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Opening Remarks

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PROCEEDINGS OF THE FOURTH ANNUAL LEGAL & POLICY ISSUES IN THE AMERICAS CONFERENCE (2003)

PANEL I. RULE OF LAW IN THE AMERICAS

OPENING REMARKS

*Buddy MacKay**

It is my pleasure to be here and to be a part of this. It is really an honor. I have found it to be a very exciting thing to be associated with Jon Mills and the things that are going on with the law school, and to be associated with Terry McCoy. Terry was the Latin American Center director when I was in the U.S. Congress. I had this little misunderstanding with the Reagan administration over aid to the Contras, which I thought and still think was immoral and illegal. There was one place in my entire district where people would listen to me and that was Terry's center. I think we are far enough past that now that I can out you, Terry, as somebody that helped look after me.

That was back when Communism was in its prime. Communism is still with us. We need Castro badly, when you think about it. Without Castro, we have nobody to be against. Without Castro, there would be no Miami. We had a conversation about insanity at supper, and the impact of insanity on politics, which I think is important. One of the things I did during my eight years in Tallahassee was to head the oversight board when the City of Miami publicly announced it was insolvent. They had a mayor whose name was Joe Carollo. He was known affectionately in Miami, and still is, as Crazy Joe. Crazy Joe's antics were such that there finally developed this huge citizen initiative to abolish the city of Miami. They figured it was the

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only way they could get rid of him. They would just do away with that level of government and it would become part of Miami-Dade County. The proponents of that plan were leading about seventy to thirty, there were three weeks to go, and somebody said, "We've finally got him. He's on the ropes." Then Crazy Joe went on Cuban radio and said, "You want to help Castro; abolish the city of Miami." He won the vote by seventy percent.

I was appointed by President Bill Clinton to be the second Envoy to the Americas. The first envoy was Mack McLarty. The position came with the FTAA and the Summit of the Americas. It was the effort by President Clinton to be sure that the nations of Latin America understood that this was a priority and to be sure that the agencies of the U.S. government understood that. So the focus of the post was to be the President's spokesman in Latin America. The post was created in 1994; by the time I got there in 1999, President Clinton had just narrowly avoided being impeached. The Democrats had lost both Houses of the Congress. There was nobody in the White House that could go to the Congress and talk about Latin America. I became the President's Envoy for Latin America to a U.S. Congress which did not want to listen.

I was talking with Janet Reno at one point. Janet's a friend; she is one of the people I most admire, in or out of government. Totally honest, fearless, an extraordinary person. She was at that time the Attorney General — Secretary of the Department of Justice, if you look at the position the way other countries describe it. I was telling Janet sort of the unusual things I was doing, so she started telling me the unusual things she was doing. She was spending a huge amount of time working with the ministers of justice in Mexico, in Chile, in Colombia, and all throughout Latin America. A lot of the work she was doing originated with the drug problems the United States had, and the impossibility of getting Latin American nations to extradite people because it was seen as an insult to sovereignty. There was a total inability to make a hemispheric system of justice work because of the absence of rule of law and because of the inability to get a reform accomplished or even to agree on what that reform should be. Janet told me about the effort that was being made with the center for justice which had just been established in Chile. At that time she told me just how important she thought that that was. It is now housed in the Organization of American States. She asked me, as long as I was doing all these other things that were not in my job description, why did I not try to see what was going on with the rule of law in Latin America? It was a fascinating challenge, and so I did. I got some staff and we started trying to evaluate the efforts that were being made by our government to develop a rule of law, a workable rule of law in this hemisphere.

I want to say something serious. Think about the contrast between this hemisphere and the European Union. They are bringing in fifteen nations, which you could think of in a rough analogy to Central and Latin America and the Caribbean. They are bringing them into their system. How are they doing it? They are requiring that they adopt a uniform body of law. They are requiring that they adopt uniform institutions. How are we doing it? Well, we are going to have free trade. Are we going to have anything else? That is a real question. Is it going to work? That is a real question. Do our institutions match? No, they do not match. Do our traditions match? No, they do not match.

Chile went directly from the Roman law, the law of inquisition, to a modern court system. I talked to the man who had been hired by the Chilean congress to implement this. He said, "You have no idea what this is like. We have never seen a courthouse. There were no courthouses. We have never seen a prosecutor. There were no prosecutors. The idea of a public defender? Who ever heard of such a thing?" He had six months literally to build the courthouses, hire the prosecutors, hire the public defenders, and train them. This was all because the legislative branch finally got upset with the judicial branch which was not going to enact reforms because they thought things were all right the way they were. So the legislature said, "You're going to try your first case on January 1st of next year. Period. Go to work on it." They were in high gear.

I started trying to follow the challenge that Janet Reno had given me, to see what was going on with the rule of law. I went to the U.S. Agency for International Development (USAID) — which I think is a good agency, which does a good job with funds that are unrealistically small. I am not saying anything here to criticize USAID. I found out what they were doing in various countries in Latin America. Then I found out that they are not the only agency doing things down there. It ranged from the Department of Agriculture, which in one country is funding judicial reform, to the Defense Department, which in a number of countries is funding judicial reform, to the State Department, to a number of universities who are getting funding from every which way. The truth of the matter is, nobody in government in the United States could answer the questions: what are we trying to accomplish down there and what are the goals and objectives? How are we measuring whether we are succeeding or failing? Are there any gaps in our efforts? Is what we are doing going to work out in a system of globalization?

So it really began with Janet Reno. Jon Mills and others were working on it in an academic setting. The idea that originated is the idea not to duplicate other university efforts toward judicial reform, because there are long-standing and highly respected efforts by a number of U.S. universities. Rather, we wanted to find a way to put in place the ability to

coordinate with this judicial center in Chile and begin to try to make sense out of this. That is really what we were talking about.

I want to give you a quote which I think is an important thought. This comes from the book, *Lexus and the Olive Tree* by the journalist Tom Friedman.¹ He made a point which I think is important, that one of the aspects of globalization is confusion. It is a natural part of it as some of the areas where globalization is significant, such as the corporate community, the commercial community, are in the twenty-first century. Some areas, such as the Internet, are not controlled by anything. The Internet was designed to be anarchic and it is exactly that. It is totally controlled by the consumer. It exists without government. It is rendering the whole idea of sovereignty — something that people scratch their heads about anyway — defunct. Can you really have sovereignty in the age of the Internet? It is a very interesting thought. So Friedman made the point in his book that what is needed is what he called “information arbitrage.” I am going to read you a brief quote to try to make clear the point that he is making,

Today more than ever the traditional boundaries between politics, culture, technology, finance, national security, and ecology are disappearing. You cannot explain one without referring to the others and you cannot explain the whole without reference to them all. . . . That is the essence of information arbitrage. In a world where we are all so much more interconnected, the ability to read the connections, and to connect the dots, is the real [need]. If you don't see the connections, you won't see the world.²

I think this new effort by the Justice Center of the Americas is a promising thing. I believe we could add a tremendous amount of value to this state, at the central point in this hemisphere, by developing a counterpart effort and a role which enables us to help rationalize, read the connections, and make people all over this hemisphere able to understand the world that we live in. I think it is quite clear; the Americas will never develop in the same way as Europe. It would not fit this hemisphere at all. But there are a number of things we have got to have to make sense out of this and one of them is a rule of law, a uniform rule of law for the Americas. I believe, in other words, the University of Florida, through this center we are going to discuss, can provide a critical component in information arbitrage, showing the connections in the Americas.

1. THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE: UNDERSTANDING GLOBALIZATION* (2000).

2. *Id.* at 20.