

# WRESTLING WITH MEXICAN CRIMINAL PROCEDURE: HOW LAW SCHOOLS IN THE UNITED STATES AND MEXICO CAN TEAM UP TO REBUILD MEXICO'S CRIMINAL TRIAL

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I.	INTRODUCTION.....	54
II.	MEXICO'S CRIMINAL JUSTICE SYSTEM.....	59
	<i>A. Mexico's distinct legal evolution .....</i>	60
	<i>B. The unchecked power of the ministerio público .....</i>	61
	<i>C. Too much corruption, too little public trust .....</i>	62
III.	THE 2008 REFORMS .....	63
	<i>A. The slow march toward reform .....</i>	64
	<i>B. U.S. influence on the reform process .....</i>	65
IV.	MEXICAN LEGAL EDUCATION .....	67
	<i>A. Obstacles to reform within Mexico.....</i>	67
	<i>B. Obstacles stemming from the United States .....</i>	69
V.	REFORMING MEXICAN LEGAL EDUCATION.....	71
	<i>A. Moving Away from Memorization .....</i>	72
	<i>B. Taking Another Look at Transnational</i>	

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54	<i>HOUSTON JOURNAL OF INTERNATIONAL LAW</i>	[Vol. 33:1
	<i>Programs</i> .....	73
	C. <i>Working with U.S. Law Schools</i> .....	74
	VI. CONCLUSION .....	93

## I. INTRODUCTION

*“[Lucha libre] is a contest between two or more wrestlers who compete not as themselves but as characters that they (or their promoters) invent.”*<sup>1</sup>

One of the most colorful images associated with Mexico is that of the masked *luchador*. Inside Mexico, *luchadores* are superstars, a unique mix of real-life superhero and movie star. *El Santo* [The Saint] was one of the biggest stars in the history of *lucha libre*, and his influence over Mexican culture extended far beyond the wrestling rings where he first became famous. He starred in close to sixty feature films in which he battled mummies, vampire women, and Martians—all while wearing his famous silver mask.<sup>2</sup> He took off that mask publicly for the first time in 1984; a week later, he had a heart attack and died.<sup>3</sup> Thousands attended his funeral and watched as he was buried—wearing his mask.<sup>4</sup> *El Santo* was a cultural icon,<sup>5</sup> but it is impossible to examine his cultural significance without acknowledging that of *lucha libre* itself.

Of course, a large part of *lucha libre* is simple entertainment, “[b]ut what wrestling is above all meant to

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1. Heather Levi, *Sport and Melodrama: The Case of Mexican Professional Wrestling*, SOC. TEXT, Spring 1997, at 57.

2. *Id.* at 64–65.

3. *Id.*

4. *Id.*

5. *Id.* at 64 n.7 (“El Santo was recruited to the film industry in 1958 and continued to star in at least one film a year until 1983. Although *lucha libre* was a popular entertainment before El Santo and others crossed over into film, the cinema contributed to its ever[-]wider audience.”).

portray is a purely moral concept: that of justice.”<sup>6</sup> The popularity of *lucha libre* should come as no surprise, then, in a country that has historically struggled to impose justice.<sup>7</sup>

On June 17, 2008, Mexico took an unprecedented move toward strengthening its justice system by modernizing its trials and implementing true adversarial procedure.<sup>8</sup> Mexican president Felipe Calderón signed into law a constitutional amendment establishing three fundamental changes to Mexican criminal procedure: (1) Trials would be open to the public; (2) Trials would be adversarial in nature, not inquisitorial as had been tradition; and (3) Trials would be based on oral argument, not written memoranda (these changes are, collectively, the “2008 Reforms”).<sup>9</sup> Though these characteristics are taken for granted in U.S. trials, they had been absent from Mexico’s “medieval” trial system until President Calderón was able to push through the constitutional reform—something his two predecessors had attempted but failed to do.<sup>10</sup> In those years of failed attempts, Mexican scholars and politicians who continued

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6. ROLAND BARTHES, *The World of Wrestling*, in MYTHOLOGIES 15, 21 (Annete Lavers trans., Hill & Wang 1st Am. ed., 1972).

7. Catalina Pérez Correa, *Distrust and Disobedience: Discourse and Practice of Law in Mexico*, 77 REV. JUR. U.P.R. 345, 353 (2008) (“In Mexico, however, the legal institutions do not meet their most basic purpose: the enforcement of the law.”); see Jorge A. Vargas, *Privacy Rights under Mexican Law: Emergence and Legal Configuration of a Panopoly of New Rights*, 27 HOUS. J. INT’L L. 73, 99 (2004) (noting “severe criticisms” from the international community on Mexico’s “arbitrary administration of justice”).

8. *Decreto por el que se Reforman y Adicionan Diversas Disposiciones de la Constitución Política de los Estados Unidos Mexicanos* [Constitutional Reform Decree], Diario Oficial de la Federación [D.O.], 18 de Junio de 2008 (Mex.) [hereinafter 2008 Reforms]; see Julie Watson, *Mexico Adopts U.S.-style Trials, Presumption of Innocence*, ASSOCIATED PRESS WORLDSTREAM, June 18, 2008.

9. 2008 Reforms, *supra* note 8, art. 20 (initiating comprehensive changes to many other aspects of Mexican criminal procedure, including a presumption of innocence, confessions of guilt, and victims’ rights); see Germán Adolfo Castillo Banuet, Dir. Gen., Interior Ministry, Morning Keynote Panel at the University of San Diego conference: Justice in Mexico: Evaluating National and Local Initiatives (Apr. 21, 2008) (on file with author) (discussing in detail all of the changes). Many of these changes, including formal protections for victims, are vital to ensuring lasting reform. See Eric Talbot Jensen, *Incentivizing and Protecting Informants Prior to Mass Atrocities Such as Genocide: An Alternative to Post Hoc Courts and Tribunals*, 29 HOUS. J. INT’L L. 113, 147 (2006). However, this paper examines only the three changes listed above.

10. Watson, *supra* note 8.

to push for reform were acutely aware of the U.S. legal system as a model.<sup>11</sup>

As the most comprehensive legal changes made since Mexico's 1917 Constitution (the "1917 Constitution"),<sup>12</sup> the 2008 Reforms had many catalysts. However, one catalyst in particular stands out: The ever-present threat posed by the drug cartels in Mexico. Their influence is ubiquitous and pervades almost all levels of the justice system.<sup>13</sup>

Those in a position to put cartel members in jail are faced with a foreboding choice: "*plata o plomo*" (silver or lead).<sup>14</sup> They can choose to receive either silver, in the form of a bribe, or lead, in the form of a bullet, from the drug gangs.<sup>15</sup> Many officials choose the silver.<sup>16</sup> Public knowledge of the widespread use of bribes has cultivated a general distrust in Mexico's criminal justice system.<sup>17</sup> To combat that, Mexico must foster faith in its

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11. See Cristal Gonzalez, *Mexico Reforms Legal System, Turns to U.S. Structure for Direction*, COMMENTATOR, Sept. 1, 2007, available at <http://media.www.swlawcommentator.com/media/storage/paper1267/news/2007/09/01/Politics/Mexico.Reforms.Legal.System.Turns.To.U.s.Structure.For.Direction-3150030.shtml> (explaining new steps Mexico has taken to move from the inquisitorial to the adversarial criminal justice system); Press Release, Ill. Inst. of Tech. Chicago-Kent Coll. of Law, Chicago-Kent and Tec de Monterrey Establish Criminal Law and Advocacy Program (July 7, 2009) [hereinafter Chicago-Kent Press Release] (recounting the U.S. constitutional amendments adopted in the new system).

12. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), [hereinafter 1917 Constitution].

13. See, e.g., Rishi Hingoraney, *International Extradition of Mexican Narcotics Traffickers: Prospects and Pitfalls for the New Millennium*, 30 GA. J. INT'L & COMP. L. 331, 343 (2002) (noting that "[n]arco-traffickers wield enormous amounts of influence in the Mexican judicial institutions"); U.S. Gen. Accounting Office, *Drug Control: U.S.–Mexican Counternarcotics Efforts Face Difficult Challenges* 15 (1998) (noting that former Mexican President Ernesto Zedillo "publicly acknowledged that corruption is deeply rooted in Mexican institutions and in the general social conduct of the nation.").

14. Joshua S. Spector, Note, *Extraditing Mexican Nationals in the Fight Against International Narcotics Crimes*, 31 U. MICH. J.L. REFORM 1007, 1027 (1998).

15. See *id.*

16. See *Curbing Money Laundering Is Not Easy*, LATIN AMERICAN WKLY. REP., Sept. 25, 2001, at 448 (noting that each drug cartel spends about \$1 million weekly on bribes).

17. See Pérez Correa, *supra* note 7, at 357.

legal institutions.<sup>18</sup> The 2008 Reforms represent a significant step in the right direction, but substantial changes must be made to Mexican legal education to ensure the reforms are enacted as planned.<sup>19</sup>

Mexican legal education is substantially different from legal education in the United States.<sup>20</sup> Many Mexican law schools lack the social justice clinics, law journals, and mock competitions that are common in U.S. law schools.<sup>21</sup> As a result, even before the 2008 Reforms, Mexican law schools were far behind their U.S. counterparts in teaching advocacy skills.<sup>22</sup> Now the reforms have been adopted, Mexico must train thousands of law students and retrain thousands of practicing lawyers by 2016.<sup>23</sup>

U.S. law schools are uniquely positioned to assist in this transition.<sup>24</sup> Transnational cooperation to improve Mexican law schools will not only assist implementing the 2008 Reforms, but it will also parallel efforts to eliminate the drug cartels.<sup>25</sup> Through the Mérida Initiative, the United States has already pledged to support Mexico in its fight against drug gangs by

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18. Pamela K. Starr, *Challenges for a Postelection Mexico Issues for U.S. Policy*, 13 L. & BUS. REV. AM. 799, 819 (2007) (“The way forward depends on improving the quality of Mexican law enforcement and increasing public trust in these institutions.”); see U.S. Gen. Accounting Office, *supra* note 13, at 15 (noting former President Zedillo’s assertion that “the creation of a new culture of respect for law must start with public officials.”).

19. See David Brennan, *Mexico’s Twin Challenges: Reforming its Criminal Justice System and Combating Drug Cartel Violence*, ORANGE COUNTY LAW. at 38, 45, Jan. 2009 (“[L]ong-term success of the criminal justice reform programs will depend on the extent to which educational program for both students and practicing lawyers are created and fully implemented.”); see also Karen E. Bravo, *Smoke, Mirrors, and the Joker in the Pack: On Transitioning to Democracy and the Rule of Law in Post-Soviet Armenia*, 29 HOUS. J. INT’L L. 489, 567 (2007) (noting that new legislation and training seminars are not enough to effect major changes to a legal system and suggesting changes to legal education as a more effective alternative).

