



**“LEGAL ETHICS AND PROFESSIONALISM IN COMPARATIVE PERSPECTIVE:  
THE CASE OF MEXICO”**

**JUSTICE JOSÉ RAMÓN COSSÍO DÍAZ  
MEXICAN SUPREME COURT**

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**Dr. David A. Shirk, director, Trans-Border Institute (TBI)/Justice in Mexico Project, University of San Diego (USD):**

This series, entitled “Ethics and Professionalism in Legal Practice”, is sponsored by the Tinker Foundation. The purpose of this seminar is to provide a historical and comparative perspective of ethics and professionalism in the practice of law in Mexico. It, it will enable the debate between law students and practitioners at a historical moment in the development of the profession. Other cases that will be included in this seminar are those of Spain, Chile, and the United States, both for today’s seminar and for the whole series of conferences, which will be recorded on audio and video to be made available on the Web.

The Justice in Mexico project will collaborate with Schools of Law in Mexico and other Latin American countries to disseminate the results of these seminars and to foster the incorporation of these courses into the Law study programs and curricula in Mexico. The conference will last approximately 45 minutes; during this presentation Justice Cossío will speak about ethics and professional conduct in the legal field in Mexico. He will briefly explain the historical development of ethical and professional conduct and standards in Mexico and will give an analysis of the best practices and challenges, in other words, what has worked and what does not work as far as the educational practices and legal mechanisms that foster ethics and professional conduct in the legal field in Mexico.

We will then have a chance to ask the Justice questions, during a session ... an approximately 45-minute Q&A session, after which there will be a cocktail celebrating the conference. For this seminar, we invited a highly renowned and distinguished speaker. Dr. Cossío has a doctorate in Law from Madrid, Spain’s *Universidad Complutense*, and has published numerous articles on constitutional law and law theory. He has also published over 15 books on social status and presentational rights, the non-judicial attributions of the Supreme Court, the Judiciary, Law & Economic Analysis, the Mexican Constitution, and other topics relevant to today’s discussion. He was part of the commission that drafted the initiative for legal reform regarding *amparos*, was head of the Law Department at *Instituto Tecnológico Autónomo de México* for nine, nine years, as well as a professor of Constitutional Law & Law Theory at this same school. He is a member of Mexico’s National Researchers’ System and of the Mexican Academy for the Sciences, from which he received, in 1998, the National Social Sciences Research Award. In September of 2000... 2004, the Tabasco State government and the José Páges Llergo Foundation recognized him with the *José Páges Llergo National Legal Journalism Award 2004*. Currently, as I mentioned, he serves as a Mexican Supreme Court Justice, and as a professor of Constitutional Law at ITAM. It is both a great honor and a great pleasure to be able to welcome Justice José Ramón Cossío.  
(Applause.)

**Justice José Ramón Cossío Díaz, justice, Suprema Corte de Justicia de la Nación:**

The first topic we need to embark on is an assessment of ethics and professional conduct. I think there are some pretty complex issues here. First of all I think we should point out, or indicate, what it is we mean by it. Usually, when we say “professional practice,” we imagine only the work performed by a trial lawyer before a court; however, it seems much more appropriate to broaden the definition to also include the entities involved in administration of justice; the heads of each of its departments, on the one hand, as well as the members of professional associations, of the Mexican State Secretariats, members of the Federal Congress who perform legal duties, of course the trial lawyers, of course Notary Publics, and in general anyone who works in or is exercising a legal profession; with this I feel we have made some progress.

In my opinion, the first problem we face; to start with... let's say the best known issue in the legal field, is that we have enormous difficulty in regulating professional practice; starting with the profession itself, since in Mexico as you well know there are Supreme Court criteria that very specifically limit mandatory bar membership in this country. Consequently, and I feel that these are important criteria because of the context under which they were constructed; in a minute I will explain what they are.

It has been difficult to try and make it compulsory to belong to a bar association thus far. In 1993, the Supreme Court of Justice... heard four *amparos* filed by (a hospital trade association in Durango) and what these *amparos* claimed was the unconstitutionality of the Association Act, because it forced members of different professional activities to have to belong to (trade associations, groups, etc.).

Four *amparos* were brought, but no legal decision was reached; however, in 1995, the Supreme Court determined that the right of association in Mexico meant the possibility of becoming a member of an association whenever (one) wanted, to leave the association whenever (one) wanted, and to not belong to an association if (one) did not want to be part of it. This of course, at the time had a huge impact, because it marked the end of a corporate model within the PRI party which created an association, a mandatory membership, for the Chambers of Commerce themselves, and at the time this had a huge impact.

