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Notes on the Impact of Lawyer Performance on the Administration of Justice in Mexico

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ABSTRACT: This paper has the purpose of highlighting the role of lawyers in the justice system. It attempts to provide a basic conceptual framework for the analysis of lawyer performance as it relates to the operation of the administration of justice in Mexico, especially in criminal cases. For such purpose, and after presenting an overview of legal education and the legal profession in Mexico, the professional effectiveness of lawyers and their role as intermediaries between the justice system and society are examined. This allows identifying the main avenues for future reform, but much will depend also on having a more detailed and precise description of the actual behavior of lawyers and on an open and public debate on their proper role in the judicial process.

Notes on the Impact of Lawyer Performance on the Administration of Justice in Mexico

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Introduction

In the discussion on the administration of justice and judicial reform in Mexico, most analyses have centered on their institutional aspects, such as the training and professional abilities of judges, corruption, organizational constraints, and the like. Few studies, if at all, highlight the (positive or negative) role of lawyers in the day-to-day operation of the justice system. This is the all the more remarkable, if we consider, for example, that no judge could ever decide a dispute without the indispensable input provided by the parties … duly represented by their lawyers. Bench and bar depend on each other: sometimes they cooperate closely; sometimes they are at odds with each other. Their relationship could be described as "friendly rivalry". Indeed, a very general observation tells us that court operation is dependent on the behavior and practices of other actors and organizations; prominent among them are lawyers and the organized bar.

In Mexico, judges complain that attorneys can be a significant external obstacle to the adequate operation of the courts. Thus, for example, about 25 percent of the trial and appeals judges interviewed for the Concha and Caballero study (2001, 188, 215 ff.), mentioned "external factors" as the main obstacle to their activities. Many of them indicated that lawyers were among those external factors and they referred to the attorneys' lack of professional knowledge and to questionable practices, like using the press to apply pressure on the courts. Asked about attorney performance, about 40 percent of the civil judges interviewed, and 55 percent of criminal judges, considered it to be "poor"; 18 percent found it to be outright "bad". When asked about the role of bar associations (*barras* and *colegios de abogados*) in their home state, 22 percent of chief judges said it was "so-so", and another 22 percent considered it as "non-existent". Several of them observed that, from a professional point of view, bar associations were scarcely representative because they frequently had only political aims, "flourishing" around election time. Finally, when asked about the training lawyers receive in law school, a majority of judges considers its quality as "poor" (40 percent of appeals judges and 49 percent of trial judges) or even "bad" (18 percent of appeals judges and 19 percent of trial judges).

It may well be that such opinions are not impartial. However, they provide an indication of the problems associated with lawyer performance in the judicial process. Unfortunately, they can hardly be subjected to critical examination in the light of alternative evidence, as there are no systematic studies on the quality of professional training and lawyer performance. Nevertheless, existing data on the accelerated growth of enrollment in law school in the last decades, as well as on the explosion of new, small private law schools, justify the assumption of a general decrease in the quality of legal studies. This is confirmed by other observers of the legal system (López Ayllón and Fix-

Fierro, forthcoming). In short, it can be safely asserted that the training and performance levels of a majority of lawyers (as opposed to those of a small legal elite) tend to be rather poor.

Why have legal education and the legal profession been left out of the sweeping changes introduced into the Mexican legal and judicial systems over the past two decades? Why are reforms in these two areas absent from the public agenda? One possible answer lies in the autonomy accorded both institutions. Public and private law schools have to satisfy certain requirements to obtain recognition from the government and the right to grant law degrees. But those requirements are not very demanding, and, beyond them, the schools enjoy a large degree of autonomy to decide the type and quality of education they provide. The legal profession--or at least practicing attorneys--is not highly regulated by the government or by professional associations. Furthermore, lawyers seem able to deflect attention from their professional performance. Where a case is lost and the "criminal" set free, or where an "innocent" is sent to prison, the public blames the judge, not the attorney. Finally, the fragmentary and unsystematic character of many reforms has effectively placed legal education and the legal profession well beyond their immediate objectives.

This paper has the purpose of highlighting the role of lawyers in the justice system. It attempts to provide a basic framework for the analysis of lawyer behavior and practices as they relate to the operation of the administration of justice in Mexico, especially in criminal cases.

The paper is divided in three sections. The first section provides a general overview of Mexican legal education and profession. This overview is necessary for a better understanding of the circumstances and conditions surrounding the professional practice of the law in Mexico. The second section examines two of the main areas in which lawyer behavior may have an impact on the administration of justice. Finally, the last section provides a brief discussion of some ideas for further research and future reform.

Mexican Legal Education and Profession: Too Many Lawyers?

To be able to better understand the role of lawyers in the operation of the judicial system, it is quite convenient to have a brief description of Mexican legal education and profession. This section intends to provide such description.

