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# PANEL DISCUSSION: COMMENTARIES ON THE PROSPECTS FOR THE ABATEMENT OF WHITE COLLAR CRIME IN MEXICO

MODERATOR: LIC. MIGUEL JÁUREGUI ROJAS\*

PANELISTS: ALEJANDRO POSADAS, LUZ NUÑEZ CAMACHO, AND LORETTA ORTIZ\*

**JÁUREGUI ROJAS:** Many steps must be taken to abate white collar-crime. First, there is a need to determine how deep and how important white-collar crime is in Mexico.

Next, when Mexico reaches out for assistance, it is injured by the lack of concerted effort on the part of the United States. Typically, Mexico reaches out for debt securities and for equity securities in the U.S. stock market or registration of American Depository Receipts (ADR's)<sup>1</sup> and registration of securities at large. To the extent that white-collar crime from that vantage point is not abated the sources of wealth to Mexican companies will be stalemated. In addition, situations similar to the development of FOBAPROA<sup>2</sup> will continue. This is the salvage fund for the bank institutions that failed during the 1994 peso crisis. FOBAPROA and its successor entity, IPAB<sup>3</sup>, are charged with the task of preventing white-collar crime from permeating the Mexican financial system. In doing so, the financial institutions of Mexico function in a healthy manner. A second related issue is the relationship between white-collar crime and money laundering, assistance to drug trafficking, and other such crimes.

Finally, there is great concern that the changes made thus far might be done away with should the political scenario of Mexico change yet again. There is also great concern in Mexican society at large as to the role of the district attorneys, both federal and local because they are the first door of entry to the justice system in Mexico.

In that regard, Mexican society is making a big effort. They are putting together, through the good offices of a counselor of my law firm, Ignacio Gomez Palacio<sup>4</sup>, the Mexican Institute for Justice.<sup>5</sup> The Mexican Institute for Justice's first objective is to look at the behavior, the training and the control of the district attorney. That is also the focus of Mexican society. We need good district attorneys for justice to be imparted, or the beginnings of justice, that will go to the judiciary.

**LORETTA ORTIZ:** The University of Mexico Iberoamerica, also the Tecnológico de Monterrey, and the Instituto de Investigaciones Juridicas<sup>6</sup> have been asked to

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\* A brief biography of the moderator will follow the article.

\* A brief biography of the participants will follow the article.

1. American Depository Receipts enable investors to trade foreign stocks as if U.S. companies issued them. They are bought and sold through regular Wall Street brokers and pay dividends in U.S. dollars. See ADRGuide.com

2. Fondo Bancario de Protección al Ahorro. This is the now defunct salvage fund for the bank institutions that failed during the 1994 peso crises. It has since been replaced with IPAB, the Instituto Para El Ahorro Bancario.

3. Instituto Para El Ahorro Bancario, at <http://www.ipab.org.mx/>

4. Jauregui, Navarrete, Nader y Rojas, Torre Arcos, Paseo de los Tamarindos 400B, Pisos 8 y 9, Col. Bosque de las Lomas, 05120 Mexico, D.F. Telephone: 52-5-267-4500. Fax: 52-5-258-0348

5. Instituto Mexicano Para la Justicia, A.C. (IMEJ), Avenida Tlaxcala 193-206 A, Colonia Hipodromo Condensa, Mexico, D.F. Tel. 52.67.45.23, e-mail [igp@innr.com.mx](mailto:igp@innr.com.mx)

6. The Instituto de Investigaciones Juridicas is based out of Universidad Nacional Autonoma de Mexico, at <http://www.juridicas.unam.mx/>, last visited 02/10/03.

investigate the jurisdictional administration in all the Mexican territory. The Iberoamericana University is conducting its study on the administration of justice in the states of Colima, Zacatecas, Estado de México, and three others. The World Bank who will allocate resources to all these universities to study our system and isolate the main problems initiated these investigations. For example, the prosecutors need more training capacity. It is telling that students from the Iberoamericana do not want to be judges or work as *ministerio públicos*, government prosecutors. They prefer to live and work as a lawyer in a luxury office near Santa Fe. It is difficult to have a good life as a lawyer, as a judge or as a *ministerio público*. We have to change this situation. The only way to do so is to make the work of a judge one of the most important in our country.

