

“Los Juicios Orales y la Definición de un Sistema Acusatorio Garantista en México”
“Oral Argument and the Definition of a Liberal Adversarial Criminal Justice System in Mexico”

Facultad de Jurisprudencia / College of Jurisprudence

Universidad Autónoma de Coahuila

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Students and professors from the Facultad de Jurisprudencia of the Universidad Autónoma de Coahuila, as well as representatives from the state judiciaries and prosecutors offices of Coahuila and Nuevo León, attended the public forum “Los Juicios Orales y la Definición de un Sistema Acusatorio Garnatista en México” March 7, 2007, in Saltillo, Coah.

The public forum “Los Juicios Orales y la Definición de un Sistema Acusatorio Garantista en México” provided attendees the opportunity to debate and discuss criminal justice reform in Coahuila, one of Mexico’s most progressive states in such matters. The one-day event featured introductory statements by representatives of the collaborating institutions, a panel discussion critiquing recent reform attempts at the state level, and a keynote talk on long-term prospects for adversarial justice reform nationwide. The event was concluded with a working lunch and informal discussions among the conference organizers, presenters and speakers, as well as select students. The forum was part of a working group meeting of the Red de Justicia / Justice Network, a joint research project between the Trans-Border Institute (TBI), University of San Diego (USD), and the Mexican think tank Centro de Investigación para el Desarrollo, A.C. (CIDAC).

The public forum was held March 7, 2007, at the College of Jurisprudence of the Autonomous University of Coahuila (UADEC) in Saltillo. The event was well-attended with an overcapacity crowd of an estimated 300 persons filling the auditorium. Attendees mainly comprised law and other students, as well as other university staff and professors. However representatives from the state judiciaries and public prosecutors offices of Nuevo León and Coahuila were also very well represented. Among notables acknowledged by the speakers were **the Hon. Jorge Luis Mancillas Ramírez**, chief justice of the Nuevo Leon state supreme court, and **the Hon. Gregorio Pérez Mata**, chief justice of the Coahuila state supreme court.



Dr. Antonio Berchermann Arizpe, professor of criminal law, UADEC, responds to questions from the media at the public forum “Los Juicios Orales y la Definición de un Sistema Acusatorio Garantista en México” at the Facultad de Jurisprudencia, UADEC, in Saltillo, Coah., March 7, 2007.

A key conference organizer was **Antonio Berchermann Arizpe**, a criminal law professor at UADEC who is also the Coahuila state representative on the Red de Justicia / Justice Network. The forum provided the opportunity for distribution of a recent report, drafted by **Dr. Berchermann** and **Dr. Luis Efrén Ríos Vega**, a philosophy of law professor at UADEC, on the development of pretrial and post-trial dispute resolution and sentencing alternatives in Coahuila from the 1970s to the present. The report, “The Reform of Coahuila’s Criminal Justice System:

An Initial Assessment / La Reforma del Sistema Justicia Penal en Coahuila: Una Primera Evaluación,” is available on the Justice in Mexico Project website at http://www.justiceinmexico.org/resources/documents_from_our_partners.php.

Below are brief summaries of the main points made by the speakers during the public forum:

Introductory Speakers

- **Dr. José Moreno Reyna, dean, Facultad de Jurisprudencia, UADEC.** Dr. Moreno talked about the need for reforms in Mexico and in Latin America. He noted that poverty, corruption, and other militating factors are forcing the legal community to think hard on the need for structural reforms to ameliorate an inadequate system. “The socio-economic and cultural distances, corruption, and poverty necessarily obligate reflection on the schemes of government, and on the laws that organize us and guide us.”
- **Dr. David A. Shirk, director, Trans-Border Institute, USD.** Dr. Shirk applauded the turnout of young people and stressed the momentous and generational role they will play in making Mexico’s criminal justice system more equitable. Nonetheless he noted that the forum provided the opportunity not just to cheer oral trials but also to question their risks and potential pitfalls. “You all form part of a new generation of changes, of experimentation, and overall of energetic enthusiasm to promote (this) advancement. You all are living changes these days that are going to bear fruit in the following decades. You are really going to transform your country.”
- **The Hon. Natalio Ricardo Dávila Moreira, representative, state judiciary, Coahuila.** Mr. Dávila linked the theme of criminal justice reform and, specifically, the adoption of an adversarial system with enhanced public security and the development of a fuller democratic society. He noted such adversarial criminal justice system characteristics as: 1) the presumption of innocence, 2) greater “equality between parties” (prosecution and defense on more level ground), 3) fair and speedy trials, and 4) a predominantly oral and not predominantly written process.