Legal Education: A Quantitative and Qualitative Overview

Mexican higher education has expanded at an accelerated pace in the last decades. Whereas in 1970 there were a total of 210 111 university students (about 0.45 per cent of the population); this number had increased to 731 291 in 1980 (about 1.1 per cent of the population) and to 1 660 973 in 2001 (about 1.7 per cent of the population) (ANUIES 2001). Enrollment in law school has also grown rapidly, especially in the 1990s. The following table shows the number of law students, graduates, degrees and programs between 1979 and 2001:

Table 1
Law students, graduates, degrees and programs
(1979-2001)

Year	Law students				Graduates *(previous year)*		Degrees *(previous year)*		Programs
	Total	*/100 K*	*% women*	*% enrollment*	*Total*	*% women*	*Total*	*% women*	
1979	57 973	89	28.2	8.3	6 011	n.a.	n.a.	n.a.	87
1991	111 025	132	41.0	10.0	12 781	n.a.	6 077	n.a.	118
1997	155 332	162	46.7	11.9	20 983	45.7	10 960	42.0	309
2001	190 338	192	48.4	11.5	26 844	48.2	14 538	47.3	506

SOURCE: ANUIES. *Anuarios estadísticos* 1979, 1991, 1997 and 2001. "Programs" refers to the number of facilities ("*planteles*") that have independent student enrollment. One school or university may have more than one facility or program in one or more states or the Federal District.

The preceding table clearly shows an accelerated increase in the number of students enrolled in law school in the 1980s and especially the 1990s, both in absolute terms and relative to the total population and to the total number of students in higher education. Between 1979 and 2001, the total number of law students increases by 228.3 percent. Relative to the population, this increase is 115.7 percent. In 1997 law was still the second most demanded area in higher education; by 1999 it had already climbed to the first position, well above accounting and business administration.

Law school enrollment also increases (and then slightly decreases) in relation to other disciplines. The number of law students, as a percentage of total enrollment in higher education, increased from 8.3 percent in 1979 to almost 12 percent in the year 2000. This is somehow surprising, because the growing diversification of university programs could be rather expected to lead to a relative reduction in the number of students choosing law and other "traditional" disciplines. To the extent that this is happening at all, it does at a slow pace. In 1997, accounting, law, business administration and medicine still accounted for 38.4 percent of enrollment in higher education; in 2001, this percentage had slightly decreased to 35 percent, despite a considerable growth in new career options, like computers and industrial engineering (ANUIES 1997, 2000 and 2001).

Gender composition also shows important changes. The proportion of women studying law in 1979 was less than one third (28.2 percent); by 2001 it was almost 50 percent, although in some law schools (notably the Law Faculty of the National University) the percentage of women is already higher.[1] This stands in sharp contrast with other disciplines that are still regarded as either predominantly "male" (like engineering) or "female" (like psychology). In law school, at least, women seem to have attained equality. In the practice of the legal profession, however, women are far from approaching the level of parity they have achieved in law school.

The table provides also data on the number of law school graduates and degrees granted in the previous years. We can easily see that the number of graduates, i.e., students that

[1] There were 59 percent women enrolled in the Faculty of Law of the National University in 2001.

have obtained all their credits, increases almost four times after 1979, while the number of students who also obtain their degree grows almost 150 percent between 1991 and 2001. Not all students finish law school after 4 or 5 years, however, and still fewer manage to obtain their degree afterwards.

Roughly speaking, between one fifth and one fourth of students in law school should graduate each year. Thus, for example, in 1997 34 470 students started law school. Four years later (2000), the number of graduates was approximately 78 percent of that figure, but, according to Table 1, in previous years the proportion had been much lower (between 50 and 60 percent). Of those who finish law school, only about 50 to 60 percent comply with all requirements to obtain their degree and, therefore, the official certificate *("cédula profesional*") that legally entitles them to practice law.

Although these are just rough estimates, we do have, however, a careful study on the performance of three classes of law students in the National University after 1980 (Blanco/Rangel, 1996). According to the authors' data, the number of students finishing law school after 10 semesters, i.e., the normal duration of legal studies at the National University, did not even reach 30 percent. Although this percentage increased over the years, such increase proceeded at a very slow pace. As the number of graduates continued to accumulate, the number of degrees granted did not seem to change much between 15 and 20 semesters after students had started law school. This means that students who do not obtain their degree after a certain time, will not do so any more. About 20 percent of a class will abandon law school before a period of five years has elapsed, and after 10 years, between 9 and 13 percent of the class will be still enrolled in law school. A more recent assessment (Facultad de Derecho de la UNAM, 2002, 16-18) shows that an average of 1 433 students enrolled for the first time in the Faculty of Law of the National University each year from 1997 to 2000. However, the number of students (belonging to different classes) who finished their credits decreased from 1 555 in 1997 to 1 084 in 2001.[2]