**JIMMIE REYNA**, Washington, D.C.: I have a very basic question to ask our Mexican colleagues. What is the standard of proof that must be satisfied in order to achieve a criminal conviction in Mexico? And are there different standards for federal case, state case, white-collar crime; blue-collar?

**NUÑEZ CAMACHO**: I think there are some problems that affect both countries. One of them consists of outlining the elements required for a behavior to be deemed as a white-collar crime in Mexico. Take for example "fiscal fraud." In the U.S. it is not considered a crime, it is a matter that can only be tried in the civil arena. In Mexican legislation "fiscal fraud" is criminalized as an offense. In practice, when a case is opened for fiscal fraud and the criminal suspects become aware of the investigation, these persons will most likely go to the United States. In such case, it is very difficult to obtain extradition from the United States to Mexico, since the American authorities will reject the extradition of these persons because the illicit behavior is sanctioned in a different manner in both countries. To solve these problems, it would be necessary that both countries have similar laws and penalties. However, it is more important that fiscal fraud be considered a crime in both countries, and furthermore that it be deemed a predicate offense in cases of money laundering, since in Mexico when tracking the resources from fiscal fraud it is often discovered that the resources are used for other illicit conducts.

**POSADAS**: There is no exact equivalent to standard of proof in Mexico. You have to prove fully all the elements of the crime. The judge, of course, has a pre-evaluation of the evidence in general terms. Many times the problem is simply getting before the judge because the *ministerio público* has complete discretion to press charges and will not initiate a proceeding if they feel that there is not sufficient evidence. Another evidentiary challenge is that Mexico is a very low trust society, which creates problems with testimonies. Witness statements are not highly valued, and many times they are needed to provide crucial evidence in cases.

**JÁUREGUI ROJAS**: I am not a criminal lawyer or an expert in criminal law, however, in working with many criminal lawyers in the corporate context to defend companies against white-collar crime offenses, I have realized that the *integración del cuerpo de delito* or integration of the *corpus delicto* creates a serious stumbling block in the Mexican legal system. The *corpus delicto* is almost impossible to get integrated within a reasonable period of time and within reasonable terms.

Therefore, the prosecution and the jailing of white-collar criminals is difficult in Mexico. It may be easier if you catch them stealing money from financial institutions or defrauding financial institutions. Maybe it is easier if you catch them evading taxes or with contraband. However, in fraud of management of corporations it is extremely difficult to have the required standard of proof to integrate the *corpus delicto*.

**NUÑEZ CAMACHO:** Regarding the investigation and prosecution of money laundering offense, the advances in Mexico shall be recognized because of their success not only within the country, but also in the investigations that involve other countries, including the US, where Mexico has provided witnesses in several Court cases or hearings concerning these investigations.

On the other hand, currently, the Attorney General's Office has an investigation for money laundering, where the predicate offense is corruption.

Regarding the measures to prevent the offense of money laundering, there have also been advances in Mexico; last year (2001) several amendments to the financial legislation were issued in order to regulate "money remitters", which are different to money exchange offices, which establish the obligation to report suspicious transactions to the Secretariat of Finance and Public Credit.

**BRIEF BIOGRAPHIES OF PANELIST:**

*Lic. Miguel Jáuregui Rojas* is a founder and member of the firm of Jauregui, Navarrete, Nader y Rojas, Torre Arcos, Paseo de los Tamarindos 400B, Pisos 8 y 9, Col. Bosque de las Lomas, 05120 Mexico, D.F. Telephone: 52-5-267-4500. Fax: 52-5-258-0348. E-mail: mjr@jnnr.com.mx

