has to become routine.

It can't be associated with the notion of disciplining people for particularly aberrant behavior; it has to be sort of in the lifeblood of how we do supervision, how we evaluate people. If it's not a daily thing, it's not going to work. Mexico and other countries have proven that in their attempt to do it on a kind of spectacular one-off basis. That's hard.

I don't really believe this, but I'll put it out for discussion which is the nice thing about accountability is that it is technical. I mean, we don't have to have the great debates that we have in Mexico about do we want investigative police joined with preventive police, do we want to go after the Ministerio Publico and the various procures of the country, are they the problem? There's a lot of potential for political debate and paralysis.

One of the questions, I would say, is there is any room for a technical sort of set of reform proposals that could somehow slide in under the political radar? Again, I will have to be skeptical about that, but I would like to at least throw up what room is there for a separate discussion, what you might call the other reform of the police, of the judges, that talks about the interior institutional life and doesn't talk about so much what's their name, what's their set of functions and who's running them.

Thanks.

David Shirk: We'll to go Miguel Sarre from the Instituto Tecnologico Autonomo de Mexico.

Miguel Sarre: Thank you, David. I'd like to make a few comments about the remarks that were made here in connection with what Arturo Alvarado said. He talked about the resources that the state allocates to security and you talked about the justice system, you talked about the administration of justice and you talked about the investigative police and the judicial police and you said that these two police bodies have different functions.

I think it's important within the context of the reform put forth by President Fox, it's important to look at this because we are talking about this merging of police forces. There are many aspects that are positive, that are innovative in this reform and I think this is something that can be subject to criticism.

When we look at this from an Anglo-Saxon viewpoint, perhaps it may be hard for Anglo-Saxon people to understand this because for them they have just one police force, but why is it important in my opinion for the preventive and the judicial police to be separated?

The judicial police, actually, report to the public ministry and the public ministry is not part of the executive branch of government. The law states that the PGR, the attorney general's office, is not part of all this system, but we don't have a chain of command, a direct chain of command here because if we put the police and the public ministry under the executive branch of government, we are going to politicize things, so therefore this has to be separated from it.

So in Mexico, the judicial police was designed as an auxiliary body to the public ministry and then it became a body that had its own command, its own structure, that it's parallel to the public ministry. I think this body should report to the public ministry and it should be like a detective kind of body, if you will, and that has not happened.

So since we were faced with this deformation, so to speak, we have to look at the preventive police to do preventive actions and for the judicial police to carry out judicial functions.

I think this merger is not a good idea because if we wanted to give these two bodies as one under the secretariat, I think for it to process it all would not be a good idea.

So there is a risk here. There is a risk of politicization

in justice or in the justice system. It's a first link, this kind of body is a first link that we have and when we have a criminal complaint, we have situations where the judge can act sua sponte and if we look at the militarization of it all, the militarization of public security and of the administration of justice, then we see a key component. The key component is the functions that they carry out, investigation and also prevention.

So if we merge all these, then we're going to have one body that is going to carry out military functions, if you will, because of the system in which it operates.

Now, if we look at the militarization of the administration of justice, then we're going to have a justice that is conditioned by military principles and that has nothing to do with the rule of law and this actually leads to situations that will in turn lead to impunity when you are conducting affairs under the military or under the aegis of public security because there is less transparency, less control, less access to the information by the public. So I think it's very important when referring to the rule of law, like Mr. Kendall was suggesting, we have to look for a certain guarantee.

The rule of law implies not so much the fulfillment of the law, but it has to do with complying with other principles like international law and humanitarian law and human rights law. So you have to have a guarantee. The powers have to be separated. There are certain functions that cannot go together because public security has to be a part of the executive system and the administration of justice is part of a different system that has to do with the judiciary. It has to do with the system of justice and not with the law enforcement side of things, so it would not be a good idea to merge all these things.

Thank you.

David Shirk: I'm starting to form a list here. I'm going to go to this gentleman in the back, but let me just point out that people that are sitting in the back rows, just because you're not near a microphone, please don't feel intimidated. If you have a question, we can have you come up to the table or just speak loudly, but I don't want to exclude those people who are out of my peripheral vision.

Go ahead. Please introduce yourself and then it will be Alejandro and then Sigrid.

Voice: Thank you very much. My name is Emilio. I wanted to ask the panelists, particularly Lopez-Portillo and Arzt how can you combine political incentives with technical incentives?

It's my impression that if any technical reform proposed does not incorporate political incentives, which have their own time and their own agenda, it's difficult to implement them afterwards, as Mr. Lopez-Portillo mentioned, particularly bearing in mind the latest U.N. development report indicated that more than 50 percent of us Latin Americans would prefer authoritarian government if that were to resolve economic and security problems.

Now, how can this be incorporated, Mr. Ramos, into coming up with the technical solutions?

Alejandro Ramos: I sometimes agree with Mr. Lopez-Portillo in that in Mexico, when we undertake these processes or seek to change things because they're not working, we completely ignore what's been done in other countries and the mistakes that have been made.

I see this clearly with the criminal justice reform, but I also see it in the police, because I've become aware that the trend in Latin America has been, first of all, to decentralize police forces and to link them more with local and community authorities, rather than creating a superstructure which only benefits the high level bureaucracies of those police forces.

So the idea of centralizing it, I think, runs against the trend and what is being recommended by experts, or what I have read is the trend, which is to tie the police more to the community.

There has also been a lot of talk of accountability. What would the experts think? Well, it occurs to me that the police or the directors of the police could be elected so as to not depend so much on the executive.

And the other issue which also reflects major disdain towards criminal procedure reform in Latin America is that the most serious problem has been the lack of coordination between police and the public ministry because they are delinked. So in a system in which an effort is being made for the public ministry to go to a public trial and have to present evidence, well, that link becomes extremely important because otherwise the information that's collected by the police is going to prove insufficient or improperly collected and it's not going to be of use to the public ministry, it's not going to be sufficient for the public ministry, and it's been seen that there is a major problem of lack of coordination.

So many of these countries, Chile, Argentina and so forth,

what they have looked for or sought is a police force under the public ministry, as we have here, the AFI. And what's being proposed here is to delink them. So I think that a major problem is going to ensue, particularly when one wishes to establish a system of public adversarial trial in which the public ministry will be required for the first time in history to present evidence before a judge and to prove guilt before a judge in a public trial.

I think that these trends run against the problems that are arising in other countries and other countries' experiences, some of them successful and others problematic. So we would have to see what the experts have to say as well.

David Shirk: Sigrid?

Sigrid Arzt: I will respond in general terms to what's been said here. First, this trend to concentrate at the federal level, I think, answers to what Mr. Sarre had said, which is that concentration of the police in relation to the militarization in the country. In contrast to the South American experiences, the role of the military, while there was no military government, the army in Mexico enjoys great prestige and has for some time and it's been the easy answer of the political elite to solve an immediate problem without attending to the structure of the social problems we face.