20. Robert Kossick, *The Rule of Law and Development in Mexico*, 21 ARIZ. J. INT’L & COMP. L. 715, 732 (2004).

21. *Id.* at 738.

22. *See id.*

23. Watson, *supra* note 8.

24. *See* Brennan, *supra* note 19, at 45 (“[C]ollaborations between the United States and Mexico’s law schools . . . should be pursued at the earliest time to enhance the implementation of these major ongoing reforms.”).

25. *Id.*

providing equipment and law enforcement training.<sup>26</sup> The shortcomings of Mexican legal education must be addressed if the Mérida Initiative is to succeed.<sup>27</sup>

This paper is separated into four parts following this introduction. Part two is a general overview of Mexico's criminal justice system; part three examines the 2008 Reforms in particular. Part four gives an overview of Mexican legal education, and the fifth part explains the changes that are needed to ensure that Mexican law schools are ready to prepare current and future lawyers for the changes encompassed in the 2008 Reforms. An expanded partnership between Mexican law schools and their U.S. counterparts promises to be especially helpful in the transition to public, adversarial, oral trials. That partnership, both as it already exists and as it should evolve in the coming years, is examined in depth in the fourth section of this paper.

At the outset, I feel obliged to call attention to one of this paper's shortcomings. As a general rule, I am personally intrigued by almost every facet of Mexican life. With regard to Mexican legal education however, I find myself distinctly in the minority. In 2002, the United Nations recognized a lack of information regarding Mexican law schools, and it urged the Mexican government to undertake the research required to make that information available.<sup>28</sup> Since then, only marginal

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26. U.S. Department of State, Mérida Initiative, <http://www.state.gov/p/inl/merida> ("The Mérida Initiative will provide equipment and training in support of law enforcement operations and technical assistance to promote the long-term reform, oversight and professionalization of our partners' security agencies.") (last visited Oct. 3, 2010). Additionally, as the "world leader in promoting rule of law programs," the United States has traditionally shown an interest in quelling challenges to the rule of law like those currently facing Mexico. James R. Maxeiner, *Some Realism About Legal Certainty in the Globalization of the Rule of Law*, 31 HOUS. J. INT'L L. 27, 45 (2008).

27. The Mérida Initiative includes funding for "[t]echnical advice and training to strengthen the institutions of justice." U.S. Department of State, The Mérida Initiative, *Fact Sheet*, <http://www.state.gov/p/inl/rls/fs/122397.htm> (last visited Oct. 3, 2010). Legal education is presumably within the scope of that training. See Jon Mills & Timothy McLendon, *Law Schools as Agents of Change and Justice Reform in the Americas*, 20 FLA. J. INT'L L. 5, 26 (2008) (recognizing that law schools are "tools that should provide research, training, and learning opportunities to the existing legal profession and judiciary").

28. U.N. Econ. & Soc. Council, Comm'n on Human Rights, *Civil and Political*

progress has been made. The leading scholar on the subject admitted plainly in 2008 that “[r]esearch on Mexican law schools is almost nonexistent.”<sup>29</sup> At a time when Mexican law schools are facing important changes to the legal landscape, that dearth of research is especially frustrating. I have worked with what sources I could find to paint a comprehensive picture of the current situation of Mexican law schools. With that in mind, I believe that my conclusions (as well as my suggestions for further action) are well researched, but in the end, they are still just that: mine.

## II. MEXICO’S CRIMINAL JUSTICE SYSTEM

*“One of the most important features differentiating lucha libre from its Anglophone cousins is the use of masks, not only as an element of the wrestler’s costume but as a crucial dramatic element.”*<sup>30</sup>

Built around a civil law tradition, Mexico’s legal culture is fundamentally different from the U.S. system. The most significant difference, as it is relevant here, is the diminished importance of the judge.<sup>31</sup> Built on that foundation, Mexico’s unique history has further weakened the judge’s role.<sup>32</sup>

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*Rights, Including Questions of: Independence of the Judiciary, Administration of Justice, Impunity, Recommendations (g)(i)*, U.N. Doc. E/CN.4/2002/72/Add.1 (Jan. 24, 2002) [hereinafter *U.N. Report on the Mission to Mexico*] (“It is imperative that the Government undertake without delay a study of the system of legal education and qualification to [practice] the legal profession in Mexico, at both the federal and State levels.”).

29. Luis Fernando Pérez Hurtado, *An Overview of Mexico’s System of Legal Education*, 1 MEX. L. REV. 53, 68 (2008) [hereinafter *An Overview of Mexico’s System of Legal Education*].

30. Levi, *supra* note 1, at 64.

31. Kossick, *supra* note 20, at 742 n.78.

The differences between the roles and prestige of common and civil law judges is actually rooted in phenomena and experience which run much deeper than Mexico’s modern history. Going back to Roman times, the judge (*iudex*) was not a prominent man of the law vested with inherent lawmaking power but, rather, a layman discharging an arbitral function in conformity with the formulae supplied by the *praetor* and the indispensable advice of the *jurisconsult*. The French revolution’s consecration of the dogma of strict separation of powers reinforced this historical tradition by preventing judges

### A. Mexico's distinct legal evolution

Mexico's judicial system is a reflection of Mexican culture as it has evolved since pre-colonial times, but it is formally rooted in the language of the 1917 Constitution.<sup>33</sup> The U.S. Supreme Court had decided *Lochner* just twelve years before that document was written.<sup>34</sup> Wary of the power wielded by the U.S. Supreme Court in the *Lochner* era, the drafters of the 1917 Constitution deliberately created a judiciary that was weaker than the executive and legislative branches of government.<sup>35</sup> This was a direct condemnation of a Mexican Supreme Court that had, before the 1910 Revolution, declared its power of judicial review.<sup>36</sup> In fact, the pre-Revolutionary Mexican Supreme Court used *Marbury v. Madison*<sup>37</sup> as a model for the concepts of stare decisis and judicial review more than a decade before the U.S. Supreme Court cited to *Marbury* for those principles.<sup>38</sup>

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from either directly or indirectly making law. Consequently, civil law judges came to be perceived as public servants that perform important but essentially uncreative functions.

*Id.* (citations omitted); see also Harve A. Truskett, Comment, *This Does Not Matter in Mexico*: Mexico–U.S. Competition Law—Conflicts and Resolutions, 30 HOUS. J. INT'L L. 779, 792 (2008) (noting that civil law traditions have less tolerance for judge-made law than do common law systems).

32. See Miguel Schor, *The Strange Cases of Marbury and Lochner in the Constitutional Imagination*, 87 TEX. L. REV. 1463, 1477–78 (2009) (“Mexican constitutional scholars knew that the U.S. Supreme Court had played a conservative role in preventing social reforms during the *Lochner* [e]ra and believed, therefore, that the political branches, rather than the judiciary, should play the key role in effectuating the guaranties of the Mexican Constitution of 1917.”).

33. 1917 Constitution arts. 94–107; Charles A. Hale, *The Civil Law Tradition and Constitutionalism in Twentieth-Century Mexico: The Legacy of Emilio Rabasa*, 18 LAW & HIST. REV. 257, 257–58 (2000) (describing Mexican constitutionalism as a product of historical context).

34. *Lochner v. New York*, 198 U.S. 45 (1905).

35. Schor, *supra* note 32, at 1477–78.

36. See *id.* at 1471–72.

37. 5 U.S. (1 Cranch) 137 (1803).

38. M.C. Mirow, *Marbury in Mexico: Judicial Review's Precocious Southern Migration*, 35 HASTINGS CONST. L.Q. 41, 41–42 (2007) (comparing a Mexican Supreme Court decision in 1881 to *Pollock v. Farmer's Loan & Trust*, 159 U.S. 429 (1895)).

Besides establishing a fundamentally weaker judiciary, the 1917 Constitution formally addressed criminal procedure.<sup>39</sup> The drafters specifically intended, for example, to increase public awareness of criminal trials.<sup>40</sup> Without implementing any legislation, however, much of the pre-Revolution procedure continued unchanged.<sup>41</sup> The Mexican Congress passed “extraordinarily defective” enabling legislation in 1934.<sup>42</sup> The gap between that legislation and the original constitutional principles resulted in a hybrid system that gave immense power to the *ministerio público* [federal prosecutor] and made the trial itself “a mere formal exercise.”<sup>43</sup>

*B. The unchecked power of the ministerio público*

In this system, the *ministerios públicos* held considerable sway over the entire criminal proceeding—from the issuance of arrest warrants to the presentation of cases to the judge.<sup>44</sup> The *ministerios públicos* decided the weight of the evidence during the investigation without giving the defense an opportunity to challenge evidence or cross-examine witnesses.<sup>45</sup> The *ministerio público* created a written report (a “dossier”) upon which the judge would rely in making his decision.<sup>46</sup> This system may have evolved naturally from the 1917 Constitution’s suspicion of an activist judiciary during the *Lochner* era.<sup>47</sup> However, by taking power away from the judge and placing it in the hands of the

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39. Carlos Rios Espinoza, *Redesigning Mexico’s Criminal Procedure: The States’ Turning Point*, 15 SW. J.L. & TRADE AM. 53, 56 (2008).

40. *Id.*

41. *Id.*

42. *Id.* at 56–57.

43. *Id.* at 57; see Carlos Rodrigo de la Barra Cousino, *Adversarial vs. Inquisitorial Systems: The Rule of Law and Prospects for Criminal Procedure Reform in Chile*, SW. J.L. & TRADE AM. 323, 325 (1998) (describing Chilean criminal procedure).

44. JULIA PRESTON & SAMUEL DILLON, *OPENING MEXICO: THE MAKING OF A DEMOCRACY* 388 (2004).

45. Rios Espinoza, *supra* note 39, at 57.

46. *Id.*

47. See Schor, *supra* note 32, at 1477–78 (noting that Mexican scholars knew of the U.S. Supreme Court’s active role in preventing social reforms during *Lochner* era).

