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XII. JUDICIARY REFORM IN COLOMBIA

*Luis Alberto Moreno**

Introduction by Governor MacKay

Ambassador Luis Alberto Moreno is the Colombian Ambassador in Washington. He is involved in one of the most pressing issues in the hemisphere, and we are allies in the common fight to make sure that peace and chance for justice and prosperity come to his country.

Plan Colombia is generally portrayed in the press as an anti-narcotics program. And, of course, that is very much what the crisis is about. Yet at the core of Plan Colombia is a judicial reform program that is intended to strengthen the rule of law and support President Pastrana's effort to rid his nation of drug traffickers. If we cannot get meaningful judiciary reform in Colombia, then the successes we make will easily be rolled back by terror and civil war. I am pleased that the United States and the Congress is beginning to turn greater attention to the importance of Latin America. It is a time of real crisis for this country, this is the oldest democracy in Latin America. It has leadership now that is very good, very strong, and very courageous. I am convinced that the U.S. contribution to Plan Colombia will pass our Congress and that the peace process in Colombia will succeed, difficult as it is. When it does, a major part of the reason will be the extraordinary ability to enthusiasm and the dogged determination of our speaker today and I am pleased to present Luis Alberto Moreno, Ambassador.

AMBASSADOR LUIS ALBERTO MORENO

There is no question that the state of Florida has a lot of ties with Colombia. For one, we do about \$4 billion worth of trade every year and if you just go to South Florida you can see much of the economic activity that takes place related to Colombian exports or to Colombian imports from the United States. Almost a million people live in the state of Florida and they really thrive with the speed with which this state has been growing throughout the years to become one of the more important states in this union. I remember when I first came to study at Florida Atlantic, I recall that it would never have the impact that Florida has today economically and

* Colombian Ambassador to the United States of America.

more importantly in the definition of many of the larger issues that make presidential politics.

I always say that it is easy for an ambassador to spend most of his or her time within the Washington Beltway, but I really believe that they do that at their own peril. To understand this vast and dynamic country one must travel widely which I often do at every chance I get. My affection for the United States runs deep. I was born and educated here, and until last year I was a U.S. citizen. I gave up that citizenship in order to do everything possible at the critical juncture in Colombia's history. The simple fact that you invited me to speak here says a great deal of the interest that Colombia brings today in the larger context of the hemisphere.

I would like to say that few nations are as misunderstood as Colombia. The international media's long wrong faces on drug trafficking has meant that the real Colombia, a country of enormous variety and impressive achievement, is too often lost, obscured by the ten second sound bite.

Of course, we face serious challenges and how we respond to them will define U.S. well into this century. Since winning its independence from Spain almost 200 years ago, Colombia has developed into South America's oldest democracy. The basic reason for this, is a strong commitment to a strong judicial system. I would like to focus some of the attention to what Colombia has had to endure during the last twenty years, as a result of drug trafficking, and how it has impacted our judicial system and how it continues to be a great challenge for our country to resolve.

During the 1980s Colombia suffered the onslaught of most of the organized crime into its judicial authorities. The drug cartels, in effort to weaken Colombia's resolution to fight their illegal activities, assassinated 550 judges between 1979 and 1991. One of the most appalling cases was the murder of Colombia's Minister of Justice in 1984. He was killed by the Medellin cartel, because of his clear intent to extradite Colombian nationals to the United States. In 1985, all members of the Supreme Court were threatened and one of its members was assassinated shortly afterwards for refusing to declare the extradition treaty with the United States unconstitutional.

In 1986, the Attorney General was killed in the city of Medellin, under orders of Paulo Escobar. And many other judges, prosecutors, attorneys and law enforcement officials paid with their lives, their will, to uphold Colombian justice.

But it was not until a new Constitution was drafted in 1991 that the Colombian justice system was thoroughly reformed. Colombian judicial system over the years was private, written, and to an extent inquisitorial. The judges were in charge of investigating and deciding the cases, and it is important to keep in mind that in our system, the government does not

prosecute the crimes, it is the judiciary. Until the late 1960s the system more or less worked with many obstacles and delays. There was a dramatic change in the situation when the load of cases increased due to the drug-related crimes. All of a sudden, our judges were overloaded with hundreds or even thousands of investigations of violent crimes, most of them originating in drug trafficking. Not only the burden of the cases affected negatively the system but the violence and threats of the judges from the criminals contributed to bringing the system close to a collapse.

To make things worse, dozens of judges were killed by drug traffickers, who began to take advantage of a system that was built to prosecute basically petty crimes. The size and organization of the criminal enterprise made the judges work even more complex.

Another mechanism used by the drug traffickers was corruption. They used their huge profits not only to buy weapons and create sophisticated organizations, but to corrupt people. The violence against the judges was at some point so rampant that a safer environment was needed. Traffickers often used to say to their victims, "you choose your lead." A bullet or money. Based on the Italian experience, a country that for many years has had to endure sophisticated mafias, who used violence to intimidate judges, the Colombian Congress passed legislation that withdrew the most violent crimes from the regular jurisdiction and made them the responsibility of a special group of judges with unknown identities. They were in charge of investigating all the crimes relating to terrorism, insurgency, and drug trafficking. This new judicial structure provided more protection to the judges that had to be investigated. Nevertheless, the government and Congress understood that such a system should be in place temporarily. The same law that created the special jurisdiction established a deadline for its existence of ten years.

