

Judge Peter J. Messitte
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A TRIBUTE TO TEORI ZAVASCKI

The tragic death last week of Brazilian Supreme Court Justice Teori Zavascki represents not only the loss of a great Judge, but an occasion to reflect on the outsized role he and his Court have played in combating endemic corruption in Brazil.

Justice Zavascki, 68, who went down in a private plane crash near Rio de Janeiro, was appointed to the High Court in 2012 by then Brazilian President Dilma Rousseff. At the time of his appointment, he was a member of the Superior Tribunal of Justice, Brazil's highest non-constitutional court. Before entering the Judiciary, he was an attorney for the Central Bank of Brazil, and from 1980 on he lectured on the subjects of administrative and tax law at the Federal University of Rio Grande do Sul, his alma mater. He received numerous prizes and awards from different public entities, the Judiciary, and even the Armed Forces, in recognition of the relevant services he performed.

On the High Court, Justice Zavascki was all that he promised to be: brilliant, workmanlike, quiet and gentle.

But his break-out role came in connection with the Operation Carwash investigation and prosecution – the largest corruption investigation and prosecution in Brazilian history, an undertaking still in progress. Scores of political and business figures have been charged, many have pleaded guilty, and several are already serving jail terms. Although most of the recognition in this effort has been given to Federal trial court Judge Sergio Moro, overall supervision for the operation has been in the hands of Justice Zavascki.

His role, as a Supreme Court Justice overseeing a criminal prosecution – much less one of the magnitude of Lava Jato – is one that an American audience is almost certainly unfamiliar with. The U.S. Supreme Court has no criminal jurisdiction, save for the possibility of reviewing criminal cases on discretionary appeal. Not so in Brazil. Not only does Brazil's highest court have criminal jurisdiction; it plays an active role throughout the criminal process. And, to do so, as indeed as it does in deciding all cases, the Brazilian Supreme Court designates one of its 11 members, called the relator, to be the principal reporter for the case.

That was the role that was bestowed upon Justice Zavascki in the Operation Carwash case.

And he took to the task with great aplomb. But always, in handling those politically sensitive cases that went directly to the Supreme Court or in contemporaneously reviewing hundreds of decisions from the trial courts, he was the brilliant, workmanlike, quiet, gentle soul that he had always been.

But Justice Zavascki also displayed a critical, most certainly innate, dimension. His was unfailingly independent.

He had been appointed by President Dilma Rousseff, but that did not deter him from impartially deciding cases, however those decisions might have reflected back upon his political benefactors.

Teori Zavascki was, in sum, an icon of the Judiciary. His loss is not Brazil's alone. It is a loss for all of us everywhere who believe in the Independence of the Judiciary and the Rule of Law.

Peter J. Messitte
U.S. District Judge
Adjunct Professor Of Comparative Law &
Director, Brazil-U.S. Legal & Judicial
Studies Program
American University Washington College of Law.
Washington, D.C.