*ministerio público*, which actually represents the executive branch,<sup>48</sup> this system further weakened judicial independence.<sup>49</sup>

This produce[d] the atrophy of the criminal prosecution system because it [did] not provide any incentive for carrying out a quality investigation, and one [could] never successfully attack the low quality of the investigation in court because the judge decide[d] according to the dossier, and witnesses [were] not required to give testimony in the presence of the judge and [could] not be cross-examined by the defense.<sup>50</sup>

C. *Too much corruption, too little public trust*

The public has historically been well aware of the feebleness of the Mexican judiciary.<sup>51</sup> A reputation for rampant corruption has only amplified that image.<sup>52</sup> One decade ago, only about one-fourth of Mexicans trusted Mexican courts.<sup>53</sup>

The considerable control over criminal proceedings wielded by the *ministerios públicos* has never been reflected in their salaries, and their modest incomes have made them prime targets for bribes.<sup>54</sup> “They were not infrequently accused of writing mistakes into criminal complaints, for a price, thus forcing judges to dismiss charges.”<sup>55</sup> Judges themselves enjoyed larger salaries, but they were not above corruption.<sup>56</sup>

Additionally, despite guarantees in the 1917 Constitution, Mexican courts have not observed a presumption of innocence.<sup>57</sup>

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48. Under the 1917 Constitution, the *ministerio público* is part of the executive branch of the federal government. 1917 Constitution art. 21; see STEPHEN ZAMORA ET AL., MEXICAN LAW 361–32 (2004) [hereinafter MEXICAN LAW].

49. See Rios Espinoza, *supra* note 39, at 58.

50. *Id.*

51. JEFFREY K. STATON, LOBBYING FOR JUDICIAL REFORM: THE ROLE OF THE MEXICAN SUPREME COURT IN INSTITUTIONAL SELECTION 8 (2003), <http://mailer.fsu.edu/~jstaton/lobbying.pdf> (“[T]he judiciary was always seen as an appendage of the executive. The judiciary did whatever the president wanted.”).

52. U.N. Report on the Mission to Mexico, *supra* note 28, at ¶ 166.

53. PRESTON & DILLON, *supra* note 44, at 388.

54. *Id.*

55. *Id.*

56. *Id.*

57. Brennan, *supra* note 19, at 38.

In practice, those accused of crimes are presumed guilty.<sup>58</sup> More than 85% of those accused of a crime in Mexico are sentenced.<sup>59</sup> The presumption of guilt is applied almost exclusively to poor defendants.<sup>60</sup> Those who can afford it file an *amparo* suit.<sup>61</sup> In theory, the *amparo* is Mexico's rough equivalent of a habeas corpus petition, but in practice, it is a "get-out-of-jail-free card."<sup>62</sup> *Amparo* abuses have been rampant.<sup>63</sup> "Most Mexicans would never seek *amparo* protection even once in their lives, yet not a few of Mexico's five hundred federal judges routinely extended *amparo* protection to narcotics traffickers, kidnappers, and other criminals."<sup>64</sup> Widespread knowledge of *amparo* abuses contributed substantially to public distrust of Mexican courts.<sup>65</sup>

### III. THE 2008 REFORMS

*"But, more importantly, the mask can be removed and the personal, everyday identity of the wrestler revealed."*<sup>66</sup>

The 2008 Reforms embody some of the same ideas that were present when the 1917 Constitution was being created.<sup>67</sup> Those ideas have only recently begun to be implemented, however. Before the constitutional reforms changed federal procedure, several Mexican states had taken steps toward opening their judicial systems.<sup>68</sup> The first oral trial in Mexico, a drunk-driving

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58. See David Luhnow, *Presumption of Guilt*, WALL ST. J., Oct. 17, 2009, at W1 (examining the Mexican criminal justice system and telling the story of one man imprisoned for more than two years despite an airtight alibi).

59. *Id.*

60. See PRESTON & DILLON, *supra* note 44, at 388.

61. *Id.*

62. *Id.* at 388–89 (quoting a U.S. Justice Department official who had been based in Mexico).

63. *Id.* at 389.

64. *Id.*

65. *Id.* at 388.

66. Levi, *supra* note 1, at 65.

67. See Rios Espinoza, *supra* note 39, at 55.

68. *Id.* at 54–55; see Steven E. Hendrix, *The Mérida Initiative for Mexico and Central America: The New Paradigm for Security Cooperation, Attacking Organized Crime, Corruption and Violence*, 5 LOY. U. CHI. INT'L L. REV. 107, 116 (2008) [hereinafter *The New Paradigm for Security Cooperation*].

case that involved one death, took place in the city of Montemorelos on Feb. 23, 2005.<sup>69</sup>

President Calderón's predecessor, Vicente Fox, officially started reform in the federal system when he unveiled his plans for an overhaul on March 29, 2004.<sup>70</sup> Fox, like Calderón, called for oral arguments in public courtrooms.<sup>71</sup> As the first opposition-party candidate to win the presidency after seventy years of single-party rule, however, Fox was unable to push reforms through the legislature.<sup>72</sup> "He was a victim of lousy and obsolete institutions."<sup>73</sup>

*A. The slow march toward reform*

Criminal procedure reform was an important factor considered by the drafters of the 1917 Constitution.<sup>74</sup> In 1916, President Venustiano Carranza outlined a "procedural revolution" aimed at modernizing the criminal justice system.<sup>75</sup> President Carranza specifically criticized inquisitorial processes and closed-door legal proceedings; both were institutions Mexico had inherited from the Spanish.<sup>76</sup> Unfortunately, the political upheaval surrounding the Revolution substantially delayed the beginning of President Carranza's "procedural revolution."<sup>77</sup> The most important reforms were not implemented until recently.<sup>78</sup>

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69. David Carrizales, *Concluyó en NL el Primer Juicio Oral del México Actual*, LA JORNADA, Feb. 23, 2005, available at <http://www.jornada.unam.mx/2005/02/24/035n1est.php>.

70. Kevin Sullivan, *Mexican President Submits Plan to Overhaul Justice System*, WASH. POST, Mar. 30, 2004, at A20.

71. *Id.*

72. Jo Tuckman, *Mexico Takes Stock of Fox's Presidential Legacy*, BOSTON GLOBE, June 20, 2006, at A6.

73. *Id.* (quoting Fox's former foreign minister).

74. Diario de los Debates del Congreso Constituyente [Constitutional Congress Debates], No. 12, 259, 1 de Diciembre de 1916 (Mex.) [hereinafter Constitutional Congress Debates].

75. Rios Espinoza, *supra* note 39, at 55.

76. Constitutional Congress Debates, *supra* note 74, at 263–64.

77. Rios Espinoza, *supra* note 39, at 56.

78. Maria del Pilar Hernández, *La División de Poderes en la Constitución de 1917*, 1 MEX. L. REV. 353, 364 (2004).

In the absence of federal direction, Mexican states took the lead in procedural reform. Several states, including Mexico (state) and Nuevo León (where Montemorelos is located), took symbolic steps toward reform.<sup>79</sup> These steps included little more than facilitating oral trials.<sup>80</sup> Baja California, Chihuahua, Oaxaca, Morelos, and Zacatecas have passed legislation enacting much more comprehensive reforms.<sup>81</sup> These reform packages—to be gradually implemented—encompass several areas of criminal law, including, of course, the implementation of public, adversarial, oral trials.<sup>82</sup>

*B. U.S. influence on the reform process*

The U.S. legal system has substantially influenced the Mexican legal system.<sup>83</sup> However, even after the 2008 Reforms, Mexico's apparent emulation of U.S. legal institutions should not be overstated:

In Mexico, there is still no jury trial, still no grand jury, no case law, no limit on the ability of police to stop and frisk pedestrians, and no bail for defendants charged with crimes more serious than misdemeanors. A defendant formally charged with a serious crime is jailed until trial, a process that can take months or even years.<sup>84</sup>

Because fundamental differences will remain even after the 2008 Reforms are implemented, U.S. observers should avoid viewing the reforms as a first step toward an eventual mirror image of the U.S. criminal trial.<sup>85</sup> The jury, as sacred as its role

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79. Rios Espinoza, *supra* note 39, at 55.

80. *Id.*

81. *Id.* at 54–55.

82. *See id.* (describing the state's changes).

83. Fernando Villareal–Gonda, *The Three Most Important Features of My Country's Legal System that Others Should Understand: Mexico* 149 (Int'l Ass'n of Law Sch., Working Paper, 2007), available at <http://www.ialsnet.org/meetings/enriching/gonda.pdf>.

84. Allen Pusey, *Justice in the Rough*, A.B.A. J., July 1, 2009, available at [http://www.abajournal.com/magazine/article/justice\\_in\\_the\\_rough/](http://www.abajournal.com/magazine/article/justice_in_the_rough/).

85. *See* Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLINICAL L. REV. 131, 134–37 (2008) (examining the U.S. influence on European civil law jurisdictions).

is within the U.S. criminal trial, is completely foreign to Mexico, and there is little reason to believe it would ever thrive there.<sup>86</sup> Nevertheless, the current move to oral trials alone is “utterly revolutionary” in Mexico.<sup>87</sup>

Despite its relatively recent emulation of some U.S. legal procedures, historically, Mexico has been notably suspicious of U.S. interference in its domestic affairs.<sup>88</sup> However, in the modern era, “Mexico also understands that its national security is intricately interconnected with that of the United States.”<sup>89</sup> President Calderón and his two main opponents in the 2006 election offered plans to reduce the influence of drug traffickers in Mexico’s legal system, including plans to increase judicial impartiality.<sup>90</sup> Mexico’s interest in its own security will likely more closely align it with the United States in the near future.<sup>91</sup>

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86. See Ethan J. Leib, *A Comparison of Criminal Jury Decision Rules in Democratic Countries*, 5 OHIO ST. J. CRIM. L. 629, 631 (2008).

87. Pusey, *supra* note 84, at 49; see Hiroshi Fukurai & Richard Krooth, *The Establishment of All-Citizen Juries as a Key Component of Mexico’s Judicial Reform: Cross-National Analyses of Lay Judge Participation and the Search for Mexico’s Judicial Sovereignty*, 16 TEX. HISP. J. L. & POL’Y 37, 39–40 (2010) (arguing that jury trials should be implemented to augment the 2008 Reforms but acknowledging that, even without jury trials, the reforms “represent a paradigmatic shift in Mexican jurisprudence”).

88. See Starr, *supra* note 18, at 815 (noting “Mexico’s historic sensitivity to permitting U.S. military and police forces to operate in Mexican territory”); see also Luis E. Cuervo, *The Uncertain Fate of Venezuela’s Black Pearl: The Petrostate and its Ambiguous Oil and Gas Legislation*, 32 HOUS. J. INT’L L. 637, 656 (2010) (“Historically, all of Latin America has had a love-hate relationship with the United States.”).