It should be noted that law students who do not satisfy all requirements to graduate and obtain their degree and "*cédula profesional*", are not necessarily prevented from practicing law. In Mexico, lawyers do not enjoy a monopoly on the provision of legal advice, as they do in other countries, and a law degree is not necessary for representing clients in court for certain types of cases (criminal, employment and agrarian cases). Article 20, section IX of the Mexican Constitution provides that defendants in criminal proceedings have a right to an adequate defense, through themselves, through a lawyer or a person they trust. If they do not do so, the judge will appoint a public defender.[3] Unfortunately, the majority of public defenders are not well trained (most are students or lawyers who have just graduated from law school), their pay is very low and they are

[2] The document found that the decrease in the number of graduates coincides with the first class leaving law school after a new studies program was implemented in 1993.

[3] Article 28 of the Law on Professions for the Federal District (1944, as amended) provides: "In criminal matters, the defendant will be heard through himself or a person he trusts or both if he so desires. Where the person or persons appointed as defenders are not lawyers, the defendant will be invited to appoint also a defender with a law degree. If he does not make use of this right, the judge will appoint a public defender".

incredibly overburdened, so they see themselves forced to deal with their cases in a perfunctory manner (Lawyers Committee for Human Rights, 2001, 45-47). Nevertheless, as a rule –at least in the Federal District– only legal professionals who have had their degree duly registered with the proper authorities are entitled to represent clients in judicial and administrative proceedings.

Table 1 above also shows an impressive growth in the number of law schools and programs, especially in the 1990s. Most of the new programs belong to small private law schools. Until the 1980s, the great majority of law students attended state (public) universities. The two largest law schools were the Faculty of Law of the National University and the school of law of the University of Puebla, which had ten and twelve thousand students, respectively, in 1991. At that time, only a small proportion of law students attended private schools (either independent law schools or law schools within private universities). The majority of the most prestigious or well-known among private law schools had been established from the 1960s onwards. Table 2 shows these developments between 1991 and 2001:

Table 2
Law students and programs
(1991 and 2001)

Year	**Law Students**					**Law programs**		
	Total	*Private law schools*		*Public law schools*		*Total*	*Private programs*	*Public programs*
		Total	Women	Total	Women			
1991	110 944	17 282 (15.58%)	6 875 (39.78%)	93 662 (84.42%)	38 528 (41.13%)	118	72 (61.02%)	46 (38.98%)
2001	189 864	85 911 (45.25%)	40 213 (46.80%)	104 481 (54.75%)	51 943 (49.71%)	506	431 (85.18%)	75 (14.82%)

SOURCE: ANUIES (1991; 2001).

The preceding table documents the spectacular growth in the number of, and enrollment in, private law schools. In 1991, private law schools had less than 18 thousand students. This number increased by about 68 thousand to almost 86 thousand students, an increase of almost 400 percent! The proportion of law students in private schools went from 16 percent in 1991 to more than 45 percent in 2001. By contrast, enrollment in public law schools increased by little more than 10 percent. The total number of programs/facilities, the majority of which are private, also grew in a spectacular way, from 118 in 1991 to 506 in 2001. As already stated, the overwhelming majority of (new) private law programs has a small enrollment and belong to small universities and other institutions of higher education. Their relative size in terms of student enrollment is shown in Table 3:

Table 3
Law programs by size of student enrollment
(1991 and 2001)

Student enrollment	Public law programs				Private law programs			
	1991 (N=46)		*2001 (N=75)*		*1991 (N=72)*		*2001 (N=431)*	
Less than 50	1	2.17%	4	5.33%	11	15.28%	94	21.80%
51 to 100	2	3.35%	2	2.66%	10	13.89%	83	19.26%
100 to 250	3	6.52%	12	16.00%	25	34.72%	135	31.32%
251 to 500	4	8.69%	15	20.00%	15	20.83%	63	14.62%
501 to 1000	5	10.87%	7	9.33%	8	11.11%	35	8.12%
1001 to 2500	21	45.65%	24	32.00%	1	1.39%	6	1.39%
2501 to 5000	7	15.22%	7	9.33%	0	0.00%	1	0.23%
More than 5000	3	6.52%	4	5.33%	0	0.00%	0	0.00%

SOURCE: *Anuarios estadísticos de la ANUIES* 1991 and 2001. In 1991, two private schools do not report enrollment. In 2001, 13 private law schools do not report enrollment.