The first question we can ask ourselves is whether the decision made by the Supreme Court would affect the matter of mandatory association membership, as far as professional associations; and this is where the issue turns delicate. If we want to have mandatory membership as they do in many of the countries you were mentioning, how then, or rather since we cannot have this mandatory membership, how are we going to internally regulate our own bar associations? Right now there are some very prestigious associations, the Mexican Bar Association, represented here by Atty. Cuauhtémoc Reséndiz, I imagine other important associations such as the illustrious National Attorney Association, and some others throughout Mexico; not as many as we would like, but there are some out there.

The first problem that we have, then, in this field of practicing attorneys, and let's say it like it is; what is the consequence of an attorney violating his code or the provisions as set forth in each of these organizations that have to do with the practice of the law? The Association kicks them out, and what is the consequence of being kicked out of the association? Well, they go to another association, or they simply do not belong to any association and avoid having to pay the fees; basically, each can do as they see fit. I think that there is a core problem here; obviously we can state what the solution is, let's create the associations and resolve this with strong disciplinary measures. But the solution, I insist, simultaneously leads us to a constitutional problem regarding whether it is possible or not to have compulsory membership. Here I am trying to point out both the problem and the solution, and the new problem created by the solution itself. Towards the end I will try to express my own opinion. That is one issue that I feel is important.

Now, as far as legal professionals who serve in public office, well, they have their respective Responsibilities Act, I don't think there are any delicate issues here. If you look at the Federal Administrative Responsibilities Act, and analyze what the different provisions set forth in legislation, well, in this case the federal bureaucracy, to call it that in a very general sense, and of course not pejoratively, has the Federal Responsibilities Act as a provision that regulates their behavior, more so as public servants than as attorneys, but, well, since this is where they practice, that is where they are clearly regulated.

Another area where there also aren't specific regulations is that of attorneys that serve as legislators in this country. This is also a delicate matter, an important issue. There have been criticisms at different times in our country's history, different moments, it is not a recent phenomenon of "how can people who serve as federal legislators or local legislators simultaneously be practicing attorneys and find out, whether as legal advisors or in trial, or by any other means during their practice, about issues that could be related to matters that they have to process in Congress as legislators. Here I also think we are lagging behind. Some solutions have been proposed, ranging from forbidding them from hearing the case to a system similar to that of Spain, where they have a record of the matters heard by legislators outside of their

legislative activities and forbidding them, let's say, from being involved with any issue that could have an impact on what they do as legislators. This is another area that I feel is significant.

Another has to do with jurisdictional bodies, and particularly with those of us who work in administration of justice. There are two mechanisms that have been developed, or three mechanisms. First are prohibitions; we have a long and exhaustive list of affairs which... rather "conditions" – sorry – that keep us from hearing certain types of matters; these go from having a close friendship (with a party), manifest enmity, having been counsel for or employer of one of the parties, having advised them, issued a decision, well, a whole series of things that are fairly common in a lot of countries. We also have a series of specific rules that keep us from hearing, in our jurisdiction, certain types of matters when certain situations of fact have taken place that could affect our autonomy or independence. Additionally, something that we're beginning to see in our country, originally brought forth by our Federal Judiciary, and later adopted by some of the states, has been a Code of Ethics. Today, if you visit the Supreme Court's website, or that of the Federal Judiciary Council, you will find a well-drafted Code of Ethics. I feel that this Code of Ethics is very complete. I feel that at times it has more moral-type elements than it should. That is obviously a very personal observation, but I feel that it is a good Code of Ethics overall. The problem with it is that it doesn't have any sanctions to go along with it; If a public official were to be sanctioned under it, it could give way, could give way to issues as far as the Principle of Legality, since the sanction would originate from whatever regulation were to be created in this regard, as has been suggested by several articles. Now, this is not a personal opinion, since I could not give such an opinion being a Justice, it is simply a retelling of what has been proposed by other authors.

So we have this two-edge sword as far as judicial officials. We have the set of provisions that keep us from hearing certain cases, the set of provisions related to the first set that set forth responsibilities that are somewhat similar to those for the Federal Bureaucracy, and on the other hand, we have this code of Ethics that regulates certain aspects of our conduct without anything to make it binding. This leads to the original question of what is the role of a Code of Ethics. Some people used to say: it tries to establish the ideal for judges, regardless of its not having any sanctions; or... it tries to paint a picture of what judges already are; well... perhaps that is another possibility, but what we are lacking is that connection to sanctions for these specific cases. So then, I think that our situation today as far as the set of norms that regulate our profession is that they are in truth I feel... pretty light, or rather shallow, this aspect of litigators is not properly regulated as I see it; as far as bureaucrats who also practice law, it exists, albeit in a very generic way, in the Responsibilities Act; as far as career public servants they also to some extent have to deal with the Responsibilities Act; but not so as far as Federal Legislators nor clearly and fully set forth as to the Judiciary inasmuch as the Code of Ethics is concerned; so, in a very general sense, as far as what is out there today, these are the conditions.