The army today has the third greatest credibility of any institution in the country. This is along with universities and churches. In whatever order, whatever the survey, ratings of institutional credibility on the police, the congress and the political parties are in the bottom three in terms of institutions with credibility. So since the political elite has to come up with a response, this response of easy action has been to incorporate the military into the three areas of government and the three political symbols. No distinction whatsoever is drawn.

The leftist party has said turn to them, the PAN has turned to them, the PRI has used them at the local level, at the state level or at the federal level and we are clearly moving towards, and we have discussed this in other panels, a situation in which this institution through its incorporation is giving attitudes and aspects to security institutions which should be much more transparent, but, given that these actors are becoming involved in these areas, this is becoming all the more difficult.

Now, if gaining access to information is already a problem, it's even more difficult today because these structures have never known anything about transparency, accountability or

answering for the actions that they carry out. That's plain and simple the reality.

Now, there is a terrible concentration in the public debate about professionalizing the police, but they don't talk about professionalizing the public ministries and this has led at least in the interviews that I've been able to collect, it's led to pressures because they feel that all the resources are going to the AFIs, they have equipment, they have new uniforms, and the federal public ministries don't feel that they are incorporated in a similar fashion and this is leading to tensions between resources and level of professionalization which they can see clearly.

A last point is the question of incentives and I'll wind up so as to give my colleagues an opportunity. The idea that one might prefer an authoritarian government or a much more democratic government, well, what Ernesto was saying is quite clear. Political pressure is being brought to bear by society and it was seen in the march and the political actors see that the solution is to adopt a tougher line without laying a bases for the processes, the tools, the laws to abide by the basic requirements of respect for individual rights and human rights.

Today, they are looking for alternative, rapid responses because elections are coming in three years. There will be eight elections at the state and local level and this year and a few others that will change the whole political map of the country. And so we don't have political incentives in Mexico today to enter into agreements beyond these short-term arrangements of holding the military accountable and there are signs that those members of the military who were commissioned from the marines to the federal preventive police were discharged because they, as they pointed out, their initial option in the first place wasn't even to become a member of the police, it was to join the army or the marines.

The same thing is happening in the SEDENA. The first option was to join the army and then being commissioned and so what are the tensions that are resulting? Tensions in that they don't enjoy the same or they lose some of their rights. The first right they lose, if they are commissioned to these institutions, is that they don't have access to their military career service.

They cannot continue in the line of promotion and so they opt to discharge, so we are losing important resources there. Once they rejoin the military, they are marked because they have come from the police. Socially, they don't enjoy recognition and it's feared, especially in the federal sphere, that they've been contaminated or tainted by the monies of transnational crime.

I'll leave it at this to leave the floor for others.

Voice: Before going further, I would like to welcome the Deputy Attorney General, Alejandro Ramos from the Office of the Attorney General, the Procuraduria General de la Republica. He will address a few words to us in just a few minutes.

I just want to note that we have three other speakers seeking the floor before his participation and I also wanted to offer up as one issue that we have not discussed and yet which is related, we have talked quite a bit how there can be accountability, how we can keep checks on the police, but it was interesting to see in the May 2003 conference what Marcello Ebrant [ph] had to say. He said that what we need isn't to control the police more, that rather to give them more authority to do their work. In other words, the police and police agencies in Mexico need more training.

But why the dilemma? It's not either having checks or giving more authority, you can't give authority if you don't have adequate checks in place. That's what I'm getting at. What I'm saying is that the argument of some authorities of the public security secretariat in Mexico was that we need to give them more training, we need to give them more resources, we need to give them the guns and bullets they need to do a good job. And the concerns that you mention are precisely concerns that keep us from giving them those capacities. So we're in a situation in which we don't trust them so as to give them the responsibility, nor do they have the authority they need to do their work.

So how can we solve that puzzle?

We'll go in the following order: Rob Varenik, Arturo Alvarado, and Ernesto, and then we will hear from the Deputy Attorney General.

Robert Varenik: ... technocrats, this huge problem posed by the people, you know, what do they think about all this? It's a little hard to generalize, but there are some answers and one of the strongest experiences I've had in Mexico is that police officials constantly ask me what do we do to get back the trust of the people, which is to say that for seven decades or so there was an authoritarian response and there is a sense now with political competition that you have to do something to get people on your side. There is recognition that if people aren't even denouncing crimes, the persecution of crime only part of the solution, but if they're not even doing that, then there's too much of a gap between the people and the public and we've got to do something to get them back.

The response that I like to give people, it's an empirical one based on experiences in the United States. I'm pretty sure in Mexico there's not a lot of literature and empirical study on this, there may be more in other parts of Latin America that goes in a different direction, but there's a wonderful survey of New Yorkers who had ten years of crime drops and the whole thing and the answer basically that they gave was, you know, we're very concerned about the effectiveness of the police against crime; if the police are effective against crime, that's going to make us more likely to complain to them about crime, collaborate with them, giving them information, support more resources, the whole broad sort of menu of things he wants to give his police. Those are all things that we would be more likely to get behind if the police were effective against crime.

Now, that's number two. Number one is how they act, the way police act in the encounters with us as citizens. Do we perceive them to be fair across the board, do they discriminate against some people and not against others, are they operating with certain basic human decency, are there rules and procedures which we are sort of aware of and they're following?

So the answer seemed to be in New York, which would be sort of the poster child for doing it tough and doing it well, the answer for New Yorkers was, no, we really care more about how the police do what they do, that's the first thing we care about. And the strongest correlations were with our willingness to support the police. So that's just one response.

New York happens to be an interesting case to read back to people in Mexico because of the famous Giuliani contract in Mexico City.

So I think that as Ernesto suggested, we don't have to think about these things as either or, it's not a binary equation. The question is sort of in what order.

And then you go back to, well how do you get started? Processes of reform that have been effective have started with a diagnostic that looks at things and one of the most interesting parts of the processes that have been most effective starts with a diagnostic asking the police what they think because if these things are going to be difficult, then one of the things you first -- and this is something we have said on a number of occasions, you need to know, if you're the reformer sitting on top of one of these agencies, you need to know who your potential allies are, where the resistances are, and what is the cost of buying reform, what do you need to provide your police in order to get them to accept more control, different standards,

et cetera.

So, you know, I guess the broad answer to the question of sort of what do we do with the public is in Mexico, I think you focus on the question of you are going to solve this problem if you have the people on the same side of the police. Doing that is clearly linked to how the police perform and how the police perform, I think, is most clearly linked to some notion of accountability, both in the positive, we want to promote good behavior; we also want to have the potential of discipline.

With regard to the other element of the question that came, should we be thinking about maybe electing police officials and make them more accountable to the people directly, the only answer I have on that, again, it's sort of a U.S.-based response. We have a very mixed system in the United States. I'm thinking of attorneys general, district attorneys and judges and electing those has not been a solution because in fact often the people respond to short-term answers and so they don't give the sort of incentives to publicly elected officials in criminal justice that you want to see.