Calling on law schools to institute courses on oral trials, Mr. Dávila stressed the need for greater training for judges, public defenders, and prosecutors, in order for criminal justice reforms to bear fruit. “If we judges are not prepared, injustice will be committed in full view of everyone. Equally so, if the public defenders and prosecutors are not prepared, the equitable administration of justice also will suffer.”

Speaking for the state judiciary of Coahuila, he noted, “We are prepared to go forward with an oral trials system that will radically change the way that the work of judges, public defenders, and prosecutors is organized.” He remarked that implementation of reforms entailing expanded use of alternative dispute resolution mechanisms, as well as of alternative sentencing measures, is welcome since such reforms are cost-effective.



Nina Ruiz of the Nuevo León state prosecutor’s office; Guillermo Zepeda, researcher, CIDAC; and Dr. David A. Shirk, director, TBI, pose for a photo at the “Oral Argument and the Definition of a Liberal Adversarial Criminal Justice System” public forum in Saltillo, Coah., March 7, 2007. Ruiz and Zepeda are members of the Red de Justicia from Nuevo León and Jalisco respectively.

Panel: “Una Crítica a los Juicios Orales al Nivel Estatal”

- **Mr. Guillermo Zepeda, researcher, CIDAC.** Mr. Zepeda critiqued the implementation of state-level criminal justice reforms. In his preliminary comments, he remarked on the importance of analyzing state- and local-level developments since these jurisdictions account for such a large proportion – much more than 50 percent – of total criminal proceedings in Mexico. He also commented that the states – much more so than the federal government – represent viable laboratories for criminal justice innovation, after the failure of a wide-ranging criminal justice overhaul early in the previous Fox administration. He noted that the Red de Justicia / Justice Network represents an important resource for analysis of local-, regional-, and state-level developments.

The substance of the CIDAC scholar’s talk concentrated on outlining a diagnosis of and remedy to the common problems afflicting all Mexican states. However before articulating this central theme, Mr. Zepeda pointed out that prosecution and sentencing

rates are influenced not only by inefficiencies in the criminal justice system but also by the prevalence of alternative dispute resolution and sentencing patterns in particular jurisdictions. He made this point because Coahuila he said is a “pioneering” state in pre- and post-trial options that represent a workaround to prison punishment. Therefore while low prosecution levels and sentencing rates can be attributed to incompetencies, they can also be due to greater reliance on more equitable and less costly punitive mechanisms.

In his diagnosis of the common problems afflicting the Mexican states, Zepeda used a Russian doll image to show continually decreasing rates along the criminal justice chain. For example, official criminal complaint rates, which are considered much lower than the actual crime rate, beget even lower rates of preliminary inquiries, which in turn lead to even lower rates of cases going to trial. Understandably, conviction levels are lower than the number of cases going to trial (since some cases end in innocent verdicts) but so are sentencing levels. Ultimately, very few criminal complaints end in the formal sentencing of a criminal who has been accordingly charged and convicted. This inefficiency erodes public confidence in the criminal justice system’s ability not only to identify and prosecute criminals but also to ultimately process and punish them appropriately. Zepeda employed various media images to visually show this Russian doll phenomenon. He demonstrated how low levels of criminal complaints lead to paltry prosecution rates and ultimately proportionately tiny conviction and sentencing rates.