How do I put this in a historical perspective? As far as I know, there is very little work as far as a historical explanation of how ethics have evolved in Mexico, or even of the evolution of the responsibility of addressing both issues simultaneously in our country. While I was preparing material for this conference, to tell you truth I found very little historical explanation of it. This is a symptom of the issue not being one of great concern in the exercise of the profession in Mexico. My impression is that the professional attorney field in Mexico, and specially attorneys in Mexico City – because there are also significant differences in this regard – played an extraordinarily important role between 1917 and 1928. er... until 1934. After 1934, there was a decrease in the importance of the attorney guild as such; this seems anything but trivial to me. Because I think that this is when it intertwines with the way society was segmented or organized, and a time of hegemonic parties, and then I think the profession starts to bounce back again in the 70's, at the same time that you start to see elements of change in society itself. Here we cannot measure it in relation to the issue of Ethics, I insist, there isn't a lot of literature, nor a lot of regulatory work in this regard; We can instead measure it as far as how the profession itself tries to face certain conditions that are occurring in the country. We have discussed this at the bar association where I was a board member for 2 years, how this downturn occurred. The bar's gazette, for example, stopped being published; they stopped making critical commentary on legal resolutions, which I think was very grave in terms of building a legal culture. The bar stopped being involved, I'm not saying in the assignment of Supreme Court Justices, but in their opinion of the assignment of Justices to the Supreme Court. These

years, let's say from the 40's... or maybe even before, from the thirty-something's up until the 70's, were very low profile years, professionally speaking, leading to the emergence of 2 situations. The first is that a certain pretty powerful segment of Mexican attorneys withdraws to a strictly commercial practice, and this is a hypothesis, to avoid being caught in the situation, where the PRI party was 'catching', let's say, a series of segments of the population. As you well now back then whatever couldn't be classified as either agricultural or labor activities ended up being stuck in the National Community Organization guild. It all ended up there, whatever wasn't one or the other. So it seems to me that there was a strategy, I don't know if it was deliberate, I haven't found an explanation for it; the Bar published, about 4 years ago, a book on the history of those years, but I don't think this phenomenon was quite clarified. I think that it was a double strategy, in the sense of how the profession, and now I am referring only to trial attorneys, withdrew from the exercise of...from certain aspects of involvement in public life, and seemingly focus exclusively on their private practice. In doing so, they obviously do not join any large associations, to avoid being "captured", nor do they take into account the ethical conduct of their members. And of course aside from that segment, I reiterate, that particular group of attorneys with very high professional standards, there is the remaining attorneys throughout Mexico, and even in Mexico City, who start to work as they see fit without being subject to any specific regulations. This, I feel, is also a very important issue.

As regards the bureaucracy, well, we all know that starting in 1982 a new Responsibilities Act takes effect, which is the one that tries to rebuild certain conditions for the profession in the Federal public service arena. Prior to that, it was difficult to pin-point any strong regulations or a strong punitive system, as a result of the existing political model, as was, I feel, the case of the Federal Congress. Now in the judicial Branch, what, um, um, what was going on? I don't have a precise explanation as to what was happening in each of the states as far as ethics or conduct; However, in the Federal judiciary, from about 1928 to 1982 there was a conduct model, I tried to baptize it a "tutorial model", in which since all judges and justices were appointed by the Supreme Court from their court clerks, those who were appointed judges or justices were people who had acquired a great deal of expertise within the Supreme Court. On average, for a court clerk to become a judge, it would take 7 years. As a result what happened is that they were people who had been very visible to the Justices; the justices had seen them perform for a very long time, they would have their eye on one of them and these same Justices would start assigning them to more important positions and would also move them around, since they were also in charge of appointments and removals throughout Mexico. These I think were good years as regards the conduct of the judiciary. I think the levels of inappropriate behavior were pretty low, since the relationships were fairly personal. Of course, I would not dare say that they all behaved appropriately, I don't think that could be the case in any institution, but overall I feel that it was reasonably well observed.

The appointment system changes in 1982... no, 1984, as a result of a budget increase which brought huge additional resources to the Federal Judiciary. Judges and justices start being appointed at dizzying speeds, sometimes with less than a year in the Supreme Court they start to be moved around. And what does that cause, in my opinion? That they start appointing people to positions of great importance, such as District Judges, Circuit Magistrates, without knowing them personally and without evidence of their experience. And I'm not even talking about the set institutional rules of the legal career, but merely of at least knowing who these people were. These were, I think, years in which the judiciary... the judiciary grows exponentially; The Supreme Court was appointing approximately 35 people per year; and with 35 appointments among people who know very little about each other, that is, I feel, where they lost control. And that moment when they lost control has repercussions both on the reform or restructuring of the Supreme Court and on the creation of a Federal Judicial Council to try and move away from this model of appointing those you start getting to know and towards a model of a Career in Law. My impression is that an organism which was composed of 21 people, with the 21 people having to vote on 35 appointments a year, ends up doing something which I am very careful about describing, and today I will be even more careful in doing so, where there could be a condition where some persons could reach some sort of commitment or agreement with other persons as regards the appointments. And this, undoubtedly, can lead to a decrease in the quality of the appointments, and even in the quality of deputies or clerks. Excessively young, inexperienced individuals were always appointed to the most complicated positions, and the most complicated positions were in the northern border. Older, more experienced individuals

drifted towards the center, towards Mexico City, then the younger individuals would be sent away again, the Magistrates would drift in, I think these were very complicated times in this regard.