89. Starr, *supra* note 18, at 814–15. Mexico’s national security is also critical to its economic development. See John R. Bolton, *Address to the Federalist Society*, 30 HOUS. J. INT’L L. 639, 640 (2008) (noting that, especially in Latin America, economic development and global integration can be held hostage by faulty security policies); see also Carrie Anne Arnett, Comment, *The Mexican Trucking Dispute: A Bottleneck to Free Trade. A Tough (Road) Test on the NAFTA Dispute Settlement Mechanism*, 25 HOUS. J. INT’L L. 561, 605 n.211 (2003) (noting the inability of Mexican truckers to comply with “extreme U.S. security measures” and thus to take advantage of NAFTA).

90. Starr, *supra* note 18, at 814.

91. See *Id.* at 815 (explaining that Mexico’s security interests will dovetail with U.S. interests, as the country fights back against drug-based crimes, especially in matters of border security); but see Anne H. Geraghty, *Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World’s Most Pervasive Problems*, 16 FLA. J. INT’L L. 371, 399 (2004) (“Because U.S. law provides such harsh penalties for drug traffickers, [recent Mexican Supreme Court precedent blocking extradition of Mexican nationals who would face a life sentence in other countries] would effectively prevent

So, aside from the culmination of almost a century of working toward President Carranza's "procedural revolution", the 2008 Reforms represent a significant move toward parity with U.S. criminal procedure. However, there is no guarantee the reforms will be successful. One Mexican law professor has noted their precarious position: The 2008 Reforms represent "dramatic changes," but their success depends on the assumption they will be "implemented as everyone intends them to be."<sup>92</sup>

#### IV. MEXICAN LEGAL EDUCATION

*"To uphold the mask's charisma, wrestlers make a serious commitment never to be seen unmasked."*<sup>93</sup>

In Mexico, a law degree is the equivalent of an undergraduate degree.<sup>94</sup> It's also a very popular undergraduate degree; by 2003, more Mexican students were enrolled in law degree programs than were enrolled in any other degree program.<sup>95</sup> In the 2006–07 academic year, about 240,000 Mexican students were pursuing a law degree.<sup>96</sup> The United States had 100,000 fewer law students.<sup>97</sup>

##### A. *Obstacles to reform within Mexico*

Many Mexican law schools do not have permanent faculty, and about 90% of all Mexican law professors divide their time between teaching and private practice.<sup>98</sup> Classes are also

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extradition of suspects from Mexico to the United States.").

92. Pusey, *supra* note 84, at 47.

93. Levi, *supra* note 1, at 65.

94. Luis Fernando Pérez Hurtado, *Transnationalizing Mexican Legal Education: But, What About Students' Expectations?*, 10 GERMAN L. J. 767, 768 (2009) [hereinafter *Transnationalizing Mexican Legal Education*].

95. *Id.*

96. *Id.*

97. American Bar Association Legal Education Statistics, *Enrollment and Degrees Awarded*, <http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf> (last visited Oct. 3, 2010).

98. Luis Fernando Pérez Hurtado, Dir., Centro de Estudios sobre la Enseñanza y el Aprendizaje del Derecho, A.C. [Center for the Study of Legal Teaching and Learning], Keynote Presentation at the North American Consortium for Legal Education (NACLE)

exceptionally large.<sup>99</sup> There is no organized system of accreditation for Mexican law schools, and the standards for licensing law schools are generally lenient.<sup>100</sup> Likewise, Mexican law graduates are not required to pass a bar exam.<sup>101</sup> The lack of standardization results in a varying quality of legal education and various levels of professional preparation among graduates.<sup>102</sup> The United Nations has cited Mexico's "total want of organization of legal education" as a possible cause of "the many ills in the administration of justice in Mexico over the years."<sup>103</sup>

Partially because of Mexico's civil law tradition, Mexican legal education places a premium on memorization of black letter law.<sup>104</sup> The heavy focus on black letter law leaves very little room to teach students practical lawyering skills.<sup>105</sup> The focus on doctrinal law is such that

Mexican law professors . . . have been known to 'teach' a course on commercial law by simply reading, article by article, the contents of the Code of Commerce without making any corresponding attempt to explain and/or

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Curriculum Development Workshop: The Role of Law and Legal Education in North American Integration (Oct. 2, 2009), *available at* [http://www.nacle.org/images/stories/Mexico\\_workshop\\_Luis\\_Perez\\_Hurtado\\_powerpoint.ppt](http://www.nacle.org/images/stories/Mexico_workshop_Luis_Perez_Hurtado_powerpoint.ppt) [hereinafter NACLE Curriculum Development Workshop].

99. Julie Barker, *The North American Free Trade Agreement and the Complete Integration of the Legal Profession: Dismantling the Barriers to Providing Cross-Border Legal Services*, 19 HOUS. J. INT'L L. 95, 115 (1996) (citing a range of between 400 and 500 students).

100. MEXICAN LAW, *supra* note 48, at 46 (2004).

101. *Id.* at 47.

102. *Id.* Because a Mexican law degree is the equivalent of a U.S. undergraduate degree, many students pursuing one have no intent of practicing law. Barker, *supra* note 99, at 114. In some ways, taking law courses simultaneously with course in other areas is an improvement on a law-only approach. See Ahsaki Anokye, *America in Lawyers' Hands: Lawyers as Social Actors*, 23 GEO. J. LEGAL ETHICS 455, 467–68 (2010) (noting the benefits social science courses would confer on legal education). These facts do not reduce the urgent need for an overhaul of Mexican legal education, however. See *An Overview of Mexico's System of Legal Education*, *supra* note 29, at 56. Regardless of a student's reasons for studying the law, once he has a law degree, he is entitled to practice law anywhere in Mexico. Barker, *supra* note 99, at 116–17.

103. U.N. Report on the Mission to Mexico, *supra* note 28, at ¶ 181.

104. Kossick, *supra* note 20, at 731.

105. *Id.*

illustrate the theoretical underpinnings, developmental history, or practical application of the provisions under consideration.<sup>106</sup>

At the same time, Mexican law schools require their students to complete hundreds of hours of public service.<sup>107</sup> Though U.S. lawyers might assume such a requirement would at least partially mitigate the lack of practical knowledge imparted by Mexican law professors, it does not.<sup>108</sup> Students who choose to complete their service requirement with the federal public defender, for example, are relegated to non-substantive work on the sidelines.<sup>109</sup>

### *B. Obstacles stemming from the United States*

Early U.S. attempts at transnational legal education placed excessive emphasis on Langdellian case method.<sup>110</sup> That method and its “vibrant interchange of reasoned and substantiated ideas regarding issues derived from real world controversies” naturally clashed with Mexican law school traditions.<sup>111</sup> Additionally, the narrow approach utilized by the pioneers of U.S. transnational legal education ignored experience-based teaching methods such as clinical education and internships.<sup>112</sup> “As a result, the American case and Socratic model was exported and adapted largely in isolation from local legal cultures,

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106. *Id.* at 732.

107. James F. Smith et al., *Why Mexico? Why Mexican Law? Why Now?*, 24 PENN ST. INT’L L. REV. 373, 381 (2005) (citing one university’s requirement of 260 hours); Eleanor Acer, *Making a Difference: A Legacy of Pro Bono Representation*, 17 J. REFUGEE STUD. 347, 359 (2004) (citing a requirement of 480 hours); Mark A. Drumbl, *Amalgam in the Americas: A Law School Curriculum for Free Markets and Open Borders*, 35 SAN DIEGO L. REV. 1053, 1081 (1998) (citing a requirement of six–twelve months).

108. See Smith et al., *supra* note 107, at 381 (expressing a concern that the purely theoretical legal education in Mexican law schools does not contribute to legal theory, law reform, or public policy); see also Acer, *supra* note 107, at 359.

109. Kossick, *supra* note 20, at 795 n.279.

110. JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 247–48 (1980).

111. Kossick, *supra* note 20, at 732.

112. GARDNER, *supra* note 110, at 249.

making it an easy and natural target for student and faculty resistance.”<sup>113</sup>

Historically, collaborations across national borders, and especially between civil law systems and common law systems, have suffered from cultural miscommunications.<sup>114</sup> Especially problematic has been a “legal ethnocentrism,” in which U.S. legal models were transplanted to developing countries based on the assumption that positive social changes would result if the developing country’s legal institutions were more like their U.S. counterparts.<sup>115</sup> In the early days of international legal collaboration a desire “to strengthen [U.S.] cultural and legal influence” existed alongside the altruistic intention to improve legal institutions.<sup>116</sup>

The heavy-handedness of previous U.S. efforts to transnationalize legal education often resulted in unforeseen (and undesirable) consequences.<sup>117</sup> Host nations experienced greater economic inequality, and U.S. legal models became the “handmaidens of a dictatorship or authoritarian state.”<sup>118</sup> Human rights issues were also frequently ignored.<sup>119</sup> U.S. faculty members involved in more recent efforts have been acutely aware of past mistakes.<sup>120</sup>

Mexico faces obstacles to reform both within and outside its borders, but “[i]t is in the interest of the lawyers of Mexico to address this situation and organize themselves as a profession, so that their integrity, independence[,] and accountability are respected by the Government and society in general.”<sup>121</sup> Mexican practitioners are well aware of existing deficiencies in

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113. *Id.*

114. *See Genty, supra* note 85, at 135 (discussing historical shortcomings of international clinical collaborations and making recommendations).

115. *Id.*

116. Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 *CLINICAL L. REV.* 465, 473 (2008).

117. *See id.* at 474 (expounding on such undesirable results as raising legal cost and widening the wealth gap between the rich and the poor).

118. *Id.*

119. *See id.* at n.39.

120. *See id.* at 469 (encouraging a detailed examination of the outcomes of more recent programs).

121. *U.N. Report on the Mission to Mexico, supra* note 28, at ¶ 181.

Mexican legal education.<sup>122</sup> However, the solutions are not as broadly accepted as the problems.

## V. REFORMING MEXICAN LEGAL EDUCATION

*“His face exposed, the wrestler might retain his charisma, or his career might collapse.”*<sup>123</sup>

Various groups have pushed to reform Mexico’s legal education system since the late 1940s.<sup>124</sup> After the 2008 Reforms, however, the need for changes to the Mexican legal education system has never been more urgent.<sup>125</sup> “Mexico will have to change everything from its curricula at law schools, teaching methods ([Mexican law professors] know almost nothing about opening and closing arguments, cross-examinations, and so on), textbooks, and assigned readings, to building courtrooms.”<sup>126</sup>

The 2008 Reforms represent a “significant transfer of responsibilities among judges, prosecutors, the police, and defenders.”<sup>127</sup> Lawyers, judges, and other legal officials must be trained to correctly carry out their new roles, and new generations of law students must be trained differently than past generations.<sup>128</sup> Further, with the public now welcome in Mexican courtrooms, there is more pressure on Mexican actors

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122. *Id.* at ¶ 99 (quoting the president of the Mexico City Bar Association as saying, “[W]hile there are five good law schools, there are many bad ones.”).