The table shows that a considerable proportion of private law schools (between 63 and 70 percent) have less than 250 students enrolled. The new private law schools tend to be smaller than before. So, for example, in 2001, about 20 percent of all private facilities had less than 50 students, and 40 percent had up to 100. By contrast, public law schools tend to be relatively large. In 1991, about half of all public law schools had between 1,000 and 2,500 students. Ten years later, and considering that no new public universities have been established since the 1980s, the additional 29 new programs mean that there has been a process of decentralization within existing public institutions. Thus, in 2001, more than 40 percent of programs had up to 500 students and only one third had between 1,000 and 2,500 students.

Another important trend in the growth of legal education concerns the establishment of institutions for specialized and graduate legal training. As the degree for practicing law does not generally require specialized training for the different legal roles (judges, public prosecutors, attorneys), this function has been fulfilled by graduate studies ("*posgrados*") as part-time education.

Graduate legal studies have also experienced considerable growth. The most ancient and important graduate legal studies program belongs to the Faculty of Law of the National University (since 1951). In 2002, this institution offered fifteen "*especializaciones*", i.e., specialized professional training in the different areas of the law (in constitutional, administrative, procedural, private, criminal law, etc.).[4] Other public universities outside Mexico City have also established graduate studies, which are mainly imparted during the weekend (Fridays and Saturdays) by local and non-local teachers.[5] Private universities have also opened graduate programs in Mexico City and elsewhere, with

[4] Paradoxically, although the "*especializaciones*" at the Faculty of Law of the National University were created with the aim of solving the problems of specialized training for the legal practice, they are often rejected in favor of more academic degrees for prestige reasons.
[5] The Consejo Nacional de Ciencia y Tecnología (CONACyT) has a specific program for giving support to postgraduate studies outside Mexico City, provided certain requirements are fulfilled.

considerable success. Attendance, which includes local judges and other public officials, is growing. Since most of their students are already practicing lawyers, private universities (and to some extent also public universities) may charge considerable fees, and thus they are able to hire prestigious scholars and practitioners, both local and non-local, usually for individual weekend sessions.

In 2000 there were 7 325 students in "*posgrado*" law programs, an increase of about 45 percent with respect to 1998 (ANUIES, 1998, 2000). 1 862 students were studying an "*especialización*", while 5 148 and 315 students were pursuing a "masters" or doctoral degrees, respectively. However, the relatively low participation of graduate law studies in relation to total enrollment in law school seems to confirm the hypothesis that professional practice requires only an undergraduate degree. This has been made possible by the existence of the informal training provided by professional practice, which starts during the students' stay in school.

We should also consider the number of students who study abroad. Traditionally, law graduates prefer to study in Europe (mostly in France, Italy and Spain) because of the proximity of legal traditions and languages. Since the NAFTA entered into force in 1994, however, legal exchanges with the United States and Canada have been steadily growing. So, it would not be surprising to find that the number of students wishing to study there –especially those who want to go into private professional practice in the areas of business, trade and finance- has been growing also. Thus, for example, according to data obtained through the Internet at the beginning of 2003, of 176 partners of the most prestigious business law firms in Mexico City, the curricula of 97 (55 percent) mention studies abroad. Of those, 63 (64 percent) are graduates of American universities; the rest have studied in Europe or Mexico. But these are not necessarily graduate studies in the field of law.

Regarding the orientation and quality of legal training, for a long time the Faculty of Law of the National University (UNAM) played a leading role in legal education. Not only was it the most ancient and prestigious law school in the country. It was also the largest school and the foremost center for political recruitment (Lomnitz/Salazar, 2002). Private law schools adopted the UNAM's law curricula and even chose to have their degrees recognized by the UNAM. This leading role has diminished in recent times, as many private universities have gradually adopted their own curricula.

According to many observers, legal education in public universities (UNAM, but also in some state universities with regional prestige, such as Guanajuato, Veracruz and San Luis Potosí) was acceptably good in the 1950s and 1960s (López Ayllón/Fix-Fierro, forthcoming). It began to decay with massive enrollment in public universities in the 1970s.[6] This was an important reason for the growth of private universities. But limits

[6] Some observers have the impression that although reduced in number, the most capable and bright students (and maybe also the worst) come still from the UNAM, perhaps because training in this university is more "ecumenical": it transmits a more complete view of the law, and it is less directed to a specific market niche, as many private law schools are.

imposed on the growth of public law schools[7] mean further opportunities for private law schools. These schools have also become attractive because they offer a particular professional orientation (for example, in corporate lawyering) and the opportunity to forge significant personal relationships, or even because their curricula is shorter (three years instead of the customary five).

When asked about the contents and quality of legal education, the same observers describe it as being still too traditional. It has stagnated, transmitting mostly legal-theoretical models of the 19th century. So, for example, while the number of available law books and titles for students has increased, most of them do little more than reproduce traditional legal ideas and models. In fact, the "classic" Mexican law books of the 1950s and 1960s are still widely used by law students and teachers.