Lic. Jáuregui's main areas of practice include, mergers and acquisitions, taxation, telecommunications, energy, infrastructure and trade. He is a member of the Mexican Academy of International Law (Academia Mexicana de Derecho Internacional), the Mexican Bar Association (Barra Mexicana, Colegio de Abogados), the American Bar Association, the National Association of Corporate Counsels (Asociación Nacional de Abogados de Empresa), the World Presidents' Organization and the Chief Executives Organization. Lic. Jauregui is the Chairman of the Section of Central and Eastern Europe (Sección de Europa Central y Oriental) of the Mexican Businessmen Council for International Affairs (Consejo Empresarial Mexicano para Asuntos Intercionales), Chairman of the Legal Framework Group and Member of the Executive Committee of the Mexico-European Union Business Council (Consejo Empresarial Mexico-Union Europea) and Observer to the Board of the American Chamber of Commerce of Mexico. Lic. Jauregui is a Trustee of the Board of Governors of The American British Cowdray Hospital and Treasurer of the Mexican Foundation for Health (Fundación Mexicana para la Salud). Lic. Jauregui is an Honorary officer of the Order of the British Empire. Lic. Jauregui received his law degree from the Universidad Nacional Autónoma de Mexico and was admitted to the Mexican bar in 1965.

*Lic. Alejandro Posadas* is presently working toward his S.J.D. at Duke University School of Law, 2748 Campus Walk Ave., 18 F, Durham, NC 27705. Telephone: 919-382-5587. Fax: 419-791-8252. E-mail: [alejandro.2osadas@law.duke.edu](mailto:alejandro.2osadas@law.duke.edu). Lic. Posadas is a S.J. .D. candidate whose work currently focuses on the development of international law initiatives to combat corruption. Lic. Posadas was an associate with Thomas and Partners in Vancouver, BC where he worked in the preparation of NAFTA Chapter Eleven investor-State arbitration cases for the Mexican government, 1996 to 1998; and a member of the Directorate of Foreign Litigation at the Office of the Legal Advisor in the Mexican Secretariat of Foreign Affairs, 1992 to 1994. He was a Visiting Associate Professor at Duke University School of Law, 2002-03; an Associate Professor at the Centro de Investigacion y Docencia Economicas, 2001 to present; and a Lecturing Fellow at Duke University School of Law, 2000 to 2002. Lic. Posadas is the author of numerous publications in law journals and books, including the *Duke Journal of Comparative and International Law*. He received the Licenciatura en Derecho from the Universidad Nacional Autónoma de Mexico (UNAM) and his LL.M. from Duke University School of Law. He has also been admitted to the New York Bar.

*Maria de la Luz Nuñez Camacho* is a Lawyer graduated in the *Universidad Nacional Autónoma de México* (Autonomous National University of Mexico), with studies on Public Finances. On money laundering matters she has taken courses at the Border

Patrol Academy in Glynco, Georgia, and at the Royal Canadian Mounted Police in Vancouver, British Columbia Canada. For over 20 years she worked for the Secretariat of Finance and Public Credit. During said period, she was Head of the National Advisory Board in the Taxpayer Assistance Directorate; Director of International Audit, applying the Agreements for the Exchange of Tax Information; Manager of Money Laundering; Attached General Director for Transactions Investigation, developing the Unusual or Suspicious, Large Value and Concerning Transactions Report Computer System for money laundering effects. Moreover, she encouraged negotiations to enter into several international agreements for the exchange of financial information, and Mexico's incorporation into several International Organizations, such as the Egmont Group and the Financial Action Task Force (FATF). Likewise she was responsible for the drafts of amendments to the Customs Law, to several Financial Laws and to General Provisions to Prevent and Detect Acts or Transactions Carried out with Resources from Illicit Origin, including therein various obligations for financial entities. In order to prevent money laundering transactions she created the Mexican Financial Intelligence Unit and has given 72 Conferences at national as well as at international level. In January 2001, she was designated Head of the Special Unit to Combat Money Laundering in the Attorney General's Office of the Republic of Mexico Plaza de la Republica, No. 35, Piso 6, Col. Tabacalera, Mexico City, DF 06030. Telephone: 52-55-5346-3315. Fax: 52-55-5346-3381. E-mail: [ueclid@pgr.gob.mx](mailto:ueclid@pgr.gob.mx). Lic. Nuñez currently she Chairs the CICAD/OEA Group of Experts for the Combat of Money Laundering. Since 1985, she is professor for opposition of the subject of Fiscal Law, in the Law School, at the *Universidad Nacional Autónoma de México*, and was appointed Director of the Fiscal Law and Public Finances Seminar, position she held from 1985 to May 2002.