Also nowhere to be found in this explanation were significant reforms nor significant measures within the judiciary for the purpose of, um, pacing or trying to control this growth by means of codes of conduct, of ethics. I think what they said was, well, the judiciary is going to expand because it had not done so for years; the salaries went up, a lot more people started pouring in; the per-worker budget allocations were very good, the salaries of justices and state secretaries were homogenized; and so on... and so began a sort of positioning, budget-wise, and with it a rising career. But there were no reins to correct the growth within the federal judiciary. This, I also feel, was a very important development.

Something I want to add to this idea I'm trying to develop, of the topic I was assigned for this talk, is an issue which greatly concerns me and which I have addressed elsewhere, at other presentations. It is something that is difficult for me to explain, but let me try it this way: I believe that within the legal community this set of factors which I have been trying to specify... there isn't a very clear idea of the fact that our profession not only needs to be concerned with the individual activities that each of us performs, but that we have to observe or try to set forth the institutional conditions under which we are to operate.

This, I feel, is a delicate issue: I think that other groups of professionals around the world not only look after their individual actions... Let's say that you and I are going into court; and you are the attorney for party A and I'm the attorney for party B, um, I am going to try to beat you and you are going to try to beat me, and that's what it's about. We're not there to become friends. But completely aside from that, there is that delicate issue, that that both you and I, and everyone else who works in the legal field, as judges, for example, should be trying to establish certain "minimum operating conditions", so to speak, for the system or subsystem, or whatever we want to call the conditions of the process. Now this is something of great concern to me, and I'm not only referring to the ethical problems, but to much more general issues that have to do with appointments, assignments, reasons for removal, conduct enforcement. Seems to me that as regards the creation of precisely these Professional Ethics Rules, we are once again before a very delicate matter.

I don't feel quite comfortable using this next word, since it might seem a little violent, and I'm just trying to set a scene, but I think that sometimes people in this profession have the intention of preying on the system; for the system to create them as much wealth as possible in the shortest amount of time, and whatever may happen to the overall system, well that's the system's problem and he or she need not be concerned with it. This seems like a very delicate problem, because then the issue is what happens if they appoint a corrupt judge; well, so much the better for me, because then I can corrupt him, or what if the level of preparation of attorneys starts to decrease, as I feel it is decreasing, well that's their problem... I will face more feeble competitors; and if the number of universities has multiplied and almost any institution can now give out law degrees? Well, even better. I think that this is a very serious problem that we are not taking to heart, so we can go back to these issues. I know there have been some isolated efforts, I insist, those of the Mexican Bar Association, which I feel are significant, but aside from these, I see no other efforts to come up with ideas for improving the system, for giving personality to the system as a whole, and as part of that how to improve the conditions or the practices being done within the system itself. This is a matter that is very worrisome to me, personally.

Where I think that some semblance of light is beginning to appear as to putting a stop to some of these problems, again, in general in our profession, and as to judicial reform we need to go beyond just ethics, because I think they are a symptom of a larger problem for which we have begun to see some actions; again, it has been in a handful of professional associations that have been concerned enough to try to establish some rules as to how their members act, even if these rules have no real teeth. Second, those same professional associations who have cared enough, for example, to try and set forth some minimum parameters for the law schools that are issuing Law degrees. You probably have seen this, faculties where in just a few years, with very few classroom hours and a handful of courses, you can earn a Law degree. Someone once said to me; "what happens is that the market sets them apart". I'm not so sure about that, and I want to share the following hypothesis: the market might make a distinction as to their fees, but it

makes no distinction as to the mistakes made by these lawyers from the perspective of the one left without a home, or without his or her freedom, or without his or her property. I think a distinction is made strictly as regards their fees, and that's a whole other subject. For now, the damage caused is gigantic, and I think this is a very significant problem. These same associations have also been concerned with another issue facing this profession, and that is the market access created as a result of the Free trade Agreement. What is the relationship between Mexican lawyers and U.S. lawyers? Can they come here to practice? Can't they? How about accreditation in the other country? This is also, I think, a very important issue. As have been the efforts to try to offer some specialization courses, some seminars, albeit few, to try and educate students as to ethical considerations. This is an issue I'd like to go back to towards the end of my presentation, because I think this is another serious issue.