I guess the last thing to say on this is I personally tend to think that the sort of military option or the notion of how police perceive the different options is a function of how much information they have and it's over-examination of those things, those polls that put the military at the top of the list of sort of trusted institutions after dirty wars and all sorts of horrible things.

It seems to me it has to be linked to some degree with the way you control it and the more information that's controlled, which is more likely to be the case if we militarize it, then people are going to have less information on which to make informed judgments about what they and what they don't want. So I think we have to be really careful about the way we sort of structure the information regimen. I think that's an essential part of this sort of whole notion of creating the right sorts of institutional expectations.

Armand Peschard-Sverdrup: I wanted to just make a comment.

Ernesto, by the way, it's nice to see you, I haven't seen you in a while and it's unfortunate that we have to invite you up here to Washington in order to see you.

Your comment about the fact that the policemen are (speaking Spanish) I found to be interesting.

I left Mexico in 1977. When I left Mexico in 1977, growing

JUSTICE REFORM IN MEXICO - 7/16/04

up in Mexico, I had the perception growing up in Mexico that -- you know, the old saying that if you're in an alley and there's a policeman on the one end or criminals on the other that you go towards the criminal and that was very much the joke back when I was growing up in Mexico.

I don't know that since 1977 much has really changed in Mexico with regards to the perception of law enforcement. Interestingly enough, I left Mexico and I went to Canada. One of the biggest adjustments for me going to Canada is the way police are perceived in Canada, which is a complete extreme opposite. Number one, the police are authority figures. The police go to your schools, the public schools. They talk to the children. Early on, there is the reinforcement that law enforcement is an authority figure and it's amazing to me. For me, it was one of the biggest adjustments go from how police is perceived in one country to how it's perceived in another country.

Going to school in Canada, many of my schoolmates in university actually wanted as a career path to join not just the provincial police, but the RCMP was seen as the elite, joining the RCMP. Many not only wanted to get their B.A., but their M.A.s, because it also implied a higher salary scale.

To me, it's fascinating how Mexico in a lot of ways has been standing still in the area of professionalizing law enforcement. It's interesting that the military wasn't raised until just recently and Sigrid commented as a quick fix that the use of the military was basically a political quick fix to the problem.

To be honest, I was very skeptical of the use of the military in law enforcement because this is something that started pre-2000 and I though I don't know if it's a good idea to involve the military, given where Mexico was politically, but it has, as it was pointed out, I think by Sigrid, it has shown that the military does have credibility in the eyes of the Mexican people, they are a respected institution. It may be a quick fix, I don't have a problem with it being a quick fix.

I'm more concerned with the point that Sigrid made at the beginning, that there isn't a long-term strategy and that every time somebody comes in, somebody rolls out their blueprint of what the justice system and law enforcement organizations should be.

In fact, I'm actually even curious as to how the involvement of the military took place because we know it wasn't a consensual decision that was made by political actors. Somebody made the decision and at this point the quick fix may end up being the solution to professionalizing law enforcement.

I know Arturo is nodding no.

But I'll tell you what, Arturo, I've looked at the issue. When you have law enforcement officers that go into that career path not with the intention of enforcing law but as a way to make additional money, how do you professionalize a law enforcement agency when you actually have -- it's a cultural problem in the recruiting process of the law enforcement?

So in any event, I just wanted to make those observations and it is a very complex problem. And at this point, we are entering a situation where the Fox administration has rolled out their proposal. They are proposing structural changes.

We know that we had structural changes before and before and before that, but interestingly enough, I think that is the first time, and I'm glad that Francisco Guerrero is here, I think it is the first time in which the executive branch and the legislative branch can participate in a process where both branches of government can hopefully discuss the issues openly in a constructive manner and hopefully come up, not only with a proposal that many of the political actors can agree on, but that hopefully can be a blueprint for reform beyond the next two and a half years that we have left in this six ano.

I think Mexico desperately needs --

Arturo, how can I be serious?

I think a blueprint so that, as Sigrid mentioned, we don't have changes every time an attorney general changes or every time a six ano changes.

David Shirk: All right. Let me point out not only has the rule of law been lax in Mexico, it has been lax in the control of the discussion today, so I will point out one thing that will perhaps provide incentive and that is nobody eats until after this panel has concluded.

I'm going to ask Arturo and Ernesto to provide very brief responses and then we're going to go directly to the subprosecutor, to the assistant attorney general for his presentation which is going to explain in more detail what precisely the justice package is and then you will be allowed to eat.

So everyone just keep that in mind. That's the only stick that I have at this point.

Arturo and then Ernesto.

Arturo Alvarado: In terms of the discussion of the military, members of the military in politics, one thing. We have reached a conclusion based on a historical analysis of who has run the police in Mexico City and most of the offices of attorney general and the country, it's been members of the military. Throughout the 20th century, because of the history of the revolution, the police have been controlled most of the time by the military.

Now, from there it's involved in to a military bureaucracy on the one hand and a cartel among various police forces, but this is a story that needs to be known. Everyone talks about the disparities between Mexico and the rest of Latin America, but we, too, have had dirty wars and this has been an issue. The military have played a substantive role in security issues and this has been a problem.

Now, the curious thing is that now they turn out to be the good guys and people like to see them in the street. So this is something that needs to be understood, the history of Mexico says something else. The military have been running the police.

Now, I wanted to address the question of what direction the reforms need to take. Well, first a point in response to Miguel Sarre, the problem of the public ministry.

The public ministry is an independent institution. It has its own status in the constitution. It is a creation of the constitution. It is not under the president and it is not under the attorney general. But in Mexican politics, over history, the public ministry is a constitutional entity. It's the cornerstone of the justice system, of the administration of justice, but it enjoys autonomy from the president in this regard.

It's an institution that is not technically speaking under the president. This is to take what you were saying a bit further.

Nonetheless, politically, it's been handled such that it's within the Office of Attorney General. The public ministry works within the Office of Attorney General and it has a head, who is the attorney general and, in fact, he acts politically. He doesn't act merely as administration of justice. That's part of the problem we've had in recent years.

So there we would have to have a discussion about what is to be done with the public ministry and what about the police reform? What do we want, an autonomous, national centralized or

decentralized police force? There might be a lot of debate about this, but the problem is what is to be done with the public ministry?

And just a couple of comments on police reform and accountability. We need to have a police force that helps with citizen and civic coexistence. That's basic to their work. So the accountability system has to be related to what the situation of the citizens is. There needs to be accountability to citizens and not to the bureaucratic organization and that is a change that is possible, it's feasible, and it's an important aspect. And from that point of view, a great deal could be discussed.

All police reforms, likewise administrative reforms, are internal bureaucratic reforms. They could be centralized, they could be decentralized, they could be large scale, they could be small scale. One could put together the whole technical structure, but the problem is where do you want the police to be accountable and where do you want them to work more efficiently? That is the idea.