The great majority of teachers in law schools are not full-time professors, but practitioners who teach for a few hours a week. So, for example, according to recent data, of about 1 000 instructors at the Faculty of Law of the National University, less than 140 are full-time, "career" professors ("La Facultad de Derecho de la UNAM en cifras", 2002, 23). This makes it likely that they will communicate traditional legal education and values. Moreover, teachers do not always update their knowledge and are hardly familiar with modern teaching techniques. Teaching methods still rely heavily on theoretical presentations and are very rarely problem-oriented. They tend to present an isolated view of the law, from both social reality and the other social sciences (López Ayllón/Fix Fierro, forthcoming).

Technical legal skills are not always the decisive criterion for evaluating a law graduate, since the legal profession is still highly permeated by personal and social relationships (Dezalay/Garth, 1995; Lomnitz/Salazar, 2002). On the other hand, the skills expected from a law graduate are apparently so basic, that the quality of education prior to law school may be much more determinant for recruitment. The overall impression one may get from legal education in Mexico nowadays is that law graduates do not receive a good or even sufficient legal training.[8] Some of its deficiencies are somewhat compensated by the training that legal practice itself provides. Most law students are not full-time students and many of them start working in law firms and public agencies after the first year in law school. However, this practical training is completely detached from the formal training provided in law school.

On the whole, it is quite difficult to assess the quality of legal education. Objective criteria, either formal or informal, for evaluating law schools and law graduates are rather scarce. In 2000, an organization called CENEVAL (Centro Nacional de Evaluación para

[7] Blanco/Rangel (1996, 128, 135, Statistical Appendix, Table 12): demand for enrollment in law school grew on average 10 per cent annually between 1985 and 1995, from 7 856 to 20 627, but supply did not increase and in fact was reduced, from 4 143 to 3 533 (about 15 per cent).

[8] According to the opinion of a colleague, most graduates from public law schools are not capable of practicing any meaningful legal work, because such schools were mostly created to solve an employment problem of middle-class groups. However, he attributes some "civilizational value" to such legal training, in so far it transmits the notion that there were other options besides violence for solving social problems. In his eyes, the study of law has been, at best, a higher course in "civic culture".

la Educación Superior), jointly established by the universities, other institutions of higher education and the government, started the evaluation of law graduates through a standard test. More recently (2002), the daily newspaper *Reforma* has published, for the second time, a ranking of 72 universities in the metropolitan area of Mexico City with respect to the 16 most demanded areas of study.[9] The ranking derives from a survey conducted among students, internal and external teachers, and employers. In the area of law, the five best law schools are private. The Faculty of Law of the National University occupies the sixth place. The first five were taken by private law schools, but the distance between them and the public universities is not considerable.

If the quality of legal education is generally poor, and if legal technical skills are not decisive for practice, then how can a more technically demanding legal system be sustained? Indeed, there are some law schools which are attempting to modernize and update their curricula and teaching methods (for example, CIDE). They have also started to show much more openness towards other disciplines and foreign or international legal systems. They have established consortiums for the exchange of faculty members and students,[10] summer courses and joint doctoral programs with foreign universities. However, their impact on the quality of legal education in general is likely to remain limited in the short term.

It is also quite obvious that certain elite sectors of the legal profession are capable of adapting quickly to the gap between legal education and the actual demands of legal practice. The question remains open, however, for the bulk of legal professionals.

The Legal Profession: Know Who or Know How?

Unfortunately, we seem to have much less information about lawyers. For one thing, we do not know for certain how many lawyers there are in Mexico. There are some data available, however.

As already mentioned, in the last 30 years the number of Mexicans who have attended higher education has increased significantly. According to data obtained from the national population census, in 1970 there were 35 333 persons stating to have completed at least four years of higher education in the area of law (10.9 percent of the total number of professionals). In 1990, the total number was 141 539 (7.5% of all professionals) (Secretaría de Industria y Comercio, 1972; INEGI, 1993).[11] Both in 1970 and 1990 law was the second most important profession in the area of the social sciences. The number of legal professionals quadrupled in absolute terms and almost doubled in proportion to the total population in the twenty-year period. Of the legal professionals identified in the census of 1990, 84 per cent declared to have an occupation, but no more than two-thirds

[9] See *Reforma,* August 26, 8 A.

[10] So, for example, the North American Consortium for Legal Education (NACLE), established by three Mexican, three Canadian and three American law schools (www.nacle.org.).

[11] Data for those two years are not completely comparable. For 1970, I have considered the number of persons having completed four o more years of higher education, regardless of age. I have estimated the total number of professionals for 1970 at 324 671. By many accounts, the 1980 population census is not reliable enough, so I have not used it. The corresponding figures for the 2000 population census have not been released yet.

among them were likely to work in activities related to the law (professionals and government categories).