123. Levi, *supra* note 1, at 65.

124. Kossick, *supra* note 20, at 734.

125. *An Overview of Mexico’s System of Legal Education*, *supra* note 29, at 56 (citing a general consensus among faculty, deans, and practitioners).

126. Miguel Sarre, Professor of Law, Instituto Tecnológico Autónomo de México, Remarks at the Policy Forum: U.S.–Mexico Security Cooperation and the Mérida Initiative: Mexico’s Judicial Reform and Long-term Challenges 2–3 (May 9, 2008), available at <http://www.wilsoncenter.org/news/docs/Sarre%20presentation.pdf>.

127. Alfredo Fuentes–Hernández, *Globalization and Legal Education in Latin America: Issues for Law and Development in the 21st Century*, 21 PENN ST. INT’L L. REV. 39, 46 (2002).

128. *See id.* (emphasizing the activities students need to engage in to meet the reforms such as mock trials, court observations, etc.); Álvaro Vizcaíno Zamora, Diez Pasos para Implementar la Reforma Constitucional en Materia Penal en los Estados de la República, *ITER CRIMINIS*, Jan. 3, 2009, at 168.

to correctly implement the reforms. The public scrutiny of open trials may be the secret ingredient to a judicial system that “put[s] pressure on law enforcement agents to get into professionalization and out of corruption.”<sup>129</sup> Even during the early stages of implementation, all actors in the courtroom are more closely analyzed within a public trial system.<sup>130</sup> Therefore, a radical overhaul of Mexico’s legal education system is essential to ensuring the 2008 Reforms are successfully implemented from the beginning.<sup>131</sup>

#### A. *Moving Away from Memorization*

A good place to begin the overhaul of Mexico’s law schools is with sweeping changes to their rigid syllabi.<sup>132</sup> The almost solitary focus on memorization of doctrinal concepts is ill equipped to prepare students to think on their feet in a trial setting.<sup>133</sup> When trials were based on written memoranda, there were few surprises. “No matter how hard the lawyer works on preparing cross-examination, however, surprise is inevitable.”<sup>134</sup> Mexican law schools should be training students to handle those surprises.

Encouraging students to learn through practical experience is one way to do that.<sup>135</sup> “[S]tudents need to conduct mock arrangements and trials, view videos, and visit Courts in other

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129. Sarre, *supra* note 125, at 1.

130. See Andrew E. Taslitz, *Prosecutorial Preconditions to Plea Negotiations: “Voluntary” Waivers of Constitutional Rights*, 23 CRIM. JUST. 14, 23 (2008) (noting that “[r]ules mandating public trials . . . ensure some measure of community scrutiny of state information practices.”).

131. Kossick, *supra* note 20, at 737 (“[T]he improvement of legal education is ‘fundamental’ to the success of judicial reform.”).

132. Fuentes–Hernández, *supra* note 126, at 46 (explaining that with the sweeping changes to the Mexican legal system, law schools need to “design systematic educational methods reflecting the values and contents of the reform programs”).

133. See Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 NW. U. L. REV. 231, 244 (2006) (citing failed efforts to teach trial advocacy in a lecture format).

134. Timothy A. Pratt, *The Ten Commandments of Cross Examination*, 53 FDCC QUARTERLY 257, 267 (2003) available at <http://www.thefederation.org/documents/Pratt-SP03.htm> (last visited Oct. 3, 2010).

135. Fuentes–Hernández, *supra* note 126, at 46.

jurisdictions to experience how adversarial procedures are applied to an array of typical crimes or disputes, among other activities.”<sup>136</sup>

### *B. Taking Another Look at Transnational Programs*

In their early attempts at transnational legal education, U.S. organizations brought with them little more than the Socratic method.<sup>137</sup> Because of that, they were met with significant resistance and largely failed.<sup>138</sup> Today in Mexico, a similar problem exists: Efforts to reform legal education have focused on integration of elements of international law while they have ignored the regional or local needs of Mexican law students.<sup>139</sup> Because Mexico itself is implementing reforms aimed at instituting these fundamental changes to its legal system, the risk of backlash against transnational programs is minimal.<sup>140</sup>

Additionally, Mexico has already shown its ability to work with other Latin American countries, especially Colombia.<sup>141</sup> Recently, Colombia began implementing changes similar to those included in the 2008 Reforms.<sup>142</sup> The Colombian police who are helping to train Mexican police are graduates of similar U.S.-instituted programs in Colombia.<sup>143</sup> Training lawyers is just another facet of the same effort, and Colombian lawyers

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136. *Id.*

137. GARDNER, *supra* note 110, at 249.

138. *Id.*

139. *Transnationalizing Mexican Legal Education*, *supra* note 94, at 768.

140. See Maisel, *supra* note 116, at 473, 475 (noting that previous unsuccessful reform movements were undertaken “without meaningful consultation with legal scholars in the host country” but that more recent efforts are working toward goals “that are both influenced by local needs and context and determined through much more collaborative processes”).

141. See Chris Hawley, *Mexico Now Embracing U.S. Training in Drug War*, ARIZ. REPUBLIC, Oct. 29, 2009, available at <http://www.azcentral.com/news/articles/2009/10/29/20091029drug-training1029.html> (noting that Colombian instructors in Mexico’s new training programs are outnumbered only by U.S. instructors).

142. Cristián Riego, *Oral Procedures and Case Management: The Innovations of Chile’s Reform*, 14 SW. J. L. & TRADE AM. 339, 356 (2008) (noting that both Colombia and the Mexican state of Chihuahua had begun to implement similar reforms based on Chile’s previous success with such reforms).

143. *Hawley*, *supra* note 140.

went through similar U.S.-led training.<sup>144</sup> Just as Colombian police officers help to train their Mexican counterparts, Colombian lawyers could help their Mexican counterparts prepare for open, adversarial, oral trials.

### C. Working with U.S. Law Schools

The constitutional reforms represent a significant change in the Mexican legal system, but Mexico lacks the resources to quickly and smoothly change over to the new trial system.<sup>145</sup> Close cooperation between Mexican law schools and U.S. law schools would significantly enhance the effort to implement the constitutional reforms.<sup>146</sup> By simply receiving part of their legal education in the United States, Mexican law students can help implement the 2008 Reforms.<sup>147</sup>

Traditionally, Mexican law schools did not discuss U.S. laws.<sup>148</sup> A variety of factors, including the implementation of the North American Free Trade Agreement (NAFTA), chipped away at that reluctance, and by the mid-1990s, Mexican law schools had begun to stress U.S. studies.<sup>149</sup> Besides studying U.S. laws

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144. Fernando Santo, *Colombian Lawyers Back in Schools*, INT'L REPORTING PROJECT, Mar. 5, 2005, <http://www.internationalreportingproject.org/stories/detail/colombian-lawyers-back-in-schools/>.

145. Pusey, *supra* note 84, at 49 ("It's remarkable that Mexico has made the commitment to change, but it's been done without the money to do so.") (quoting a U.S. law professor).

146. Brennan, *supra* note 19, at 45.

147. See Elizabeth Trujillo, *Shifting Paradigms of Parochialism: Lessons for International Trade Law*, 3 J. INT'L L. & INT'L REL. 41, 52 n.57 (2007) (noting that many Mexican law professors have trained in the United States and that the U.S. influence "can be felt in a gradual shift in the traditional Mexican teaching methods."). Ideally, these effects would not be confined to the realm of legal education: Those who study in the United States can, through their everyday interactions, help to educate other Mexicans about ways to build and sustain a healthy respect for the rule of law. See Ellie Carroll, *Twenty-Five Years in the Making: Why Sustainable Development has Eluded the U.N. and How Community-Driven Development Offers the Solution*, 32 HOUS. J. INT'L L. 545, 556 (2010) (noting the importance of "empowering ordinary people, through education and awareness").

148. Stephen Zamora, *NAFTA and the Harmonization of Domestic Legal Systems: The Side Effects of Free Trade*, 12 ARIZ. J. INT'L & COMP. L. 401, 424 (1995) [hereinafter *NAFTA and the Harmonization of Domestic Legal Systems*].

149. *Id.* at 420, 424; see Roberto Garza Barbosa, *The Philosophical Approaches to Intellectual Property and Legal Transplants. The Mexican Supreme Court and NAFTA*

in Mexico, many Mexican students have also made the choice to study in the United States. About 15,000 Mexican students studied in U.S. universities in 2009.<sup>150</sup> That makes Mexico the seventh-largest sender of international students to the United States.<sup>151</sup> Although the North American Consortium on Legal Education (NACLE) facilitates small-scale exchange programs and the U.S. Agency for International Development (USAID) fosters cross-border university partnerships, greater collaboration is possible.

### 1. *The North American Consortium on Legal Education*

NACLE is a group of thirteen law schools across Canada, Mexico, and the United States that fosters transnational cooperation between faculty and students in all three countries.<sup>152</sup> Though NACLE was originally intended to focus somewhat on NAFTA, the members of the consortium agreed to work together to develop course curricula that “involve increased understanding of the legal systems in North America.”<sup>153</sup> One of NACLE’s underlying goals is the development of “global units of education” that could be inserted into member-schools’

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*Article 1705*, 31 HOUS. J. INT’L L. 515, 515–17 (2009) (noting the differences between the philosophical approaches to intellectual property as embodied by NAFTA and Mexican law).

150. Press Release, Institute of International Education, Record Number of International Students in U.S. Higher Education (Nov. 16, 2009) (on file with author).

151. *Id.*

152. NACLE originally consisted of nine member-schools: University of Arizona, James E. Rogers College of Law; Dalhousie University Faculty of Law; George Washington University, National Law Center; University of Houston Law Center; Instituto Tecnológico de Estudios Superiores de Monterrey, Escuela de Derecho; McGill University Faculty of Law; Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas; University of Ottawa Faculty of Law; and Universidad Panamericana, Facultad de Derecho. North American Consortium for Legal Education, *Operating Agreement*, at 1 (1999), available at [http://nacle.org/images/stories/525\\_Operating\\_agreement.pdf](http://nacle.org/images/stories/525_Operating_agreement.pdf) [hereinafter *NACLE Operating Agreement*]. Four schools joined the consortium later: University of British Columbia; University of California at Berkeley; Centro de Investigación y Docencias Económicas; and Fordham University. NORTH AMERICAN CONSORTIUM FOR LEGAL EDUCATION, Frontpage–Campuses, <http://nacle.org/campuses.html> (last visited Oct. 3, 2010).