David Shirk: Ernesto?

Ernesto Lopez Portillo: The question as you posed it, I think, goes to the heart of all this, in my opinion. You were talking about how to bring together political and technical incentives. I'm starting to work with this hypothesis and I think we have to look at the costs and see how large the costs are when it comes to a system such as the one we have.

So once we look at the costs, we are going to have to look at the consensus that we are going to have to build to bring about transformation, not because we need to propagate the concept of democracy, but because we have to expose social, political and economic actors to documents that are related to costs.

This is going to enable us to look at ideas and those ideas are going to show us that there are models that bring about the reduction of costs.

Now, people have not looked at the costs and they have not looked at the alternatives. Mexico looked at South America, but it's not involved in the debate going on in South America, in Europe, and in the States, a linking connection with police reform. We don't get the books and Mexico does not go to the meetings that have to do with democratic reform of the police force.

So as a strategy, perhaps we could have a very strong

campaign for cost clarification purposes, a campaign that will help us to look at the economic costs and the political costs and all the other costs.

What does it mean to give more money to the public security system? These are debates that are not conducted by the media, so the media, I think, would play a very important role and they would open up the debate and this debate will lead to other debates and other comments and remarks.

JUDICIAL REFORM

Armand Peschard-Sverdrup: ... the next panel, Deputy Attorney General Alejandro Ramos was commenting to me, you never told me that this was going to be a discussion on the militarization of the Office of Attorney General. I say that because Deputy Attorney General Ramos is in fact the product of the military and prior to becoming Deputy Attorney General, he had served as chief of staff to Attorney General Macedo de la Concha and prior to that he had also worked in SEDENA, Mexico's Secretariat of Defense.

Alejandro, it's a pleasure that given everything that's going in Mexico that you were able to take the time to accept our invitation and come up to Washington to talk about justice reform in Mexico and give us your perspective on it.

Welcome.

Alejandro Ramos: Thank you very much, Mr. Peschard, for having extended this invitation to me. This is a very important event for us because it allows us to see how others view the situation of the administration of justice in Mexico, especially in these parts of the world, where we find that many decisionmakers are found. I think this is very significant.

Armando never told me that there was going to be a debate on militarization. Perhaps if he had told me about that, I wouldn't have come, but I wouldn't want to dwell on this. I would like to state that I think there are two different concepts that have to do with militarization.

So as I was saying in connection with militarization, I think there are two aspects here. First, when we have a military authority that replaces civil authority and then we have a different situation when an individual that is a military person because he just is has individuals qualities and then this person has a certain position. For example, Colin Powell, nobody

JUSTICE REFORM IN MEXICO - 7/16/04

says that because Colin Powell is in the State Department the State Department is going to become militarized.

In other centuries, the commander of the plaza de armas was the chief of the political delegation, the chief of the military, et cetera. So it's not the same thing to carry a battalion, a military battalion, and have the battalion work as a military unit and having the person leading the battalion be a politician also.

So the matter that I am going to talk about today has to do with explaining this justice reform put forth by President Fox. When we're talking about structural changes that were put forth in the past that came and went, I think this is an unprecedented proposal. I don't remember anyone trying to implement such a substantial change, a change that involves the criminal procedure, the institutions that deal with every single aspect of the justice system.

This is not just a name change, this is not just a decentralization of a unit or of an organization. This is a proposal that is far reaching and it looks at resolving an old problem through new alternatives. Perhaps it's not the best, but it's the one that we have put forth.

We have decided that it was not going to come out just the way we designed it. We wanted to have public debate, debates such as this. There is a public forum in Mexico that's also held to debate this changed legislation and we want new justice, of course, and we want changes and we want justice to be done in Mexico.

So the proposal put forth by the president, we have divided it into a number of sections, actually, two or three sections. One section has to do with the process, with procedural aspects; the second has to do with the organization of institutions; and the third has to do with the professionalization of public servants that work at those institutions.

Mention was made here to incentives to reporting units of the police vis-à-vis the public ministry. All these things are, of course, elements that we have present currently and there are aspects that we haven't talked about today here but all those aspects are included in the reform, so we cannot give a piecemeal answer, we have to give a comprehensive answer to all these things.

I think that we can look at this very simple presentation that we have prepared. Recognition of the problems, well, of course we have a large crime rate and that is something that we

JUSTICE REFORM IN MEXICO - 7/16/04

have. Also, we have many crimes that go unpunished, the number of people that are not brought before the judges and before the courts, there's also some differences and problems with the different sections of the justice system and sometimes there's not a good dovetailing system.

In connection with the reform of 1994, what this comprehensive concept of public security was put forth from prevention to social adaptation, well, the lawyers and people who work in the judicial system don't like to be seen as just people who work in the security system, but that's the way people look at it. There are a number of behaviors that we have to look at and we have taken a number of obligations and duties and we have to look at this from the respect viewpoint.

We have a prison system that nobody thinks much of. Nobody thinks that by going to jail the person is going to be readjusted and is going to be back in society. Everybody looks at this as a dirty system, if you will, that everybody thinks that the only objective of the prisons is to have the inmates there. Nobody thinks that when they come out of that they're going to be good people.

There is a lack of commitment also when it comes to professionalism of many public servants in public safety, in administration of justice and this is a breeding ground for negligence, for corruption, for violation of human rights, and therefore we need to change all this.

So how have we thought about changing all this? Well, through a justice model that is more expeditious, that is transparent, that gives the citizen the possibility of knowing what happens in the judicial systems, that allows the citizens to know that there is punishment if there is a crime and that the public servants work in the proper manner, that they respect to the law and human rights, and, of course, if there is a crime committed there will be a sanction or a punishment for that crime. Also, we need to have a better justice system, from the prevention of crime to social readjustment of the criminal.

I think that comments were made in connection with whether the resources were properly allocated, but I think that people are concerned with this, so we need to try and optimize free sources, maximize them, actually, in very evident areas.

When we train investigative employees, officers or a preventive police officer, then when we look at each of the states and even in the federal district, now we have to look at the different profiles and we have a number of police academies in our country. These academies have different study plans, they

JUSTICE REFORM IN MEXICO - 7/16/04

have different objectives, different instructors, and we don't have just one kind of doctrine here. We don't have some kind of consistency in the way the police officers are trained.

How can we improve ethics and improve performance? Well, people think that's easy, but it's not easy, it's actually very complicated. This refers to a number of things: making more money, having more incentives, but it refers to the whole process, the process of going into the institution, of being trained, it's a long-term thing.

The public servant needs to have stability, he needs to have a certain life expectancy. The public servant needs to feel ashamed if the public servant does not comply with the rules and needs to feel ashamed if its fellow public servants point at him when he has violated the law.

So we have different proposals: the procedural reform, the institutional reform and the professional reform. So these are reforms that have to do with amendments to the constitution and amendments to the law and also it has to do with the passing of new laws. There are 16 regulations or sets of legislation that are involved in this reform and we have these three sectors all together.