There is also some information on the number of legal professionals registered with the authorities charged with regulating the professions. According to data provided by the Federal Secretariat of Education, of about 222 thousand law degrees registered between 1945 and 2002 (two thirds after 1990 alone), the overwhelming majority have been granted by public universities. The National University (UNAM) has granted more than 50 thousand degrees alone, almost a fourth of the total number. Still, we do not know for certain how many belong to practicing lawyers. According to one estimate, there are about 40 thousand practicing attorneys in the country.[12]

Private law school graduates seem to have a disproportionate presence and influence in the top positions of the legal system. In recent times, they have begun to occupy spaces and positions that previously seemed to be reserved for graduates of public law schools, such as the government and the judiciary. Thus, for example, the group of lawyers who took part in the negotiations that led to the NAFTA (1991-1993) was, on average, 27 years old. UNAM graduates represented little more than half of the group. Of the original group, only three lawyers stayed in public service after 1994. The rest went into prestigious law firms or continued their career as counsel to private corporations. In 1999, the legal department of the Trade Secretariat was composed of lawyers who were, on average, less than thirty years of age and only one was a graduate of the Faculty of Law of the National University.[13]

If we look at the federal judiciary, in 1984 almost all district judges (95.7 percent) were graduates of public law schools; in 2002, this percentage had decreased to 87.8 percent. This does not seem to be a very significant decrease, but if we consider that the explosion of private law schools took place in the 1990s and that, on average, district judges have a seniority of 15 years in the judiciary prior to their appointment, then we may expect a sharp increase of private law school graduates entering the federal judiciary in the next ten to 15 years (Fix-Fierro, forthcoming).

In short: private law school graduates seem to have more success in entering the most lucrative, specialized and internationalized legal fields, while the graduates of public law schools seem to lag more and more behind, because of the inadequate training they are being offered. However, rather than the quality of training and the level of legal knowledge law school graduates possess, it is frequently their social networks and personal contacts that stand as decisive factors in achieving professional opportunities. In this respect, it is obvious that students coming from the lower social classes do not find in their immediate family and social environment sufficient support and relevant relationships, except those they may be able to cultivate themselves in law school (Lomnitz/Salazar, 2002). Thus, they are at a disadvantage from the very beginning *vis-à-vis* students from the upper classes. And among those that did not attend elite schools,

[12] Claus von Wobeser, former president of the Barra Mexicana Colegio de Abogados, personal communication.
[13] Cf. Dezalay/Garth (1995, 58).

this may happen quite apart from the fact that they have graduated from a private or public law school.

The Impact of Lawyer Performance on the Administration of Justice: Asset or Nuisance?

Lawyers perform many important roles and functions in relation to the justice system, both direct and indirect. An example of indirect influence can be found in their role as teachers or in the practical training they provide to young graduates. Among the direct functions, we may mention the following:

- *Gate keeping and access to the justice system*. Lawyers may influence the likelihood that a dispute will go to court or not.
- *Defense and representation*. Lawyers translate into legal terms, and help enforce, the interests of defendants and clients.
- *Legal evolution*. Lawyers may bring new social problems to the justice system, thus promoting the evolution and change of existing laws. Lawyer organizations may also play a role in the evolution of the rule of law as a whole.
- *Time and costs of legal proceedings*. Lawyers undoubtedly influence the costs and duration of legal proceedings.
- *Confidence in the legal system*. Lawyers are intermediaries between the legal system and society.

In this section I shall attempt to briefly describe a few relevant aspects of the performance of lawyers as it relates to the administration of justice. Specifically, I shall deal with two of the functions stated above, with special reference to the criminal law: quality of professional representation and legal defense, and confidence in the justice system.

Quality of professional representation and legal defense

When asked about lawyers as a group, many lawyers, judges and scholars think that a majority of them are not well qualified as professionals. One lawyer goes beyond this impression, saying that lawyers are a part of what is wrong with Mexican institutions. They are "ignorant, arrogant, and presumptuous". They claim "the leading voice, but have little to say". They are too "politically conservative" and "lack any self-criticism". They do not even realize "how narrow their intellectual horizon is". On an individual level, however, there are many good lawyers, but the chances to find one depend much on the area of the law in which they practice, the place where they live (the best lawyers are concentrated in Mexico City, Guadalajara and Monterrey) and the ability to afford their services.

There are several recent studies and surveys that provide very useful insights into the quality of the services criminal lawyers, including public defenders, provide. In general terms, they agree that the role of legal counsel in the criminal process tends to be marginal and poor in quality (Lawyers Committee for Human Rights, 2001, 45 ff.; Bergman et al., 2003; Pásara, 2003).