153. *NACLE Operating Agreement*, *supra* note 151, at 3.

curricula.<sup>154</sup> In 2001, NACLE member-schools created units for health law, environmental law, and family law.<sup>155</sup> The member-schools could create a similar unit specifically for criminal trial advocacy or for oral advocacy in general.<sup>156</sup>

NACLE's technique of immersing students in another legal culture (and often another language) has garnered praise—especially in light of the “disingenuousness” of some legal study abroad programs where, for example, American students are taught by American faculty in rooms full of other American students.<sup>157</sup> NACLE's immersion method is based on the assumption that “law of other jurisdictions is best learned in those jurisdictions, with their students and in their language.”<sup>158</sup> Because the program essentially just sends students to other member-schools and places students in ordinary classes (instead of classes specifically built around foreign students), there is no need for member-schools to expend any resources on special training for faculty.<sup>159</sup> The largest expense is incurred in the initial forging of relationships between law schools across national borders.<sup>160</sup>

NACLE has already built those relationships and could thus be an ideal vehicle for increased partnership between U.S. and Mexican law schools. The original grant money for NACLE dried up long ago,<sup>161</sup> but other sources could be tapped for new infusions of cash: the American Bar Association (ABA) Rule of

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154. Nancy B. Rapaport, Former Dean and Professor of Law, University of Houston Law Center, When Local is Global: Using a Consortium of Law Schools to Encourage Global Thinking, Address at the Symposium on Working Together: Developing Cooperation in International Legal Education (2001), *in* 20 PENN ST. INT'L L. REV. 19, 20 (2001).

155. *Id.*

156. *See id.* (noting that NACLE administrators continue “trying to come up with units that we can plug into curricula at other schools”).

157. Larry Catá Backer, *Internationalizing the American Law School Curriculum (In Light of the Carnegie Foundation's Report)*, *in* THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 49, 83 (Jan Klabbers & Mortimer Sellers eds., 2008).

158. *Id.*

159. *Id.* at 83–84.

160. *Id.* at 84.

161. Stephen Zamora, *NACLE: 10 Years in Retrospective*, NACLE NEWSLETTER (N. Am. Consortium on Legal Educ., Houston, Tex.), Fall 2009, *available at* [http://www.nacle.org/images/stories/NACLE\\_Newsletter\\_Fall\\_2009.pdf](http://www.nacle.org/images/stories/NACLE_Newsletter_Fall_2009.pdf).

Law Initiative<sup>162</sup> and the U.N. Human Rights Council<sup>163</sup> are two potential sources, though there are myriad other possibilities. Because NACLE has already done the difficult (and expensive) part of forging cross-border partnerships, only minimal funds are now needed.<sup>164</sup>

NACLE is also an attractive vehicle for cross-border collaboration because it facilitates two-way student exchanges. Not only can Mexican law students study at U.S. law schools, but also U.S. students can study at Mexican law schools. The mere presence of U.S. law students in Mexican classrooms can help diffuse U.S. legal ideas throughout Mexico.<sup>165</sup>

## 2. *United States Agency for International Development*

USAID has previously had success in implementing Latin American legal education reform<sup>166</sup> and has played a role in forming cooperative programs between U.S. and Mexican law schools.<sup>167</sup> To date, several partnerships have been formed, including Illinois Institute of Technology's Chicago-Kent College of Law with Monterrey Technological Institute's (ITESM) Mexico City campus; Southwestern University School of Law with ITESM's Monterrey campus; and Emory University with Panamerican University.<sup>168</sup>

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162. About ABA Rule of Law Initiative, <http://www.abanet.org/rol/about.shtml> (last visited Oct. 3, 2010).

163. The U.N. Human Rights Council was created in 2006 to replace the U.N. Commission on Human Rights, which was the body responsible for propagating the *U.N. Report on the Mission to Mexico*. G.A. Res. 260/251, U.N. Doc. A/RES/60/251 Apr. 3, 2006); see *U.N. Report on the Mission to Mexico*, *supra* note 28.

164. See Catá Backer, *supra* note 156, at 84.

165. See Lauren K. Robel, *Opening Our Classrooms Effectively to Foreign Graduate Students*, 24 PENN ST. INT'L L. REV. 797, 799 (2006) (describing advantages of having foreign LLM students in U.S. law schools).

166. See Steven E. Hendrix, *Restructuring Legal Education in Guatemala: A Model for Law School Reform in Latin America?*, 54 J. LEGAL EDUC. 597, 608 (2004) (lauding the San Carlos University for making "real, tangible, and measurable improvements in its law school" and "show[ing] other law schools in the region, and others across the developing world, that legal education reform is possible").

167. See generally Roger D. Garner, USAID Mission Dir. to Mex., USAID/Mexico's Role in the Mérida Initiative, Remarks Before the U.S. House of Representatives Committee on Appropriations (Mar. 10, 2009).

168. *Four New University Partnerships Launched to Support Mexico's Justice*

The Chicago-Kent/ITESM partnership offers a six-month training program focused entirely on trial advocacy to Mexican lawyers and a “train the trainers” program teaching procedural and substantive law (as well as teaching techniques) to Mexican law professors.<sup>169</sup> The professors can then return to Mexico and teach the same training program there.<sup>170</sup> Fifty Mexican attorneys attended the program’s first sessions.<sup>171</sup> A scholarship fund was also established to send fifteen lawyers through the program each year.<sup>172</sup>

The Southwestern/ITESM program was established in 2006 in response to state reforms within Mexico.<sup>173</sup> USAID funding of \$300,000 covered about a third of the investment in the projected three-year program.<sup>174</sup> The program also included a donation of extensive training by the National Institute for Trial Advocacy (NITA).<sup>175</sup> Under the partnership, Mexican attorneys could study advocacy at Southwestern for a year before moving on to training at NITA and working in clinics and externships.<sup>176</sup> Mexican attorneys were allowed an elective in their year at Southwestern, but they were required to take Trial Advocacy, Interviewing, Counseling and Negotiation, Constitutional Criminal Procedure and International Human Rights.<sup>177</sup> The partnership also focused on new teaching methods<sup>178</sup>. NITA sent “groups of its trainers to Mexico to provide oral advocacy training to individuals who will become trainers in turn.”<sup>179</sup> A faculty exchange program was also

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*System Reform*, US STATE NEWS, July 24, 2009.

169. Chicago-Kent Press Release, *supra* note 11.

170. *Id.*

171. *Id.*

172. *Id.*

173. News Release, Southwestern Law School, Southwestern Awarded Grant to Provide Advocacy Training for Mexican Lawyers (Oct. 5, 2006) [hereinafter Southwestern Awarded Grant].

174. *Id.*

175. *Id.*

176. *Id.*

177. News Release, Southwestern Law School, Mexican Attorneys at Southwestern Train in Trial Advocacy (Feb. 28, 2007).

178. *Id.*

179. Southwestern Awarded Grant, *supra* note 172.

implemented through which U.S. faculty taught oral advocacy to ITESM professors, and ITESM professors traveled to Southwestern for academic events.<sup>180</sup>

The Emory/Panamerican partnership is focused on creating a “Mexican Institute for Trial Advocacy” at Panamerican.<sup>181</sup> Under the partnership, Mexican judges and lawyers will participate in Emory’s trial techniques program and take comparative law and criminal procedure courses at Emory.<sup>182</sup> Beginning in May 2010, and continuing over the next three years, Emory alumni and Georgia judges and attorneys will travel to Panamerican to teach intensive two-week trial advocacy training programs, and USAID funding will provide scholarships for Mexican law students and attorneys to attend.<sup>183</sup>

### 3. *Why U.S. law schools should want to help*

Despite their promise and relatively low cost, funding for programs like NACLE and cross-border partnerships like those fostered by USAID will likely be hard to find. The global economy is still reeling from an unprecedented recession.<sup>184</sup> Terrorists are still trying to blow up American planes.<sup>185</sup> People across Latin America are recovering after devastating earthquakes.<sup>186</sup> There are many causes that may seem more urgent than Mexican criminal procedure reform, but that reform could have a profound effect on life in the United States. If they are implemented correctly, the 2008 Reforms “can eventually

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180. *Id.*

181. News Release, Emory University, Emory Partners with Panamerican University to Enhance Mexican Legal Education (July 15, 2009) [hereinafter Emory News Release].

182. *Id.*

183. *Id.*

184. *Pulling Apart*, ECONOMIST, Jan. 21, 2010, available at <http://www.economist.com/node/15330542/comments>.

185. *From Shoes to Soft Drinks to Underpants*, ECONOMIST, Dec. 30, 2009, available at <http://www.allbusiness.com/transportation/air-transportation-airlines/13669818-1.html>.

186. *Chile’s Earthquake: Counting the cost*, ECONOMIST, Mar. 6, 2010, available at 2010 WLNR 4514256 (noting that citizens of both Haiti and Chile are still recovering from the resulting destruction of earthquakes that hit Latin America).

have a positive impact on virtually every American community.”<sup>187</sup>

The United States should realize its interests in seeing the 2008 Reforms successfully implemented.<sup>188</sup> If successful, the 2008 Reforms will increase the similarities between the two countries’ court systems and foster trust between them.<sup>189</sup> Greater trust should lead to further cooperation and interaction between both nations’ legal systems.<sup>190</sup> A greater parity between the U.S. and Mexican legal systems may also lead to an increase in comparative law research between the two systems; such research is increasingly valuable in an ever-globalizing economy.<sup>191</sup> Additionally, if cross-border exchanges were increased, faculty and students at U.S. law schools would benefit simply by interacting with Mexican lawyers and law students.<sup>192</sup> These possibilities may appeal only to a narrow segment of the U.S. population, but the 2008 Reforms should have a much broader appeal: They represent the best chance to hurt the drug cartels in the forty-year history of the War on Drugs.<sup>193</sup>

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187. David T. Johnson, Assistant Sec’y of the Bureau of Int’l Narcotics and Law Enforcement Affairs, The Mérida Initiative, Remarks before the Tucson Committee on Foreign Relations (Apr. 7, 2009).

188. *See generally* Garner, *supra* note 166 (explaining reasons behind U.S.–Mexico cooperation in the Mérida Initiative).

