

## **The Woodrow Wilson Center's Mexico Institute**

### ***The Justice Debate in Mexico: The Reform and Future Challenges***

#### Panel II: Challenges for Implementing the Reform

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I was struck by the Woodrow Wilson Center's timing in organizing this event. We are at one of those lulls between a major reform legislation being passed and its implementation in which critical decisions are made... decisions that can be instrumental to keeping the endeavor on the straight and narrow.

As usual at the onset of any great undertaking, Mexican justice is going through a hopeful, yet very demanding time.

The symbolic moments of grandiose speeches at the Mexican Congress are behind us. Before us lies the less glamorous challenge of transforming legislation into reality. We must lay aside the poetry and the good intentions and proceed to building new realities.

In an effort to contribute to this new state of affairs, several of us, members of the Network Advocating Oral Trials, have begun working on assembling an inventory of public policy actions that would have to be embarked at the Federal Government level in order to improve the odds of the reform being a success. I confess to being overwhelmed. The collection of legal, financial, administrative, and political actions is so vast that it's difficult to decide where to begin.

In addition to these hurdles, which are inherent to any reform of this nature, I'd like to add three features of Mexico's reality today that will allow us to gauge the size of the challenge we face.

First of all, Mexico has double or triple the population of most of the Latin American countries that have successfully implemented a similar reform, not to mention the fact that unlike Chile or Colombia, our main benchmarks, we are a federal republic and not a unitary state. The latter involves a much greater political effort, coordination and policymaking activity.

The second feature relates to the timing for launching the implementation process. The Mexican state is weathering an assault by organized crime unheard of in our history. Worthy of note is the fact that in April 2007 –when the situation, although dire, was still far from today's crisis point- the President was leaning towards giving police forces and the Prosecutor's Office tools that would have been conflict with an oral due process.

At the end we convinced Congress that the reform would have to be comprehensive, and not piece by piece, as if they were unconnected. However, we must be aware that the Executive Branch's priorities are topped –in all fairness and logic- by apprehending the great drug kingpins. Even with the reform having been passed, the challenge still remains in convincing the

President that addressing both issues simultaneously is not only possible, but convenient.

The third feature is the information and communications void over the last two months by those that passed the reform: the Legislative branch, the Executive branch and civil society. The local and federal judges –who went from being skeptics and detractors to requesting considerable funds for implementation purposes- are the ones doing all the talking now, without a mediating diagnosis of the needs required to make strides from one system to another.

On account of this overwhelming reality, I declare myself incompetent to offer an orderly view of the steps to be taken next.

However, I think I see a more distinct picture regarding the political missteps that we should be particularly mindful of, over the next few years. I put before you five transgressions that, if avoided, could offer us greater chances for success in the implementation process:

### **1. Oral trials as a trend**

Because of its overarching nature, the reform represents a new racecourse in which the states will be jockeying for position, which is only natural and healthy.

The question is which criteria will win the race: being the quickest to change local laws, building the sleekest courtrooms, or embarking on a slow, winding, and challenging process of change that could eventually lead to a radically different criminal justice system that what we have today? The latter is the desired one: states vying to best their neighbors, but in substance, not in promises or pyrotechnics.

The challenge lies in convincing the Governors that the states are entering to compete in a marathon, not a 100 yard dash.

### **2. A fetish for technological and set design**

We have an edge in thwarting this dangerous transgression: we are already “blessed” with the definitive example of what shouldn’t be. Mexico State, the most populated of the country, can be held up as proof that in the legal system, as in everywhere else, “the clothes don’t make the man”.

Enrique Peña, a Governor and presidential hopeful, altered the judicial set design as a gimmick to attract media coverage in the guise of a “modern” public official on the justice front. The ploy cost Mexico State citizens 7 million dollars, spent on building courtrooms with wooden furnishings, screens, and video and sound equipment. A stage set, in short, worthy of a major Hollywood production.

There’s no doubt that the reforms to transform a written-inquisitive justice system into an oral-adversarial one cost a lot of money. However, these resources would have to go into changing the software before the hardware; training, designing new justice procurement models, creating performance indicators, before bothering about the setting design.

### **3. Announcing a cure for cancer.**

Here I plead guilty. We have overblown expectations regarding the legal reform. However, we're in time to change our discourse emphasizing implementation, and it is urgent we do so.

Every week, a magistrate, a justice or a judicial administrator comes forward to remind us that "oral trials are no magic wand". They're right: transforming a broken justice system into one that reasonably works requires much more than oral trials. Fortunately, the constitutional reform lays the cornerstones for building a new system from beginning to end, from an alleged perpetrator's arrest to his sentencing by a judge.

Painting a hopeful picture helped us push the reform through, but the time has come for the sad truth to be told, one that reminds me of the one encountered by the Irish disembarking on this land in the mid 19<sup>th</sup> century. Someone had told the poor Irishmen that the streets were paved in gold on this side of the Atlantic.

Some of you might not know it, but that wasn't so. That, however, was not the sad truth, nor was it that the streets weren't even paved, but rather that the immigrants had been brought over, in fact, to do the paving.

My dear judges: true, oral trials are no magic wand, and yes, once the reform has been passed, everything remains to be done. And guess what? A large portion of that task falls on you.

But there is good news also. If you talk to judges in Chihuahua and Nuevo Leon, where reform is already underway, they would tell you about how they have become increasingly trusted figures.

### **4. A lawyers' reform**

The tradition to date has been that lawyers have the monopoly on the whole of reforms processes to our justice system. Of course there is a need for the work of jurists in modifying the laws, but it is far from being enough to change reality.

Those who have witnessed the reform process in other countries attest to this principle: first-rate laws do not automatically make for the best implementations.

Transforming one justice system into another requires engineering the sequence of steps to be followed, demands political cajoling to convince Governors to take firm small steps instead of running, and calls for managers and financial minds to give the reform economic underpinnings.

We're in time to avoid deluding ourselves that we'll be able to modify the workings of federal justice and the penal justice system in 32 states by merely modifying laws to align them with the constitutional text.

### **5. Fantasizing about shared leadership.**

Let's not kid ourselves. Implementing the reform will be Felipe Calderón's success or failure.

While it's true that the low profile that the President kept during the legislative deliberations helped push the modifications to the Constitution through Congress, that crossroads is in the past. Congress is now busy with other issues and the Judicial branch is still in a state of anticipation regarding how serious the upcoming change will be.

A show of hands on this regard is unanimous. Change works if the Executive branch is fully committed and allocates political, financial, and administrative resources to creating a new criminal process.

I'd like to close by putting the scope of the upcoming reform -the Mexican justice system's most significant in at least a century- in a historical context.

The year 1997 has been acknowledged as Congress' symbolic moment. The PRI lost control of the House and the Mexican Legislature ceased being a Power subordinate to the President.

The year 2000 was marked by alternance in power. It was the symbolic moment for the Presidency, which today passes -like in any true democracy- from one party to the other without the specter of violence.

If Felipe Calderón succeeds in seeing the reform through to a productive end, 2008 could well be the year marked by the transition of the authoritarian Mexican justice system to democratic normalcy. Not a small legacy by any measure.