On the civil service side, what we have are some general rules by the Secretariat of the Civil Service, the enforcement of the Responsibilities Act, but I stress, under the framework of the bureaucracy, not specifically aimed at attorneys. No progress has been made in Congress either, and they have instituted no major efforts so as to regulate this lawyer/legislator situation which may be occurring, and as far as the judiciary, there are a few mechanisms, I acknowledge that they are not the end-all solution, but there are some aspects which I think are interesting.

First, the drafting or the creation of a Code of Ethics, its dissemination; this at least as a point of reference as to how to behave properly, without much so as to make it enforceable.

Second, the attempt to make the actions of the courts more transparent. I don't know whether we have gone too far by broadcasting the sessions on television; some tell me we have, some think it is absolutely fine, I leave it up to you; I could not do otherwise, to consider. But I do think that it does provide some transparency. Today the Supreme Court - and the Electoral Court, in some cases - has made their decisions available. I will speak about the Supreme Court and those things I know about. I have been asked whether we get together prior to coming out, if we "rehearse the play", so to speak, and then we go to the bench; we put on our robes, and then we come out and take our places. Well, truth is we do not. There is a courtesy rule, or rather, a rule of discipline, amongst us, that we will not comment as to which way we are going to vote on one issue or another. You find out the others' positions when they actually vote. And what you see in, well, real time, is all there is; there is nothing else, no prior agreements, no negotiations, none of these kinds of situations; there is of course a great deal of arguing by the attorneys who are present, but that is as far as that goes.

So then, in this regard everything they do has become more transparent. At the same time, they have now opened a database where you can access court decisions very quickly; we try to upload the files as quickly as possible so you can have access to it. By 6:00 in the afternoon you can see the transcriptions of that same day's public session.

So we have tried to create some rules, or some guidelines rather, to steer our behavior. This of course can have no effect unless society at large takes this work seriously. What good is it to produce tons of information if nobody is translating it and putting it back out there? There have been some interesting efforts along these lines. Jose Antonio Caballero, who made a presentation earlier, is on the verge of opening a judicial observatory, which I think is a very, very significant event. To not only be able to access the decisions, but to also be able to say, well, these are the trends, this is the way they are going; or, this Justice's votes are very erratic, or he votes X in some cases and Y in others; well, whatever it is that they come across, I think is a matter of great significance.

Something else, I think, is that we, at least in the Supreme Court, have been trying to train the media. One of the problems that I'm sure you have seen is that almost none of the covering members of the media are attorneys. It is extremely difficult for them to translate what comes out in the court decisions and therefore what they sometimes read into it has nothing to do with what it actually meant. So, a substantially good training program has been started with their collaboration. Some of the media have incredibly good people; basically there are 4 newspapers, 2 radio stations, and one TV station that have permanent staff for this, and little by little they have been getting the idea and are today presenting these issues. Obviously

this is not a complete solution, since they go after certain cases they are interested in, and that is what they report, and the bulk of the cases, the overall trends, these are still missing, since there isn't complete coverage. As far as I know, these are the efforts currently taking place, and they are very isolated efforts.

I don't know in detail how the individual states are operating, but I get the impression that it isn't much more than what is being done at the federal level, and in many cases isn't even as much as what is being done here. Well, then, what is this causing, in my opinion? First of all, a problem as far as preparing our students; it sounds great to say we are going to offer a course, perhaps a mandatory course, although I don't think many directors would be willing right now to add another mandatory course to their curricula, so maybe it would be an elective. But the problem that comes after that is, what are we going to teach them in a course entitled "Judicial Ethics"? That is a grave problem. Here the problem is not one of direct professional liability, other than that of the Civil Code and the Criminal Code, but it is an issue of legal liability for moral damages, or a problem that could become a very complex criminal case. But the first great issue is what we are going to teach in these courses. Are we going to tell them, kids you must be good because society needs you to be honest men, if so, by the third class they're going to say, yeah, and what else? Or are we going to tell them that this is the way it is in other countries, they'll tell us, well, that's there, and this is here. This is sort of important. Like you said at the beginning, I was the director of a Law School for 9 years, and we had this intention, I must acknowledge, but the issue was, what are we going to teach in this class? This is very serious business; if we had a situation where bar membership was compulsory, where certain types of activities... of professional activities were subject to sanctions, well, maybe that's what we would teach, although I'm not sure that would take a semester to do, but to open a class only for raising awareness seems rather complicated, I insist. I mean, to... and I say this with all the intention, to "waste", and I know it's not really a waste, but to "waste" space in a program that is already loaded to teach something that we don't have very clear yet... I don't know what we would teach them. I don't know how many faculty directors would be willing to take a step in that direction. Now, I am aware that there are courses or universities that teach these courses. But it is also true that they also delve into matters that don't have to do strictly with the profession; they are more of a general Ethics course, right? At certain universities with a certain confessional tendencies, so there is this whole issue of law versus values, and such, and I don't know how much it focuses on the exercise of the profession, and how much is a part of the dynamics of the university itself and of that university's convictions, the universities affinity for teaching certain things, and this also creates a delicate issue.