189. *See* Geoffrey H. Bracken & Peter Scaff, *Effective and Enforceable Dispute Resolution in U.S./Mexican Commercial Trade*, HOUSTON LAW., Sept.–Oct. 2007, at 37 (discussing misperceptions about each country’s legal system held by those in the other country).

190. *See* Ellen L. Lutz, *Strengthening Core Values in the Americas: Regional Commitment to Democracy and the Protection of Human Rights*, 19 HOUS. J. INT’L L. 643, 657 (1997) (noting that the United States and Mexico “should develop the strong bonds of trust and mutual respect necessary to act, resolve crises, and solve chronic problems” and that “common values” are essential in forming such bonds).

191. Barker, *supra* note 99, at 134–36.

192. *See generally* Robel, *supra* note 164 (explaining how foreign graduate students enhance U.S. law school experience); *see also* Philip D. Racusin, Comment, *Looking at the Constitution through World-Colored Glasses: The Supreme Court’s Use of Transnational Law in Constitutional Adjudication*, 28 HOUS. J. INT’L L. 913, 936–37 (2006) (noting former Justice Sandra Day O’Connor’s belief that U.S. legal education should include teaching of international or comparative law).

193. *See* Brennan, *supra* note 19, at 38–45 (“[T]he goal of combating the drug cartels’ criminal activity cannot be addressed without the concurrent reform of the criminal justice system.”).

The drug trade in Mexico represents two distinct threats that are not bound by national borders: corruption and violence.<sup>194</sup> The 2008 Reforms represent a chance to deal a significant blow to the drug cartels and, in the process, to minimize the threats to U.S. national security posed by corruption and violence.<sup>195</sup> Cooperation between the United States and Mexico is “particularly crucial to the war on drugs”.<sup>196</sup>

*a. Stemming the tide of corruption*

Despite its struggles, Mexico looks on track to become a rule-of-law stronghold in Latin America.<sup>197</sup> However, Mexico is

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194. See *id.* at 38 (noting that Mexico is experiencing a rise in violence and criminal enterprises perpetrated by the drug cartels and that this violence has “far more significance than many [U.S.] citizens realize.”). The U.S.–Mexico border itself could become more of a U.S. security concern if the Mexican government were further destabilized by the drug trade. See *infra* notes 202 & 211 and accompanying text; see also John Lahad, Comment, *Dreaming a Common Dream, Living a Common Nightmare: Abuses and Rights of Immigrant Workers in the United States, the European Union, and the United Arab Emirates*, 31 HOUS. J. INT’L L. 653, 660 (2009) (noting concerns that non-Mexican terrorists could use the U.S.-Mexican border as a conduit for entry into the United States); Victoria Slater, Comment, “To Govern is to Populate”: *Argentine Immigration Law and What it Can Suggest for the United States*, 31 HOUS. J. INT’L L. 693, 699–700 (2009) (noting calls for stricter border security after 9/11).

195. See COUNCIL ON FOREIGN RELATIONS, BUILDING A NORTH AMERICAN COMMUNITY 4–5 (2005), available at [http://www.cfr.org/content/publications/attachments/NorthAmerica\\_TF\\_final.pdf](http://www.cfr.org/content/publications/attachments/NorthAmerica_TF_final.pdf) (noting that addressing the Mexican drug trade would address U.S. security interests).

196. Michael R. Steinmark, *The Case Concerning Avena and other Mexican Nationals (Mexico v. United States): A Mexican Perspective on the Fight for Consular Rights*, 10 L. & BUS. REV. AM. 417, 424 (2009) (focusing on the importance of extradition relations); see also Lana Ljuboja, Comment, *Justice in an Uncooperative World: ICTY and ICTR Foreshadow ICC Ineffectiveness*, 32 HOUS. J. INT’L L. 767, 788–89 (2010) (noting the critical need for state cooperation in establishing effective answers to international criminal acts).

197. TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2009, REGIONAL HIGHLIGHTS: AMERICAS 1 (2009), <http://www.transparencia.org.es/INDICE%20DE%20PERCEPCIÓN%202009/Regiones.%20Americas.pdf> (counting Mexico among “leading economies in the region which should become anticorruption strongholds”); see Peter Eigen, *Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry*, 29 HOUS. J. INT’L L. 327, 341 (2007) (noting Mexico’s interest in an oil and gas transparency initiative).

still significantly more corrupt than the United States.<sup>198</sup> That perception stems partially from the abuses of judicial power and partially from the corrupting influence of the drug trade.<sup>199</sup> That influence is nowhere more clear than it is in Mexican law enforcement; countless police officers have been fired for taking money from the same criminals they were supposed to bring to justice.<sup>200</sup> The cartels don't stop there, however; the influence of drug money can be seen everywhere in Mexico.<sup>201</sup> In some areas, the cartels have such a strong presence they threaten the very legitimacy of the Mexican government.<sup>202</sup>

The drug influence is so pervasive in Mexico that it has wormed its way across the Rio Grande into the United States.<sup>203</sup>

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198. Andres Oppenheimer, *New Corruption Ranking Says a Lot*, MIAMI HERALD, Nov. 22, 2009, available at <http://www.ihavenet.com/Latin-America-New-Corruption-Ranking-Says-a-Lot-Andres-Oppenheimer.html>; see Stephen Zamora, Book Review, *Regional Trade Agreements: Law, Policy, and Practice*. By David A. Gantz. 2009, Carolina Academic Press. PP. XXVI, 507., 32 HOUS. J. INT'L L. 153, 159 (2009) (noting that the U.S. and Canadian governments negotiated certain terms in NAFTA to protect against Mexican violations caused by Mexico's lack of "highly developed legal systems with independent, non-corrupt, well-educated judiciaries" and examining NAFTA statistics to show such protection was unnecessary).

199. See PRESTON & DILLON, *supra* note 44, at 388; David D. Cole, *Formalism, Realism, and the War on Drugs*, 35 SUFFOLK U. L. REV. 241, 252–53 (2001).

200. See, e.g. Lauren Grau, Comment, *Cutting off the Building Blocks to Methamphetamine Production: A Global Solution to Methamphetamine Abuse*, 30 HOUS. J. INT'L L. 157, 181–81 (2007).

201. Hale E. Sheppard, *Salvaging Trade, Economic and Political Relations with Mexico in the Aftermath of the Terrorist Attacks: A Call for Reevaluation of U.S. Law and Policy*, 20 B.U. INT'L L.J. 33, 46 (2002) ("In terms of the pervasiveness of the Mexican drug dealers' power, studies indicate that their corrupting influence in Mexico has extended into every aspect of national and local political and economic life.") (citation omitted).

202. "There are many municipalities that are clearly under the rule of the drug traffickers . . . ." FOREIGN POLICY, *The Narco State Next Door?* 1 (Oct. 2008), [http://www.foreignpolicy.com/story/cms.php?story\\_id=4542&page=0](http://www.foreignpolicy.com/story/cms.php?story_id=4542&page=0) (quoting noted Mexican historian and author Enrique Krauze); see also *The New Paradigm for Security Cooperation*, *supra* note 68 at 108 ("In terms of citizen security situations, Nuevo Laredo and Tijuana have elements of failed states. Nuevo Laredo actually has checkpoints manned by gang members of the Zetas, an organized criminal enterprise reminiscent of the cruel Chicago-style mafia of the 1930s."). This "porous" sovereignty could conceivably impute cartel actions to the Mexican government. See Winston P. Nagan & Erin K. Slemmens, *National Security Policy and Ratification of the Comprehensive Test Ban Treaty*, 32 HOUS. J. INT'L L. 1, 56–57 (2009).

203. Cole, *supra* note 198, at 253 ("The corrupting power of the war on drugs is

Cooperation between the United States and Mexico is essential to stemming the tide of corruption and turning back its effect in Mexico.<sup>204</sup>

*b. Containing and reducing violence*

Where the cartels cannot buy their way into power through corruption, they use violence to force their way in.<sup>205</sup> President Nixon coined the term “War on Drugs” north of the border in 1971, but President Calderón has brought the term to a literal life Nixon probably did not imagine.<sup>206</sup> Calderón has launched an extensive military campaign against the cartels, sending some 40,000 soldiers and 5,000 police into the field.<sup>207</sup> The military campaign has done little to reduce drug violence, however. In 2008, the Mexican attorney general said that 5,376 people were killed in drug violence in 2008.<sup>208</sup> That number more than doubled the total for 2007.<sup>209</sup> In 2009, Ciudad Juárez, the city just across the border from El Paso, was the world’s deadliest city outside of a war zone.<sup>210</sup>

The pervasiveness of drug violence in Mexico compounds the destabilizing effects of corruption on Mexican society.<sup>211</sup> Though motivated solely by a cartel’s self-interest,<sup>212</sup> the brutal

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widespread in Colombia and Mexico, but it is also evident in U.S. drug and border enforcement.”).

204. Sarre, *supra* note 125, at 1.

[W]hatever can be done through Mexican law[enforcement and the judicial system to counteract the transnational threat represented by the drug trade . . . there is something Mexico cannot fix alone: the persistent consumption of and demand for drugs, and the laws and current policies that continue to make drug trafficking so profitable.

*Id.*

205. See *supra* notes 14–15 and accompanying text.

206. Edward M. Morgan, *Traffic Circles: The Legal Logic of Drug Extraditions*, 31 U. PA. J. INT’L L. 373, 374 n.3 (2009).

207. *The Narco State Next Door?*, *supra* note 201, at 1.

208. Tracy Wilkinson, *Nation’s 2008 Drug War Death Toll So Far: 5,376*, L.A. TIMES, Dec. 9, 2008, available at 2008 WLNR 23606078.

209. *Id.*

210. *Mexico’s Murder Capital: A “Dying” City Protests*, ECONOMIST, Feb. 20, 2010, at 34 (citing a total of 2660 murders in 2009).