A second part of Zepeda’s diagnosis concentrated on the imbalance between the defense and the prosecution in the Mexican courts. He said that the country’s inquisitorial system tradition has historically unfairly advantaged the prosecution, which enjoys cozy ties with the judiciary, and has been prejudiced against the defense. Moreover public defenders are poorly funded and at the bottom of the legal hierarchy in Mexico. “We have to have a defense with more opportunities and balance (compared with the prosecution),” he said.

Continuing his diagnosis of the inquisitorial system, Zepeda addressed the costly abuse of pretrial and preventive detention and said it has a “devastating effect” on society. “It’s a lose-lose system because you have individuals going to jail, depriving their families of their monetary incomes and work, atrophying their skills and abilities in a penal system that transforms petty criminals into hardened ones, and that drags down an already overburdened and overcrowded prison system. Overuse of such punitive mechanisms, especially when applied to individuals suspected of committing non-violent offenses, deprives families of those individuals’ income and work, frequently transforms those individuals into hardened criminals while in prison, and is exceptionally costly, especially when compared against more economical measures, such as bail and bond, alternative dispute resolution, and alternative sentencing, e.g. monetary restitution, etc.

In fact, the inquisitorial system perpetuates human rights abuses, he said. “Tenemos un sistema muy injusto.” Case in point, Zepeda told the anecdote of a woman who was thrown into prison for having stolen a stick of deodorant. Similar stories dot the literature and powerfully demonstrate the misapplication of justice, as well as the mismanagement of budget resources. A large proportion of each peso budgeted to fight crime goes to prosecuting, trying, and punishing similarly inconsequential and petty offenses, and too

many resources are wasted prosecuting juvenile crime, he said. Zepeda noted that besides being costly and inefficient, the present system does not appear to have pushed downward the crime rate. “Pretrial and preventive detention goes up, and crime remains constant,” he said.

In his critique of the Jalisco criminal justice system, Zepeda noted that the state has implemented *salidas alternas* (alternative dispute resolution, ADR) that provide for a swifter administration of justice through the use of *juicios sumarios*, or summary trial procedures. Generally speaking the *juicios sumarios* are much more abbreviated than the regular *juicios ordinarios* (full trials) and appear to require an individual to plead guilty to the crime in order to quickly receive sentencing, which may involve restitution not entailing jail time. However Zepeda added that checks must be implemented in the system to ensure basic due process and civil liberties rights are upheld. “It’s important that these (ADR) mechanisms are implemented while upholding civil liberties,” he said. Discussing the Jalisco experience, Zepeda noted that the state’s two conflict-resolution centers processed in 2006 about 60,000 cases, resolving about 10 percent of those cases, which therefore were not added to the criminal courts’ backlog.

The CIDAC scholar discussed other forms of alternative sentencing, such as monetary restitution, among other forms of sentencing that do not require jail time. However Zepeda noted the importance of maintaining a system that upholds the rights of the accused and of victims. He suggested that the “victims’ rights” provisions of the law were not efficiently implemented. For example, even 18 months after being hit by a drunk driver, Zepeda said he had still not received reparations to pay for damages.

Proposing remedies to the ills afflicting the Jalisco system and the Mexican system at large, he pointed out the benefits of the adoption of an adversarial system to replace the current inquisitorial model. He added the importance of reducing pretrial and preventive detention levels, since such punishment represents an unnecessary drag on the system budget and otherwise. However, he said that he had observed a shifting of the “pendulum” after decades of high pretrial and preventive detention levels, and he credited this change to the wider and wiser application of *salidas alternas*.

In his diagnosis, Zepeda also noted another major challenge: the enormous case logs judges must contend with in Jalisco, his home state and of which he is Red de Justicia representative. He noted that a typical judge in Jalisco examines up to 900 cases per year, compared against only 150 annually by the average state judge in Coahuila. The benefits to a lower cases-to-judge ratio are obvious and would redound in benefit of a more equitable application of justice, the CIDAC researcher said. “Coahuila has a very solid judicial branch that is thinking about the future with much experience in *salidas alternas* and a more decongested system ... These changes redound well on Coahuila and on the future of criminal justice reform in Mexico.”