Second, on the professional side, and I'm simply going to point out the problems here, because in this case I cannot express an opinion, how do we resolve this issue of compulsory membership given the legal precedent? I have seen, among attorneys... a while ago the world of attorneys debated this, and the roundtable brought together, I think there was four or five of us, split right down the middle on the issue, some felt at the time - this would have been about three years, no, maybe 4 or 5 years ago - some feared that there could still be a corporatist advance on attorneys, and so they said "we're not going to play that game, and so we want to remain free in our practice, and therefore we will not join an association. Others thought associating would be a good thing, as a means for building these practices, these more institutionalized practices, and so that segment was in favor; the problem is, what happens if a law is passed tomorrow, making membership compulsory, not just for this profession, but for medicine or others, and in the end some individuals file exceptions because they are not willing to do it. Again, I am not going to express my opinion, but there is the criterion of the interpretation of Article 9, and the means to do it.

Here, then, is an important issue. What Article 5 sets forth is that the states are empowered to issue professional licenses in certain cases; but one thing is to issue professional licenses and quite another to force someone to compulsorily belong to an association. They are two completely different things.

The other matter is, I think, that there has been some progress as to Codes of Ethics in the state judiciaries, but again, the Codes of Ethics have not been linked, have not been associated with the part of Professional Liability. Codes of Ethics continue being, then, this idea of a judge having to be honest, that a judge ought to be an individual who behaves in this or that fashion, etc., etc... Ergo, I think that here we also have a total disconnection. And another topic which has been lost, at least as far as I can see, from the public agenda is that of the relationship between legislators and the practices of these same

legislators. This did, you may remember, part of the agenda, and now for some time it seems to have disappeared; perhaps now that the new legislature is in session – they have been working for only 21 days – this could be an agenda item to at least try to resolve some of these issues.

I'm getting close to finishing. As you can see, it is not a very "flattering" scenario, and I think we have to look at it in a broader context; and this broader context as I see it is that... those of us who exercise this profession should, and this is absolutely ideal, should be more conscious of the conditions in which we are exercising our profession. Because my fear is that there may those within the profession who, as I stated earlier, will prey upon the conditions themselves of our professional practice. This then, has to do not only with ethics, but also has to do with the quality of our judges, has to do with the way the profession faces certain problems. Here I think that if one was to... or if you were thinking of a reform, we at the Supreme Court would pull out the white book and we are thinking about other issues in these matters; we would have to consider conditions as more of a structural thing, as the background, so to speak, against which the profession is exercised, because I see a real issue here. Other professions in Mexico have made great strides in this regard, accountants, for example, I think that they are a good model, they have their professional associations, their regulatory systems, they have trainings, they have accreditation courses, and so on. I think that among us they are the profession that has... or that has achieved the furthest development. But as far as ours, I insist, I see the operating conditions very disconnected, and within them, the issue of Ethics.

I leave you, then, with these sad meditations. Thank you!

### **Question and Answer Session**

We will now open the floor to questions & answers... we would only ask that if you have a question, please come up to the microphone.

**Q:** More than a question, I just want to share... the following meditation with all of you. The Honorable Justice indicated that he could not express an opinion regarding... (from the audience: your name and where you are from?) Sorry, Cuauhtemoc Resendiz Nuñez, from the Mexican Bar Association – the he could not express an opinion as to the right to free association. I wanted to share the following with you: I think that our profession has... gotten... stuck in a vicious circle in the sense that, from the starting point of the law that regulates – a law which is obsolete and which has many problems – the only condition set forth for the effectiveness of ethical standards was belonging to a professional association. However, the legislator opted for freedom of association. Starting from there, and due to the sociopolitical conditions already explained by Dr. Cosío, the idea of compulsory association began to be relegated. However, I feel that we are currently acting based on prejudice, because in my opinion – and that is what I want to share with you – that legal precedent that has to do with freedom of association is not applicable to professional associations. Um, I dare say it because of this: the exercise of a profession assumes authorization by the State. It is not a right guaranteed by the Constitution, as is the right to do business or any of these other activities. So, the authorizing state can set the conditions for the exercise of the profession, and one of these conditions could be membership in a professional association. Now, if we go back and look, and with this I will close my participation, if we look at what has happened we will see that this issue of compulsory association has never been discussed in the judiciary. On the other hand, we do have several professions that have compulsory membership in a professional association; some of them even, within the realm of the legal profession itself. Such is the case of Notary Publics; they have to be part of a professional association in order to be able to exercise the powers they were granted. We also have, as the Doctor just mentioned, the case of Public Accountants. CPAs, in order to carry out certain activities, are required to belong to a professional association; and the constitutionality of the regulations that require it have never been in question. That is why I feel that we are acting based on a prejudice, and that it is about time we find out if we have simply been limiting ourselves. Of course it would require legislative reform in order to establish compulsory membership, but I think that this legislative reform could be promoted without risk of its being declared unconstitutional, because we are talking about two completely different types of rights. Thank you.