Public defenders, if they do anything at all on behalf of them, tend to defend their clients in a very formulaic way. The evidence they provide is usually restricted to additional testimony by their clients. The truth is that most public defenders do not have the time to prepare for a good defense. But private criminal lawyers are not necessarily better. Many of them make no use of basic legal opportunities available to the defense (Pásara, 2003). Many lawyers are simply not aware of the most basic rights a defendant has. Thus, for example, they are not aware that their client may refuse to answer any question whatsoever and not only to provide a "confession" or a formal statement. It is not surprising, therefore, that in the few cases where the defendant is acquitted, this will frequently happen because of lack of evidence and not necessarily because of good lawyerly work.

A survey of prison inmates also confirm some of the perceived failings of criminal lawyers in the defense of accused persons (Bergman et al., 2003, 48-49, 92 ff.). Basically, prisoners think that they did not enjoy a competent defense. 46% considered that they had not been defended at all; 22% felt that they had been scarcely defended. Only 13% seemed to be satisfied with their lawyers. As a consequence, about 45% of prisoners dismissed their legal counsel once or more times because they had "done nothing" (56.1%) to defend them or because they were "bad lawyers" (10.1%).

Why is a majority of criminal lawyers so ineffective? The rules of criminal procedure give defendants (and their lawyers) an advantage to the extent that they only have to find the weaknesses and loopholes in the evidence produced by the public prosecutor. Sometimes it is the public prosecutor who deliberately obstructs the defense lawyer's efforts, but on other occasions the problem is of a much more fundamental nature. Mexican criminal procedure is geared, from the phase of criminal investigation ("*averiguación previa*") onwards, towards a conviction and this affects the legal opportunities available to defendants. The public prosecutor is by far the dominant figure (Pásara, 2003), so everything he or she does, or omits, will have a determinant effect on the outcome of the case. This is not to say, however, that lawyer performance is irrelevant. The studies and surveys cited assume that a competent defense may lead, if not to an acquittal, to a better observance of the rights of defendants and of legality as a whole.

Confidence in the legal system

Perhaps the most significant impact of lawyer behavior lies in the lawyers' role as intermediaries between society and the justice system. In this sense, the relationship between lawyers and judges, on the one hand, and lawyers and their clients, on the other, has a significant impact on the operation of the justice system and on its image in the eyes of the public.

Judges complain that some lawyers try to put pressure on the courts using the press or filing complaints against the judges themselves. Frequently, these tactics yield good results. Many judges, especially in the lower courts, feel intimidated and tend to grant these lawyers any petition they make. However, in other cases such tactics may turn out

to be counterproductive. As one lawyer puts it, the case may get "hot" or politicized, making the public prosecutor much keener on getting a conviction and creating further complications for a successful defense.

The written type of procedure prevailing in the Mexican legal system has fostered what common lawyers know (and abhor) as *ex parte* communication, i.e., communication between one party and the judge without the presence of the other party and its lawyer. In Mexico, lawyers do not rely only on their written complaints and motions. They always seek, and usually obtain, a personal interview with the judge. From the lawyer's point of view, such interviews serve several purposes. First, they allow them to find out whom they are dealing with. Second, they may also find out if the judge has actually become familiar with the case. And third, they may try to find out the judge's inclination to decide in a particular way, giving them an additional opportunity for adjusting their strategies. On the other side, many judges think that this practice is highly convenient and even necessary, because written motions are "cold" and formulaic and do not allow for direct, personal contact between the judge and the parties. They think it is also unproblematic to the extent that both parties are granted the same "right" and that the judge can be trusted to treat them both fairly and impartially. However, other judges shun such interviews, because they feel under pressure and fear the possibility of a personal confrontation with litigants.

Obviously, the problem with *ex parte* communications is that they are not regulated by the law, but depend on the discretion of the individual judge. And they not only create an opportunity for illegal arrangements that cannot be completely excluded, no matter how trusted judges are, but also for personal sympathy or aversion that may adversely affect a proceeding.

Also seemingly unproblematic at first sight is the so-called "*suplencia de la deficiencia de la queja*" (in amparo cases), i.e., that the judge will supplement the deficiencies of a lawyer's motions where this benefits her client (especially in favor of the weaker party in criminal and employment cases). "*Suplencia*" is granted even if it is not, implicitly or explicitly, sought by litigants. An appeals court will thoroughly review a case (in criminal cases first examining the merits and then the formal aspects) even before going into the specific grievances raised by a party. Judges think that "*suplencia*" gives them an opportunity to go beyond a narrow definition of their role and to really "do justice". But, if seen from another perspective, it fosters laziness, mediocrity and irresponsibility among less-than-competent lawyers.