What are the objectives and strategies of the structural reform? First, in connection with the procedural section, we have to develop a just, humane, transparent, trustworthy, efficient and expeditious criminal system. We have to have a public, transparent and oral criminal processing of criminals and also we have to overcome the deficiencies of the procedures, these deficiencies prevent citizens from receiving expeditious justice, and we have a written system.

There is a section that is undisclosed which is the first investigative stage and they say it's public but it's not really because it's only disclosed to a few people involved in the process like the prosecutors and some of the lawyers involved and also the publicity of judicial orders is very, very limited, so it doesn't satisfy anybody.

So we want the procedure to be open, to be public, to be known by everybody, and this can be done through an oral action, an oral judicial action or an oral trial, and a public trial so the decisions made by the judge in a certain hearing, that decision can be connected with the whole process that went before that and we can see the decision made is in agreement with what the evidence and the process was.

We know that the system we have in Mexico is of an

accusatory nature, it's an adversarial nature. We cannot say that there is a presumption of innocence in Mexico, however, because the first thing that happens in Mexico is that the person is detained, preventively detained, as we say, and he has to wait in custody, to see whether he is guilty or not guilty. We don't think that the system that we have has this presumption of innocence. We have this accusatory system.

A procedure such as this, the one that we want to put forth, cannot exist with a public ministry that has to look for all the information, has to obtain all the evidence under a standard of validity that is similar to the one applied to the courts.

We cannot have an accusatory system if we have preventive detention as a basis for this. The accusatory system cannot exist if the police is limited in its actions, it's limited. When it comes to investigating, the police oftentimes has to wait for the orders of the bureaucrats in order to carry out a very concrete action, to take their concrete actions.

In any other part of the world, an action such as this that is very concrete and very specific may be carried out without any kind of order. For example, there may be a questioning of a person in the person's domicile. If the person agrees to talk to the police officer and perhaps the police officer only needs to talk to the person, so if they have to wait for the ministry to issue a formal statement and that statement has to have a certain probative value, this is a more complicated thing.

So in Mexico, we have that. There are a number of aspects that are limiting the actions of the police specifically when it comes to investigating crimes.

We want to reform the federal law for organized crime in order to make the investigation process more efficient. There are a number of procedures that exist today, but they are only mentioned by the law, so there is a simple mention, and it's not really something that is used, and this brings about uncertainty on the part of the citizen and also it brings about injustice.

So the institutions that are charged with combating organized crime need to have the tools that they have to have in order to have telephone wire taps or any other tool that they need in order to carry out their function.

So on the one hand, we need to give certainty to the citizen and on the other hand we also need to give the authorities the ability to fulfill their responsibilities.

We are going to propose another law for the implementation

JUSTICE REFORM IN MEXICO - 7/16/04

of punishment, which means that some of the decisions made by the courts have to be executed by a given administrative organization. The Mexican law provides for a number of systems whereby the person is set free and sometimes this complicated because there is no transparency, so will still have a judge that is responsible for dealing with the execution of the judicial decisions.

So in connection with minors, we're talking about people that are between 14 and 18 years of age, we need to have a system that is transparent, that is more certain. When it comes to juvenile criminals, we are trying to have a more expeditious system.

Right now, we have the Consejo Tutelar, which is an organization made up by a number of people and it has not had a very felicitous performance, so sometimes the measures taken by this organization are not well known. We don't know exactly how many of these minors are reinserted in society and made better persons with better consciences.

So we want these people to come before a juvenile judge, not to be tried as adults, this is not a reduction of the age that people have to have to be tried as adults, but it means that these people, the minors, are going to be better defended and they are going to have a system that's similar to the system that the adults have. And once a decision is passed, the sanctions or the punishments imposed by the judge are going to be measures taken to treat these minors.

In connection with development and professional regulation, we are looking to increase the professional aspects of public servants and also trial lawyers because you know that today the constitution states that the defense of the accused may be carried out by a lawyer or by a person in whom the accused trusts and this may be people who are laypersons, people who do not have all the necessary knowledge that one needs to have in order to carry out a correct judicial defense. We call them coyotes in Mexico, these lay people that give legal advice.

So we want only professionals to be able to litigate in criminal and civil matters, so we want to change the legal framework of the public defender's office and we want people to be certified as litigators, criminal litigators, not civil, but just criminal.

In the U.S., since we are here in the U.S. and just to give you an example, if a person wants to litigate in a certain state, in a certain court, the first thing this person has to do is to be evaluated by the court or by any other organization for the

JUSTICE REFORM IN MEXICO - 7/16/04

organization to make sure that the defender is ready to be a litigator in these processes.

In connection with institutional reform, well, this is something that we have actually discussed here. It has to do with using the institutional capacities of the state in the administration of justice sectors and in public security sectors and we can do this from three viewpoints.

First, the public ministry has to be working in such a way that society perceives it as independent, as not governed by political bodies or political forces. So this public ministry, you can call it the PGR or the prosecutor's office, we want this institution to be a prosecutor's office that can be like an armor for the justice system and the people working here are going to stay in their positions as long as they keep their good performance or the performance of their functions and they are not going to be removed unless they violate the law.

So the circuit prosecutors that report to this institution can be appointed by the president, but they have to have the approval of the congress or of the legislature. And their position is going to be renewed again if the president deems fit, but with the approval of the senate. So then this is going to drive away the political tainting of the appointment.

When it comes to this decentralization of the police forces that we talked about here, what we are trying to do, really, is bringing together the functions of the preventive police and of the investigative police so that when these people are trained they have better training and they understand better their functions they have to perform.

The preventive police has to be the kind of police that is in touch with society. It's the first ally of society. Society has to perceive the preventive police as the authority protecting it, so the preventive police has a number of characteristics. It collects information on the different gangs, the different crimes in connection with the jurisdiction where it works, and all the information gathered by the preventive police can then help the investigative police. For example, if a vehicle is stolen in a certain street, may be the police can give information on who lives there, what are the habits of the people living there, and the investigative police can use the information to carry out its investigation.

And also when it comes to the training of police, we have a number of different institutions that train the police force and the police officers and so one academy may be able to train those police. However, it is very expensive and very bureaucratic to

JUSTICE REFORM IN MEXICO - 7/16/04

have a number of institutions that train police officers, so we need a number of instructors for all these different types of police and it's very expensive. The expenses are quite high and also the quality of the training is different in connection with the different institutions. Also, we talked about the new legal system office review juveniles and we're trying to look at this, too.

The time is short and we could say more about each of these aspects, but the most important thing is criminal procedure. The main idea, the reform is for the preventive police and the investigative police to be able to share information, share databases and so forth and to be able to have more freedom and greater authority to be able to receive a report on the possible commission of crime from a citizen directly and that the police officer can take up himself once he has found that there is a car that has been damaged or the car is no longer there, the most essential elements for verifying that a crime may have been committed.