**Q:** My name is Arturo Alvarado, from *Colegio de México*. I would like to take advantage of this opportunity to pose two questions. The first has to do with how you work within the Supreme Court. You mentioned, and were more or less clear, you have been transparent in that sense, that En Banc, is where you find out what their positions are and where the voting takes place; this notwithstanding, um, there is a whole process, um, work process, for the judges, the clerks, etc., that is still part of, how do you say, both of the construction of the legal process, and of the decision-making, right? So, let's say, you get a case... a Justice studies it, studies it individually, that is what is clear to me thus far. But, is there collective work inside, or is it truly just work that each of you does individually, as per some sort of division of work, divided randomly among you, or what? Or, how do you do perform the work? I mean, this is important because, of course it has consequences. To give you a legislative example, if the legislators were unable to reach consensus and did not do any prior activities, perhaps legislative work would have a completely different and perhaps adverse result. The work on the floor would be much more difficult, right? So, then, I'd like to know how this works as far as you can tell us, and how could this process become more transparent as well?

**Q:** Any other questions? Very well, I will ask the final question, then. To speak of ethical and professional responsibility standards in a country as diverse as Mexico, with so many differences from one state to the next and so many different regulations and customs, for example, in the indigenous communities, that vary so much from place to place... how does this diversity complicate the process of promoting nationwide standards? And if we are talking about something other than professional associations, then, how... are there other ways of setting standards? How can we be respectful of this diversity while also trying to find ways to standardize and foster greater professionalizing or greater responsibility in the legal profession, in the exercise of the legal profession, in Mexico?

**A:** To answer Mr. Resendiz's question; your interpretation is very good. I, it is not that I don't have a position as to this issue, but the thing is that, again, what happens if tomorrow a case comes before me regarding the unconstitutionality of this law? I could not hear the case because I expressed my opinion this afternoon here with you. Then, one means, as he already said, would be for the different possibilities to be explored and to see where the interpretation of the Constitution leads us; this could open the doors for professional association, if the Supreme Court in fact rules in the sense that Mr. Resendiz mentioned, that would have to happen first

Now, the question posed by Arturo is an interesting one. The mechanics are more or less as follows: We get cases sent up, so to speak, from the District Courts or Associate Appeals Courts, as well as cases that come to us directly as proceedings and disputes. So, cases get to us through two different avenues. Whatever the case, at the Supreme Court we have these sort of pigeon-holes, let's say, where we divide them according to type: writs of habeas corpus, directly, on appeal, contested cases, whatever may be the case. The way they are assigned is by seniority of appointment. First Justice Diaz Romero, last is Justice Vals. The Chief Justice does not get any matters assigned, due to the many other activities he has. Then they are assigned according to type. These matters are sent to the Committee. The Committee is what we call the group of individuals that oversee each of us as Justices.

Within the Committee, there are two ways of assigning cases. Some follow the same order of assigning the cases; by type, then by clerk. Um, each justice has 8 clerks, and cases are assigned to each of them. Another way, such is my case, we assign them through an individual, someone we fully and unreservedly trust, who divides the general cases, the ones that are fairly common, among everyone, and those which require some specialization he asks me about, who do I give this one to? Give this one to so and so and this other one to so and so. When they are extremely complicated, they are given to groups of two or three internally. They study the matter; and they don't ask us about the easy ones, um, the ones that are fairly commonplace. Those matters with a certain degree of difficulty – and I'm speaking about my work, but I think this is generally how it goes – they come ask me about; we have this case like this or that, what do you think? Well, I think this way or that way, what are your thoughts? And so on, you start giving shape to the idea. They go draft a provisional decision, they bring it to me, I read it, make corrections, give it back, sometimes it takes several rounds of this, and once it is ready, it gets signed. Once signed, they are sent down to the General Clerk if it is a bench matter, or to the court clerk if it is a court matter. And then it

enters this enormous... well, in court it is pretty fast; en banc we have a significant pool of affairs; there is a List Commission made up of three Justices, and these Justices start grouping dockets with similar characteristics. For example, we just had some matters that had to do with cost-of-sale taxation; so certain dockets that were similar were grouped together, this allows, facilitates the discussion, and we can start moving to other matters.

When we have exceptional cases... for example, today we had a proceeding regarding unconstitutionality of an electoral matter, um, from the state of Yucatan. The deadline is October 11<sup>th</sup>, and so we had to deal with it expeditiously or we would no longer be able to decide it; and that is more or less how we operate.