- ***The Hon. Miguel Medina, presiding justice, Chihuahua state supreme court.*** Dr. Medina, a sitting justice on the Chihuahua state supreme court and a Red de Justicia representative from that state, discussed recent reforms to the state criminal code and

offered several recommendations to Coahuila officials on the adoption of an adversarial criminal justice system. Among his suggestions were the following:

- **Delay implementation pending new infrastructure, retraining.** Dr. Medina offered that Coahuila officials wait at least two years before establishment of a new criminal justice model since such implementation will require time-consuming creation of new courts infrastructure and will involve extensive training for courts workers and other employees. He suggested that the most laborious step in the process of shifting to a radically different system in terms of legal philosophy and practice would likely be the re-training of employees in the public prosecutorial offices.
- **Once ready, model should be applied immediate, statewide.** Dr. Medina added that once ready the new model should be applied immediately and statewide and not according to a district-by-district schedule, as is being done in Chihuahua. He sided with a blanket, statewide imposition of a new system to avert any potential constitutional crisis that could arise from the coexistence of competing criminal justice models in the same entity.
- **Anticipate labor conflicts.** Coahuila state officials should anticipate the potential labor conflicts that may accompany the rationalization of human resources as the criminal justice system undergoes transformation.
- **Bring federal judges and prosecutors onboard.** Dr. Medina emphasized the need to enlist the support of the federal judiciary operating in Coahuila ahead of any reform implementation. He said their support was needed in order to preempt a potential flood of injunctions in the federal courts aimed at blocking implementation of new reforms.
- **“Be careful with the press.”** Dr. Medina pointed out that the Mexican media has long pandered to the public’s desire to gaze at and stigmatize suspected criminals. He urged Coahuila to obtain the favor of the press and to convince reporters, editors, and publishers of the need for wide-ranging reforms. He added that the press can help to ensure greater social acceptance of new reforms through responsible journalistic coverage.

Keynote Talk: “Hacia un Sistema Acusatorio Garantista: Reformas al Nivel Federal y Retos en el 2007”

- ***Carlos Ríos, special consultant on criminal justice reform, Proderecho, A.C.*** Mr. Ríos discussed the various different criminal justice legislative proposals being debated in Congress. He made a detailed analysis of a legislative proposal sent to Congress by the “Red Nacional a Favor de los Juicios Orales / National Network in Favor of Oral Trials,” explicating in detail the various different constitutional reforms the draft legislation seeks. In addition to the Red Nacional proposal, he mentioned other constitutional

reform proposals such as those of federal lawmaker César Camacho (Institutional Revolutionary Party, PRI), the executive branch, and the small center-left party, Convergencia Democrática.



Mr. Carlos Ríos, special consultant on criminal justice reform for Mexican justice advocacy non-governmental group Proderecho fields questions from the local broadcast media at the “Los Juicios Orales y la Definición de un Sistema Acusatorio Garantista en México” public forum March 7, 2007, in Saltillo, Coah.

The following constitutional reforms are proposed by the Red Nacional a Favor de los Juicios Orales:

- **Art. 14:** Inclusion of the “*principio de lesividad*” as a fundamental right; inclusion of the “*principio de proporcionalidad.*”
- **Art. 16:** Authorize “judicial control” of the period of “retention” by the office of the public prosecutor in “urgent” and “flagrant” cases. Preserve the right to remain silent as a fundamental right of the accused.
- **Art. 17:** Authorize the use of alternative dispute resolution mechanisms but only under strict conditions that are subject to “judicial control.”