It has to be underscored that when the faceless judicial system was set up, the violence against our judges was at its height. The new jurisdiction was urgently needed to save the lives of the people that were feeling the pressure of the criminals at the risk of losing their lives.

This jurisdiction, that was temporary by its nature, was in effect until last year, when the load of cases was transferred to the Prosecutor General's office, an institution independent from the government that was created by the Constitution of 1991. Although the prosecutor's office has more resources and weight to prosecute the cases, the system is still overloaded by past cases, and by the fact that the accusatory system has not been implemented.

We have a combined procedure that in great percentage is based in written stages instead of an oral system. The Prosecutor General's office has shown some progress, but we are still working to make it more

functional. Currently Congress is studying some amendments to the criminal codes that, hopefully, are going to strengthen our judiciary. We hope that in the next months the reforms will be approved and we will be able to have a system more dynamic based on oral procedures.

Another important reform was enacted in 1997, when Congress approved a constitutional amendment that allows for the extradition of Colombian nationals. The government of President Pastrana last year re-initiated the extradition of Colombians wanted for drug crimes in the United States after ten years when they had been interrupted by our change in the Constitution.

A largely unknown fact is how much Colombia has sacrificed in the last fifteen years in its fight against organized crime. From the moment of his election, President Pastrana has brought a powerful sense of renewal to this sacrifice. In his own words, "We must never retreat from the crusade for which so many of our citizens gave their lives, and the world owes them a great debt. We must remember to pay our respects to this veritable Vietnam Memorial's worth of martyrs."

Unfortunately, with the level of crime that came as a result of drugs in Colombia, all of our heroes are silent. Most of them are dead.

This is why in order to address the major challenges facing our country, including the strengthening of the Colombian justice system, President Pastrana designed a comprehensive, multi-year initiative called Plan Colombia. This program is based on four major building blocks. First, it will address the economic imbalances, trade, and fiscal issues. Second, it will provide for Colombia's national security, reducing illegal drug production and trafficking activities by 15%, 50% by the end of this government's term. Third, Plan Colombia will advance the ongoing Colombian peace process, and finally, will strengthen institutions of the Colombian state.

This final component is particularly critical to success in realizing the other three program elements. Only when Colombia's judicial institutions are modernized and strengthened, will our nation be able to achieve real prosperity and lasting peace.

Plan Colombia placed close attention to the weakness of our justice system, recognizing it is at the single greatest threat, not only to our efforts to end the armed insurgency, but for the democratic way of life.

No nation has done so much or sacrificed so many in this war as Colombia. Journalists and judges, politicians and policemen, many thousands have died in defiance of the drug traffickers. Yet, since the defeat of the large cartels, the industry has, like the hydra-headed monster, taken on new shapes. The recent successes of Operation Millennium, a joint U.S.-Colombian effort that saw the arrest of more than thirty of the most powerful new traffickers shows that we are capable of meeting this new

threat and challenges.

We know that the immediate future is wrought with peril, and the road to peace and recovery for every country is a rocky one. We Colombians are the only ones who can make the tough decisions and do what is right to ensure Colombia the future it deserves.

XIII. ORGANIZED CRIME IN THE AMERICAS AND TRANSNATIONALLY

*Fletcher N. Baldwin, Jr.**

This panel will change the focus, as the Ambassador did, and we are going to talk about the other side of the coin, and that is organized crime in the Americas. What I propose to do in my time is to briefly overview organized crime transnationally, as some of us see it today.

Certainly other countries recognized the threat of organized crime much sooner than the United States, even though the United States did begin to respond to its threat with RICO in 1970. Nevertheless anything dealing with banking and organized crime, aside from the Bank Secrecy Act of 1970, which was not criminal in nature, did not occur until after the Comprehensive Crime Control Act of 1984 followed by the Money Laundering Control Act of 1986.

In 1988, the President of the United States convened a conference for a Drug Free America. The conference brought in leaders from throughout the Americas as well as leaders from Europe, and the Pacific Rim. The theme of the conference appeared to be: "let us now stop organized crime, which we have in real terms just discovered exists." The fact is organized crime has existed for what seems to be forever. Saul Froomkin, QC and former Attorney General of the Bahamas points out that the Roman army was paid from Rome to avoid accepting pay backs thus corrupting local government for the benefit of local criminals in various captured regions; so it is been around a while. At the time of the conference, President Reagan gave the keynote address. He said, again I paraphrase, "[t]he big problem today is that organized crime controls \$170 billion worldwide and we now must just say no to organized crime," hence implementing directives that followed, specifically National Security Decision Directive 221. The issue became one of a threat to our nations security not to mention global security as well. In a moment, I will give you recent, though

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