What else is there... is there a lot of communication in the Committees? I think so. Is there communication among the clerks? Yes, there is as well. There is something that is difficult to understand from the U.S. perspective; that is when litigators come to see us individually – I have been told this by several people, some of them professors, they seem quite surprised – it is a custom that we have here. Here, he or she comes in, the person who came to see you takes a seat, and those who are more professional submit a brief note with their talking points, others just tell you the story of their case, um, each has their own approach... and that's basically it. The cases are divided up, the matters are read, some Justices use the help of their clerks to read them, some of us do not, we get to the en banc session, and once there, now there is no getting together before, you just enter the session. This matter heard today, for example, it was assigned to me on Monday afternoon, I worked on it all of yesterday to be able to be here today, this morning I went over the notes with the clerks, there is an important issue in this case that has to do with independent candidacies, are they or are they not allowed. So it's a delicate matter. An issue about independent candidacy funding, that is a delicate matter. We go over the case, you go into session, Arturo, and once in session what you see is how do you put this in order? In order to facilitate the discussion, a 'problemnaire' is prepared, with the topics, jurisdiction, procedure, merits, etc., and they are prioritized. Normally, it is not always so, but normally we go down the "problemnaire", in rounds, and once the arguments become repetitive, then it's done, we put it to a vote, and that's it. First there are partial votes, and then a definitive vote, and finally, as with any other collegiate body, dissenting opinions, concurring opinions, minority opinions, etc., depending on the conditions. Then there is some work you no longer see; which is the bill, it normally undergoes several changes, these changes are collected by the Justice in charge of the file, when they involve a certain degree of complexity he submits the file to us, we approve it, and then that is what is published or ordered, depending on the type of matter, that is all.

There is a variation when it is not en banc, in this case, they see many different matters. Then, what you do is the same operation, but now you have a previous session, and, um, in that previous session there is some, um, minor discussions, normally a discussion on the matters in general, they have to do with this, that, son on and so forth, there is some feed back; that is where they say, hey, I am having great difficulty with this matter of yours, I did not have time to read it... please postpone it, or leave it on the list, or take it to the bench, whatever, and then it jumps, so to speak, into the public session, which is the one you see. This one is not televised yet, it just happens very fast, but that could be one side.

The other is the associate appeals courts; we have also been asked, since very delicate matters are resolved there, could these be televised or not? The trouble is that there are currently 300 of them, right? That would be impossible!

So, my opinion is that whatever solution there might be to these issues, it cannot be found by televising, or publishing in newspapers, I think that it would be very difficult to keep something like that going – and as you were saying, David – in the sense that current court issues are interesting, they were not so 20 years ago. I worked there some... they were not so interesting; a lot of taxation cases, with all due respect to tax people, but they were a lot of tax-related cases. Today, there are disputes, lawsuits, appeals, and let's not even get into the state civil court cases – a rental case, damage to other's property – I don't think the people are... it's not like they are... they are very "ordinary" cases that only interest two parties. So it seems to me that betting it all on the 'improvements' to come just from being transparent, I think would be a mistake. I believe the solutions lies in much more integral measures, and the issue of professional association seems like an interesting one to me, quite honestly. I don't know whether it is constitutional or

not, but I think it is an extremely important alternative to explore, because of how the profession can begin to self-regulate, and ergo the profession would be able to eliminate those who are not acting appropriately, and so on.

There was an attempt in what Mr. Resendiz was saying; in the public safety reform proposal submitted by President Fox. Do you remember the idea of the criminal lawyers had that defenses could be mounted not by personal representation, but by criminal lawyers? But this initiative did not have a finalized model as to how to certify, who would decide who could be considered an attorney, the matter was not... would it be the Judiciary Council, would it be the Supreme Court, would it be a collegiate body, it was not, so to speak, fully cooked. So I think that is another case.

And finally, there is the question you asked: how do you sort through all that diversity? To tell you the truth, I don't have a very good answer. What happens here in the Supreme Court, as I think is the case in all the supreme courts throughout the world, is that the attorneys that normally come in are, um, attorneys that are part of a super legal elite in Mexico; they are normally very good lawyers, they argue well, they know their cases. I do not mean to imply that this is the way it is, that as you go down to lower judicial levels the quality of the attorneys also goes down, I don't mean that at all. But maybe there is something to it; where do you draw the line? How do you... have an impact? I think that the only possibility – and so as to not get in trouble, let me add, if it were constitutional – through professional association. I don't have many more ideas as to how to improve this situation, nor do I think that the solution to all the problems lies in having professional associations; I think that would be pulling the wool over our eyes. But I do think that, being where we are, an important step forward for now would be that. Sure, new problems will arise. Maybe so, but they would be new problems that we would have to worry about as they arise, because as it is today, the whole thing seems kind of sad to me. Thank you!