- **Art. 18:** Place special conditions on the use of pretrial and preventive detention.
- **Art. 19:** Clarify the legal principle of “formal incarceration” (“*auto de formal prisión*”) and “binding over for trial” (“*vinculación a proceso*”). Change term for “binding over for trial” from “*sujeción a proceso*” to “*vinculación a proceso*.” A lowering of the standard needed to be met for a defendant to be bound for trial. (Currently the standards are considered too high.)
- **Art. 20:** The draft legislation by the Red Nacional a Favor de los Juicios Orales proposes that corresponding reforms comprise only “principles” and not “rules.” The draft legislation also supports creation of a “General Due Process Law” that would regulate constitutional articles related to due process rights.

Mr. Ríos outlined the general characteristics and principles that should guide the re-creation of Art. 20. He emphasized that an ensuing criminal justice system should be defined as accusatory, adversarial, and oral. It should adhere to the principles of openness, contradiction and criticism, concentration (“*concentración*”), continuity (“*continuidad*”), and immediacy (“*inmediación*”).

Presumption of innocence and pretrial and preventive detention:

Mr. Ríos added that the proposed reforms to Art. 20 further call for the expressed inclusion in the Constitution of the presumption of innocence as a “formative procedural principle that must guide treatment of the accused.” Regarding preventive detention, Ríos said that the proposed reform seeks elimination of a current graduated scale that appears to automatically mandate such detention depending on the “graveness” of the offense allegedly committed. Under the proposed reform, however, this graduated scale would be scrapped and a set of standards, as well as judicial approval, appears to be required for an individual to be bound over for pretrial/preventive detention. According to the reform, the accused in question would be held over for detention only on request of the office of the public prosecutor, only when the necessity for such detention had been determined, and only when reasonable evidence had been produced to substantiate the detention (*habeas corpus*). The reform would limit preventive detention to a maximum of two years.

Right to remain silent:

Mr. Ríos informed that the proposed constitutional reforms would substitute the “right not to incriminate oneself” with the “right to remain silent.” The reforms also would entail the understanding that the silence of the accused may not be interpreted as an admission of guilt, etc.

Evidence:

Mr. Ríos said the reforms proposed by the Red Nacional a Favor de los Juicios Orales also would require the office of the public prosecutor to immediately produce the evidence substantiating charges against the accused. The draft legislation also stipulates the prohibition of confessions by the accused before



Fellow speakers and conference organizers at the public forum “Los Juicios Orales y la Definición de un Sistema Acusatorio Garantista en México,” held at the law school of the Autonomous University of Coahuila on March 7, 2007, gather behind keynote speaker Carlos Ríos for a group photo.

public prosecutorial agents. (Apparently an individual could still plead guilty at other stages of the criminal process but only before a judge and not a prosecutor.) The reforms also would entail the inclusion in the Constitution of a clause prohibiting introduction of “illegally obtained evidence.”

Right to trial information and probation:

No change to these provisions in Art. 20.

Right for illegal imprisonment:

Wrongfully imprisoned individuals, such as those illegally placed in pretrial detention, will be able to sue for reparations and restitution.

The right to an adequate defense:

Mr. Ríos pointed out that further Art. 20 reforms would stipulate that an accused be apprised of his civil rights at the moment of detention, and that judges must vouch for the constitutionality and appropriateness of any corresponding statement made by law enforcers. Moreover, the reforms call for the accused to have the right to an adequate defense beginning at the time of detention.

Victims’ rights:

Amendments to Art. 20 also would create a monetary fund to provide restitution to victims of crime, as well as to repair physical damages to buildings, etc. Financing for the fund would be collected from the three tiers of government.

○ **Art. 21**

Mr. Ríos stipulated that reforms to this article would enable private citizens and “representatives of public entities” to “exercise criminal action,” apparently degrading the monopoly on criminal prosecution that the office of the public prosecutor currently enjoys. The reforms would also eliminate the need for a plaintiff to prove damages or personal injury when “official crimes” hurt the public and society at large. “In these cases, anyone would be able to initiate a criminal” suit or proceeding, Mr. Ríos said.