And that particular police officer could carry out the investigation himself so as to overcome the inhibitions citizens have when it comes to reporting crimes, knowing they have to go to the public ministry, wait long hours and be mistreated, just in order to report a crime.

And, moreover, this person would then be running the risk of being a target by a member of the police who might be in league with the criminals and it's only logical, given these conditions, that citizens not report crimes.

Now, this can be resolved if members of the police who receive reports of a crime can act immediately in order to put an end to the continuing commission of the crime, if that's the case, or to be able to get to more evidence or to be able to cordon off the crime scene and keep it as intact as possible and can also be the one to report the facts to the respective prosecutor, once the prosecutor determines to carry out an investigation, the freedom that he may have to determine how.

I cite the following example. The public ministry serves as the chief of police and the police who might have a search warrant has to decide how many police should go to the search, what weapons should they take, how many cars should they take, even though this person doesn't have the proper preparation to direct a search. They need to determine whether it's a closed space, whether there might be many or few or any armed persons in the place that needs to be searched or whether there might be a potential victim who might be at risk.

JUSTICE REFORM IN MEXICO - 7/16/04

Well, none of that is up to the public ministry and the public ministry in Mexico doesn't have the capacity to make these determinations, so the idea is to leave to the police the freedom to be carried out what are essentially police functions without having to await an instruction from the public ministry every time a finger is to be lifted in the investigation.

But at the same time, they would be subject to review by the prosecutor because the prosecutor should not administer the police, but rather deal with the police technically in order to collect evidence and the police would then play a dual role insofar as the police is not part of the public ministry and it will be necessary to verify that the police have acted lawfully in order to ensure that there is no vitiated trial, to make sure that it's possible to carry out the indictment and go forward with it.

So when the prosecutor receives the information from the police investigation and determines that the legal basis is there, then they take this before a judge and if the judge rules favorably then there can be a trial and four or five hearings where the accused enjoy all of their rights and the public ministry won't be bringing in preconstituted evidence, rather, it would come on an equal footing to the trial and so there would really be equality of the parties before the judge.

And the trial stage can be prepared and the parties can debate the evidence that they'd like to offer in the trial and preparations are made to make sure that the day of the trial all the experts are there, all the witnesses are there, all the documents that have been requested are there and in such an initial hearing, which would take place within a period of time already established by the law, the evidence can be brought forth and right then and there a determination can be made as to guilt or innocence.

It's understood that the judge who would rule on this would be different from the judge who would be intervening in the first stages of the first hearing, precisely so that the discussions in offering the evidence would not have any influence on the animus he who was sitting in judgment when it comes to handing down judgment. Nonetheless, we know that in this stage oftentimes recourse is had to juries.

Using juries requires a great deal of preparation, a great deal of money and broad social participation. Mexico at this time would not be in a position to put together the full framework and support systems that would be needed for having a jury system, but I can tell you that with the resources we have today we can make sure that judges serve one as the investigating

judge and the other as the judge who would hand down the verdict.

And then there would be a final hearing, which would be just to rule on the sanction to be imposed or the individual penalty.

In such a phase, the penalties have not to do with whether the conduct was committed or whether the person who committed such conduct was guilty. Rather, the subsequent hearing is just to receive evidence that might aggravate or mitigate the penalty in view of the characteristics of the victim, of the perpetrator and of the crime. And then a decision would be made as to the penalty to be imposed.

Such procedure would be public and oral, abiding by all the principles of adversarial procedure, possibilities provided for such that before or during the investigation there could be alternative measures. There could also be suspension of the procedure. There might be an agreement, particularly in crimes involving harming another's property. They might come to an arrangement and then the procedure needn't go forward all the way.

Our judges at this time are not prepared to serve as mediators and, second, there is nothing in the law allowing for people to opt for alternative solutions or settlement, they'd rather go forward in trial with the possibility of winning and, if they lose, they could then bring an empado [ph] action and, as a result of a ruling in the empado [ph] action they might walk free.

So in summary, this is what I can tell you briefly about this justice reform initiative.

Armand Peschard-Sverdrup: We're going to go through the Q&A with the Deputy Attorney General.

Mr. Ramos, thank you very much for your comments.

The way we're going to structure it from here on is we're going to go to maybe ten to fifteen-minute Q&A before we break for lunch and then we'll continue with the program.

The Deputy Attorney General is not here for the entire day, he is flying back to Mexico this afternoon, and I'd like to take advantage of him being here for him to field as many questions as possible while he is still here.

I don't know if Sarah is here or someone that can turn off the projector, but why don't we don't we start with the Q&A?

Arturo?

And if you can please identify yourself as well for the Deputy Attorney General's benefit.

Arturo Arango: Arturo Arango, Studies of Citizen Security and Criminal Procedures Institute. Why does the proposal not consider providing information that is to say a criminal statistic system that could be publicly known in proper time and form to get rid of the secrecy of the 12-year prohibition on releasing information?

I think that's the cornerstone and the Achilles' heel of any other proposal. If that information does not exist, then how are we going to be able to evaluate the actions of the authorities and know that we are on the right path?

David Shirk: So that we can be a little more efficient, Sigrid Arzt?

Sigrid Arzt: Sigrid Arzt, Democracia, Derechos Humanos y Seguridad. I'd like to ask the Assistant Attorney General about how the restructuring of the organic law of the Office of Attorney General, which was issued in 2002, whether it was part of a plan to move towards autonomy of the Office of the Prosecutor or is it that that restructuring took place and now there is a discussion about the possibility of conferring such autonomy on it and creating a federal prosecutor's office? That's one.

Second, I understood that the ratification of the attorney general is a practice that is already done and the reason it's done, and if my memory serves me well, it was Attorney General Madrazo who did this first and then Macedo, it is done to obtain this autonomy and to help make the legislature more accountable.

I'd like to know how, based on getting the ratification of the attorney general, how is it possible that the appointment won't be put aside? What are the technical elements that we can put on the table to make sure that the date that's proposed by a prosecutor, to make sure that it goes beyond specific six-year administrations? That's been a problem.

Ernesto Lopez Portillo: There was mention of a document that was being discussed with some experts in the Center for Criminal Policy. The document argues that all such reforms implemented in Latin America, Guatemala, Venezuela, Costa Rica, Chile, Bolivia and also in Italy have led to an increase in crime rates. In no cases has there been a diminution. Furthermore, the document contains a table showing the process of implementation in terms of the various stages. In other words,

what this document is trying to say is that nowhere has any country sought to carry out a reform of this complexity and magnitude.

The idea is that the reform take place through 34 procedural reforms, if one thinks of all the states, the federal system and the military justice system. And what this document concludes is that the risk analysis of a reform of this magnitude, at the time that it's being contemplated, comes up with some very worrisome issues.