The relationship between lawyers and their clients is also quite complex. The most significant problem in the relationship between them is that clients are almost completely at the mercy of their attorneys. There is virtually no control over their professional behavior. They are not accountable to any one and there is practically no defense against a disloyal, negligent or dishonest lawyer. Lawyers are very rarely prosecuted and convicted of crimes related to their professional practice. No wonder, then, that citizens hold lawyers in very low esteem. According to a survey conducted in Mexico City in 1996, lawyers are considered to be very dishonest or dishonest by a majority of

respondents (Covarrubias y Asociados, 1996). Their opinion, however, was even worse if they had had contact with the justice system as compared with those who had not (54 vs. 41 percent). Lawyers were also mentioned among the main problems that a citizen had to face when involved in a legal dispute.

Furthermore, lawyers hold, to a great extent, the key to actual or perceived corruption. Many lawyers create a (false) image of corruption in the justice system. Lawyers frequently ask clients to give them money for bribing a judge, the public prosecutor and other officials,[14] but this money will go usually into their own pockets. But it is also true that many clients will seek lawyers without scruples, (falsely) believing that this is a better guarantee of success.

Although many courts and jurisdictions are virtually corruption-free (especially at the federal level), the lower the institutional level, the higher the degree of corruption in the system of criminal justice. This means that the possibility of correcting abuses and injustices, if at all, will come at the very end of the process. But corruption is much less effective than assumed. As one lawyer puts it: in many instances, money will not buy "justice", but at the most an opportunity to be heard. A lawyer cannot just rely on corruption and afford to do nothing else, but this is precisely what many of them seem to be doing.

Conclusion: A Minimal Agenda for Further Research and Future Reform

The role and function of lawyers is that of intermediaries between the justice system and society. Lawyers may facilitate, or obstruct, access to the justice system. They translate social expectations into legal concepts and arguments that may be processed by the courts. And their efforts will have profound consequences not only on the chances a client has of recovering damages or her freedom, but also on the level of confidence society is willing to place on justice institutions themselves.

In previous sections of this paper I have provided a very fragmentary description of the Mexican legal education and profession and of some aspects of lawyer performance as it relates to the administration of justice. Much more research is needed in order to have a more detailed picture and more precise evidence with respect to the different areas of the law, the different procedural stages, the different jurisdictions and the different groups of lawyers. Only a well-designed survey may, for example, provide reliable information on the degree of prevalence of certain problems. Of course, it will be necessary to interrogate not only judges and lawyers themselves, but also clients and members of society at large. But regardless of this possibility, this paper allows envisaging the main areas towards which reform efforts and strategies may be directed in the near future: access to the profession, access to legal services, and professional accountability.

[14] About 20 per cent of prison inmates said that their lawyer had asked them for money to give to the public prosecutor and the judge. Bergman et al. (2003, 94).

The need to review the requirements to have access to the legal profession as a practicing lawyer seems to have become an indisputable necessity. If judges, notaries public, public prosecutors, even legal scholars, have to comply with ever higher requirements in order to be able to perform their specialized role in the legal system, why not practicing attorneys? There is no convincing reason not to implement them in the form of controlled practical training and a bar exam which can be jointly administrated by the courts and the organized bar.

But the establishment of such requirements may create a virtual monopoly of lawyers on legal advice that has to be counteracted by measures designed to make access to their services less expensive and more equitable. Finally, effective mechanisms to monitor lawyers' ethics and to protect the client's interests have also to be implemented.

Relevant solutions have been the object of recurrent discussion. For example, mandatory bar affiliation has been proposed as a means of controlling lawyers' behavior and ethics. Since the 1930s, the Barra Mexicana Colegio de Abogados, the most prestigious of Mexican bar associations, has debated the issue on several occasions. No conclusion has been reached yet, and even the considerable number of lawyers who favor mandatory affiliation concede that it will not be a panacea for the profession's ills (Barra Mexicana Colegio de Abogados, 2002, 61-65, 78). If, for whatever reason, mandatory affiliation was to become a prominent topic on the public agenda, it probably would not provoke too much resistance: lawyers' professional organization is not strong, and good lawyers may be ready to see their profession regulated somewhat. Mandatory bar affiliation is not the only possible means for making lawyers behavior more transparent and accountable. There are other possibilities that are still largely unexplored. But an essential requirement of any mechanism that may be devised is the effective respect for clients' and defendants' interests and rights, be it through a special disciplinary jurisdiction, arbitration or other dispute-settling instruments.

No broad discussion exists yet on how to regulate legal education and access to the profession. Much will depend on having a better diagnosis. However, the decisive factor is an open, public debate on the role of lawyers in the administration of justice, a debate that we have been sorely missing so far.

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