I would just want to say that I hope that in the ongoing discussion in congress the discussions can be segmented so that a qualitative leap can be made where one reviews not only the internal technical problems but also the context of implementation, the process of implementation, the methodology of implementation, in light of international experience.

And there's one more thing and then I'll wind up. The document says, it states some conclusions in the initial explanation, for example, in the relationship between the police and prosecutors in other countries which are erroneous conclusions. The document says that the operational autonomy sought for the federal police does not have similar mechanisms which one could analyze, saying this has been done, we have examples that support this proposal because the reading of the connection between the police and the prosecutors has not been adequate, based on understanding the federal police as a function and not as an institution.

It's a somewhat complex matter, but I wanted to put several issues on the table for the coming discussions in congress. I think there are considerable such discussions.

David Shirk: One more.

Benjamin Mica: Benjamin Mica from Projustice Initiative in New York. You mentioned the issue of how we could guarantee the presumption of innocence when the rule in practice is that defendants are held in pre-trial detention, pre-trial detention that runs against international provisions, but it's also counterproductive in terms of the goals of justice. So my question would be what mechanisms would you suggest to guarantee the presumption of innocence, rather than seeing these statistics on pre-trial detention?

Assistant Attorney General, in Mexico, we have a legal principle that is also found in other countries of the world, which is to say that investigations should be kept under seal and trials themselves should be a matter of public interest.

What procedures would be established to achieve this because we now have private preliminary investigations that are always public because they leak to the media and we have private trials where the public has no way of gaining access to these proceedings? Is an oral trial the only way in which one could have access to the procedures of the trials? Would all trials be oral or just some? And might there be a law such as the law on access to information, an individual right to have access to the information on all stages of a trial?

David Shirk: One more.

Berto Undeach: Berto Undeach, Johns-Hopkins, SAIS. One question, Mr. Assistant Attorney General. Considering the proposal to conduct the changes over several years, Mexico is facing a cry for media change, which has brought about all these political pressures. One of the reasons why these long-term changes have not taken place has been for the pressure of the call for quick results.

Is there some strategy or do you have any idea in mind for an immediate solution that would make it possible that there not be such pressure or that would make it possible such that this proposal for the long-term would have time to begin to work?

Alejandro Ramos: Thank you very much for the comments and the questions. They are very complicated, but very much on the mark in terms of focusing on key issues.

Now, in terms of creating data that's public and suppressing the secrecy or keeping the information under seal for 12 years or 20 or 30 years or however many, well, first we would have to draw a distinction between statistical information and information from the investigation.

The reform does include creating statistics, but also under the current law, and in fact there are two ways that statistics are created. First, the law that establishes the basic coordination for a public security system attributes to the Secretariat for Public Security the power to create databases and to compile information on crimes, the existing police, weaponry and so forth so as to have a national registry on these matters.

Yet at the same time, the Office of the Attorney General of the federal government and of the states generally, well, these generally are required to generate statistics on crime. The Office of Attorney General has such statistics and through the National Conference of Attorney Generals it has generated a national statistic which is publicly available and is on the

Internet.

Perhaps what has been required has been wider dissemination of these statistics, but they do exist and they are available to the whole public. Among the agreements reached in the special meeting at the Office of Attorney General the day before yesterday, one of the agreements is that this statistical information should be widely disseminated monthly and this should be done by the Office of Attorney General of the nation as a conference and by each of the Offices of the Attorney General of the respective states, so this is a current matter.

Now, if we're referring to information from the investigation into a specific case, well, there I don't think we could agree on the need for that to be entirely public because an investigation is underway and making it public would merely create more complications where it comes to learning the facts of the crime being investigated and it might create risks to the security of people involved in the investigations in one way or another.

And in terms of what Sergio Sarmiento said, it could place in jeopardy one's reputation and security without even a medium level of certainty that such an investigation could lead to a trial. Oftentimes, it simply ends up filed. And, so, yes, it does call for creating the statistics and it does call for general public access.

In terms of the organic law and the Office of Attorney General of the republic which was drafted and approved in 2002, well, this gives me an opportunity to say a couple of things and I would like to tie it into the last question.

In effect, society is calling for justice, for security today and this sometimes stands in the way of long-term thinking, for one might never reach the long-term. A society is not interested in waiting two, three or five years for justice or security, so the attorney general and particularly Macedo thought that we should work separately for today and for tomorrow.

We have to work for today with the police we had, many of them who were not trained, who had been tainted by crime and corruption, and with laws such as those we had or those we still have and this can stand in the way of our carrying out our responsibility. And that is why we were working to make what we had work and to make it work well.

And at the same time, looking to the future and thinking about how to form a real institution, the Office of Attorney General is an institution because there's a law so stating, but

beyond that it wasn't much of an institution because it didn't have clear rules and standards for its conduct other than what was in our codes of procedure.

To cite an extreme case, if somebody wanted to appoint a public servant or a director general, they would draw up the draft agreement on the basis that they wanted, in the form that they wanted and the next prosecutor would do so on another basis and so forth, so there are not sufficient internal regulations. There was no career service established, there was no idea of how to form a training institute. Most of the curriculum was based on paper, shooting a pistol, personal defense, so it seemed that the police who we were training had the function of being in the street, arresting criminals, with a profile of a policeman on the beat, not an investigative police. And so we didn't really have a strong institutional structure.

So we worked along two lines. First, to change our legal framework so as to spur on specialization in federal policing, major specialization is required because of the nature of the crimes. Financial and tax crimes are very complex, crimes relating to the general law and health are very complex, crimes committed by organized criminal groups even more so, so we need to have greater specialization.

At the same time, we need to make sure that the police is not just spread along the highways of the country because, as you know, the attorney general's office had some checkpoints at different points of the highways waiting for a criminal to come by with drugs so as to be able to then bring him before the public ministry and so the question is who was investigating? We thought that the Ariano Felix would be going down the highway with their drugs.

Well, the objective of the reform was along these two lines: first, to specialize the units and their personnel and at the same time to recoup for the Office of Attorney General and the police their essential function, which is investigative.

We gave these to the Federal Preventive Police, the checkpoints, they're the ones who are responsible for preventing crime in public places, and we devoted ourselves to investigation.

Investigation also involves technique and science and that is what has allowed the federal investigative agency which would appear to be just a change in name to actually change because this agency doesn't have those fat cops with their coat with the ego on the back, it's a different kind of police force that has been trained in investigative technique. Each policeman has been

JUSTICE REFORM IN MEXICO - 7/16/04

specialized. If a policeman needs to be in the street pursuing people connected to a crime, if they need to be at a computer analyzing networks and databases so as to find new evidence or new lines of investigation, if it's one who needs to enter by force into a house or other place, well, each of them has his or her own profile and own specific training.

We can't think about having such police, first of all, with a 6000 peso salary and, second, with two months training in the training institute, so we changed the profile, we changed the study plan because we need to answer today. And while we're training the new police, we needed to work with the police already there and little by little the training course's time has been extended and we have regular training.

Now, initial training is six months. After that, there is two months of specialized training in certain areas. In other countries, other universities, some in our own National Institute of Criminal Sciences, we changed the profile to get people with better background or a better level to come in and now the immense majority of our police have university studies, many of them have completed their university studies. And the most humble policeman today earns 12,000 pesos, which is still not enough, but it's a dignified salary, particularly when compared to income levels in Mexico, I think it's somewhat dignified. But moreover, the career service seeks to ensure that these police have clear performance at each stage.

When we arrived, there was a rule that a police agent of level C would have some other commanders under him because he was in good stead with the police commander or something like that and because there was no rule that established that agent's function. And so there was an amorphous mass of police of no use whatsoever.

And so the idea was to dignify the police, not only in terms of their salaries but also in terms of the functions that are assigned to them, so now a policeman can be proud to be the smallest one, the biggest one, because they are taking on more responsibilities but also more functions and they're able to establish control through supervisory and control mechanisms.

So the idea is that the police can't be in the place without an order because there might be more robberies. The idea was that they can't be alone, they need to be moving about together and they need to have an immediate supervisor who would be responsible for what that policeman does or doesn't do and that it would go up the ranks that way. And the idea was that the head of the agency might someday be somebody who has been going up the various steps of the ladder in the police hierarchy.

This was done in the Office of Attorney General. It was a prototype to look at what aspects would be favorable to or might hold back this evolution process and it also inspired us to think up the new police. But when the law was reformed, no thought was given to this broad-ranging reform, rather, it was just simply a question of bolstering the Office of Attorney General and many of these aspects have been taken up in the initiative to bring about this functional scheme between the Office of Attorney General and the police.

Also, the ratification of the attorney general is something that we have provided in the law. We want him to be more autonomous, more independent from the executive branch of government and also from the legislative branch of government. Although the governors are representatives of the state, then all the states have to agree as to who is going to become the federal attorney general. So the senators are the ones that represent the states and therefore they need to ratify the attorney general.

The attorney general is going to be discharging his functions so long as he fulfills his duties in a proper manner. Right now, it's that the attorney general may be removed by the president at any time, whenever the president wants, so now, that's not going to be the case because the attorney general is going to be autonomous, is going to be independent.

There are risks associated to this new attorney general's office, but we are going to create an attorney general's council with the national judicial committee and the executive will be the one overlooking all this, but only overlooking.

Now, as part of this reform, we are going to have a citizens council. The citizens council is going to be a place where the citizens may voice their opinions. So they're going to create this council and he invited various members of society to be involved in it. I think that has been a good thing, but we need to institutionalize this, we need to keep it alive, and include it in our law.

In connection with the question that was posed about the crime rates, of course the reform does not aim at being the solution to all crime problems. We all know that crimes arise not because they're not punished. Crime arises because people are poor, they are unemployed and people have to do something, right? So if we think that by applying repressive measures and criminal law, if we think that by applying those measures we are going to solve our crime-related problems, we are very wrong.

JUSTICE REFORM IN MEXICO - 7/16/04

So we need to think about this and also if we are thinking about this, we are thinking about the last stage, the punishment stage, but we have to look at preventing crime. We have to look at the social, cultural and other factors. So if those social conditions don't change, then somebody that wants to or anybody that wants to may become a criminal.

We talk about reforms in other countries and we have commented on this, we have to think that the minute the reform is implemented automatically then everything is going to be running perfectly as it was designed.

Excuse me. Just one brief -- the document that you mentioned says that the reform brings about crime, more crime or increases the crime rate. This document has to do with phenomenons that have happened in other countries. The document says that in other countries when reforms such as these were implemented crime has increased.

Well, yes, but this is my viewpoint: every change needs a period of adjustment and when the change is brought about, perhaps there is an imbalance and that may bring about an increase in the crime rate, but in the long term, the reform will become more consolidated, it will become stronger and therefore it will achieve the results that it was designed to achieve and that is what this reform is about. We are thinking long term, we are thinking of the future.

In connection with the relationship between the public ministry and the police, somebody said that this document is erroneous, well, we need to review this document, we need to see whether we forgot to include something. For example, I don't think in England the police reports to the public ministry and there is no lack of coordination in England.

I know there are always complaints between the police and the public ministries or the prosecutors or whatever you call them in each of the countries, but that is something that happens in every society and I am sure the English and the Americans have some kind of issue with this relationship between these two bodies, so those two bodies have to be coordinated, the public ministry and the police force.

So we need to have a certain punishment for the police officers and for the public servants that do not abide by the rules set forth by the prosecutor's office and by the minister's orders. There has to be a possibility for coordinating the actions of these two bodies.

What about the presumption of innocence? Well, how can we

guarantee that? That was a question.

Not every single criminal is the same. The general rule is that there have to be different mechanisms. Pre-trial detention has an end and the end of the pre-trial detention is to keep the person there to assure that he is going to be put before the judge. So if we find new mechanisms such as the ones put forth with other systems such as bonds, then we are going to reduce the risk of flight and we're not going to need pre-trial detention systems because if we're thinking about a potential perpetrator of a crime that's harmful to society, then things are going to be different.

Now, I just wanted to make a brief comment. The law put forth the obligation that institutions have the duty of generating statistical information or statistics so that is not exactly what happens in reality. Ninety-five percent of the crimes go through the what we call the ordinary judicial system and all this information is not provided to the public, so we need to have information, the public needs to have information, it needs to have all of the statistics. So if the reform proposes the same system, it's not going to be good.

Statistical information generated by public security institutions has to be open to the public, has to be open to everyone. If that is not the case, we are going to run the risk that we say that we are doing something, but we're not really enforcing what we're saying we're doing.

So I think it's good that it's a law, but it's bad that after seven years the information is not really given to the public or disseminated to the public.

Thank you.

David Shirk: Thank you, Assistant General Ramos. It's a pleasure, really, to have a person of such a stature here with us today and I hope that some of the recommendations made by the audience here will be considered and will be taken into account and we all wish you success and wish that this justice reform proposal in Mexico be very successful.

Let's make a substantial change to our schedule today. From 1:15 to 2:15, we are going to entertain comments by Alejandro Ponce de Leon and Guillermo Zepeda. Basically, they are going to talk about the reaction to the justice reform system in Mexico.

We're going to take 15 minutes to take a break, grab some food, and then we're going to come back here at 1:30 and then we're going to go from there to have a working lunch. We'll give

JUSTICE REFORM IN MEXICO - 7/16/04

you 15 minutes to grab food and whatever and then we're going to come back and continue the debate while we're eating.

We're going to talk about prison reform from 2:15 to 3:15, so we're going to have two sessions of one hour, two one-hour sessions, I was saying, and then we're going to deal with the political prospect for reform and that's going to be from 3:15 to 4:15.

Thank you so much for your patience, for bearing with us, and enjoy the lunch.

[Lunch Break]