211. See *supra* note 201, and accompanying text.

212. Benjamin Kai Miller, Comment, *Fueling Violence along the Southwest Border:*

assassinations now commonplace in Mexico have the same effect as politically motivated terrorism: They “render political, judicial, economic and commercial institutions ineffective[] and destabilize the government and the economy.”<sup>213</sup>

The effects of this violence are not strictly confined to Mexico. In 1985, Mexican cartels underscored this fact with the kidnapping, torture, and murder of Drug Enforcement Agency (DEA) agent Enrique Camarena, which was ordered in retaliation for DEA successes in Mexico.<sup>214</sup> Twenty-five years later, a pervasive fear of drug violence has oozed over the border and dampened trade in U.S. border cities.<sup>215</sup> “No one in a Texas, Arizona, or California border town is safe from the widespread violence.”<sup>216</sup> Moreover, law enforcement agencies use various standards to determine whether U.S. crimes are related to Mexican drug violence.<sup>217</sup> Those competing standards make it difficult to assess the amount of violence and crime that has spilled over the border, but there is no question that *some* violence has spilled over.<sup>218</sup>

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*What More Can Be Done to Protect the Citizens of the United States and Mexico from Firearms Trafficking*, 32 HOUS. J. INT'L L. 163, 166 (2009) (“The increase in violence is a direct result of rival drug cartels competing for dominance of valuable smuggling routes into the United States.”).

213. Alexandra V. Orlova & James W. Moore, “Umbrellas” or “Building Blocks”?: *Defining International Organized Crime in International Law*, 27 HOUS. J. INT'L L. 267, 299–300 (2005) (quoting Donnie Marshall, *Narco-Terrorism: The New Discovery of an Old Connection*, 35 CORNELL INT'L L.J. 599, 602 (2002)).

214. Stephen Fohn, Note, *Do DEA Field Agents Have the Power to Unilaterally Execute a Trans-Border Abduction?: The Ninth Circuit's Take on Alvarez-Machain v. United States*, 27 HOUS. J. INT'L L. 221, 223–24 (2004).

215. *Wave of Drug-Related Violence in Mexico Blights Texas Border Towns, As Well*, HOUS. CHRON., June 13, 2005, at B6.

216. Miller, *supra* note 211, at 166.

217. Sylvia Longmire, “*El Paso 2nd safest U.S. city: Ranking a contrast to violence across border.*”, MEXICO'S DRUG WAR (Nov. 25, 2009, 6:43 PM), [http://borderviolenceanalysis.typepad.com/mexicos\\_drug\\_war/](http://borderviolenceanalysis.typepad.com/mexicos_drug_war/).

218. *Id.*

Just because no one is getting killed in El Paso doesn't mean that the [cartels] aren't there. . . . The [cartels] are everywhere in the [United States], and we know that they're killing and kidnapping people—almost all of whom are in the drug business—on [U.S.] soil. While they're apparently not doing it in El Paso, we know there are hundreds of [cartel]-sanctioned kidnappings happening in Phoenix, dozens in San Diego, and many varieties of [cartel]-

Calderón's military efforts cannot defeat the cartels on their own.<sup>219</sup> Underlying Mexican policy must change before Mexico can win its internal war.<sup>220</sup> Four decades after President Nixon declared a symbolic war on drugs, Mexico is one legal institution away from scoring a significant victory in the literal war of the same name.<sup>221</sup>

#### 4. *Why Mexican Law Schools should welcome help*

A taint of distrust has historically colored the relationship between the United States and Mexico.<sup>222</sup> Suspicion has been especially clear with regard to the other country's courts.<sup>223</sup> In part, this suspicion stemmed from frequent U.S. intervention in Mexican affairs.<sup>224</sup> In recent years, however, Mexico has taken strides toward active roles in international cooperation.<sup>225</sup> The

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directed murders happening in cities and towns across the [United States].

*Id.*

219. *The Narco State Next Door?*, *supra* note 201 (“This is not a war that can be won soon.”).

220. *Id.* (“It may be a war that cannot be won at all until we have a change [in policy].”) (alteration in original).

221. See Alberto Székely, *Democracy, Judicial Reform, the Rule of Law, and Environmental Justice in Mexico*, 21 HOUS. J. INT'L L. 385, 409–12 (1999) (explaining that the country's “precarious rule of law has been further shattered” by “drug trafficking and its role in organized crime,” but noting that the reforms taking place within Mexico's legal profession would lead to changes that ensure “enforcement of and compliance with the law.”).

222. See, e.g., Daniel S. Meyers, *In Defense of the International Treaty Arbitration System*, 31 HOUS. J. INT'L L. 47, 52–53 (2008) (describing the tortuous negotiation process between the two countries after Mexico expropriated U.S. investments—despite U.S. claims of diplomatic protection—in its sweeping agrarian reform in the early twentieth century).

223. Bracken & Scaff, *supra* note 188, at 37 (“Historically, the United States and Mexico share a mutual distrust of the fairness and efficacy of the other's legal system.”).

224. Stephen Zamora, *Allocating Legislative Competence in the Americas: The Early Experience Under NAFTA and the Challenge of Hemispheric Integration*, 19 HOUS. J. INT'L L. 615, 625 (1997) (“One Mexican commentator . . . calculates that the United States has been guilty of several hundred illegal incursions in Mexico.”).

225. Carlos R. Soltero & Amy Clark-Meachum, *The Common Law of Mexican Law in Texas Courts*, 26 HOUS. J. INT'L L. 119, 156–57 (2003) (noting that Mexico was the first country to adopt a model law proposed by the U.N. Commission on International Trade Law, and that, in doing so, it “set a remarkable example for both civil law countries and common law countries in making it possible to facilitate effective cross-border coordination and cooperation”). *But see* Arthur B. Culvahouse, Jr., *A*

traditional distrust has given way to increasing bilateral cooperation and mutual trust.<sup>226</sup> Now, the United States and Mexico have entered a new era of bilateral cooperation, especially in law enforcement.<sup>227</sup>

President Calderón recently commented on the depth of the new collaborative efforts between the two countries: “As never before we have decided that the fight against multinational organized crime must be based on cooperation, shared responsibility, and in trust.”<sup>228</sup> President Obama echoed those sentiments, heralding “a new era of cooperation and partnership between our two nations, an era built on an even firmer foundation of mutual responsibility and mutual respect and mutual interest.”<sup>229</sup>

Though this new foundation of trust and cooperation should help Mexican law schools accept U.S. help, there are two more concrete reasons that Mexican law schools and the Mexican federal government should be interested in expanding cooperation with U.S. law schools—especially for trial advocacy training: First, such cooperation would represent a significant step toward uniform standards and oversight of the Mexican

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*Practical Guide to International Sanctions Law and Lore: Mamas, Don't Let Your Babies Grow Up to Be Sanctions Lawyers*, 32 HOUS. J. INT'L L. 587, 596 (2010) (“Mexico prohibits compliance by Mexican companies, including subsidiaries of U.S. companies, with any U.S. embargo.”).

226. Karla Urdaneta, *Transboundary Petroleum Reservoirs: A Recommended Approach for the United States and Mexico in the Deep Waters of the Gulf of Mexico*, 32 HOUS. J. INT'L L. 333, 337 (2010); see J. Scott Childs, *Continental Cap-and-Trade: Canada, the United States, and Climate Change Partnership in North America*, 32 HOUS. J. INT'L L. 393, 449 (2010) (noting extensive U.S.-Mexican cooperation regarding renewable energy projects along the U.S.-Mexican border).

227. President Barack Obama and President Felipe Calderón of Mexico, Joint Press Conference in Mexico City, Mexico (Apr. 16, 2009) [hereinafter Joint Press Conference]; see Rodrigo Labardini, *Life Imprisonment and Extradition: Historical Development, International Context, and the Current Situation in Mexico and the United States*, 11 SW. J. L. & TRADE AM. 1, 100–01 (2005) (noting the successful “seed-sowing of real and effective mutual trust” between the two nations in law enforcement); see also Scott Looper, *NOPEC Goes Bananas: Thwarting Congress's Attempt to Extend U.S. Antitrust Law's Extraterritorial Reach*, 32 HOUS. J. INT'L L. 281, 299 n.93 (2010) (noting cooperation between the U.S. Justice Department and Mexican authorities in the investigation of international cartels).

228. Joint Press Conference, *supra* note 227.

229. *Id.*

legal education system.<sup>230</sup> Second, using clinics and other participation-based teaching methods represents a significant step toward modernizing the teaching methods of Mexican law professors.<sup>231</sup>

*a. Uniform standards and law school oversight*

“At present, Mexican law schools must meet only minimal requirements before receiving permits from either state or federal authorities to offer law degree programs.”<sup>232</sup> Evidence of Mexico’s lax accreditation standards can be seen in the recent explosion of the number of Mexican law schools.<sup>233</sup> In 1997, there were 364 Mexican law schools, but by 2007, there were 930.<sup>234</sup> There is a general consensus in the Mexican legal community that this lack of uniform guidelines must be urgently addressed.<sup>235</sup>

Currently, each Mexican law school sets its own criteria for graduation.<sup>236</sup> Though individual students can receive an exceptional legal education without uniform standards or oversight, the Mexican legal profession as a whole suffers for it.<sup>237</sup> Widely varying standards in law school result in graduates of widely varying competence—a problem that is especially important in Mexico, where a law degree from the worst school grants exactly the same privileges as a law degree from the best school.<sup>238</sup>

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230. See *An Overview of Mexico’s System of Legal Education*, *supra* note 29, at 56 (noting that no agency provides oversight for Mexican law schools even though most Mexican faculty and practitioners recognize the urgent need to address problems with Mexican legal education).

231. See *id.* at 68 (“Research on Mexican law schools is virtually nonexistent, so there is virtually no new knowledge that may affect legal education.”).

232. *NAFTA and the Harmonization of Domestic Legal Systems*, *supra* note 147, at 422 n.40.

233. *Transnationalizing Mexican Legal Education*, *supra* note 94, at 767.

234. *Id.*

235. See *An Overview of Mexico’s System of Legal Education*, *supra* note 29, at 56.

236. *Id.* at 63.

237. See *MEXICAN LAW*, *supra* note 48, at 46–47 (noting that Mexico’s lack of consistent standards has led to a lack of uniformity in the “level of professional preparation of law graduates”).

238. See *id.*

There is no Mexican equivalent to the American Bar Association (ABA) to oversee legal education and provide uniform guidelines.<sup>239</sup> The bar associations in Mexico are purely voluntary and play no role in overseeing the nation's law schools.<sup>240</sup> Without a private organization to regulate legal education, the Mexican federal government stepped in.<sup>241</sup>

Because the 2008 Reforms will directly affect criminal procedure in federal courts, the federal government is especially interested in ensuring that the reforms are carried out as intended. Additionally, under federal law, a Mexican law degree allows its holder to practice law in any Mexican state, regardless of where the degree was obtained.<sup>242</sup>

In general, a "profession controlled" model of law school oversight, such as the U.S. system that utilizes the ABA, is more flexible than a "government controlled" model.<sup>243</sup> However, the Mexican federal government is the only entity currently in a position to exercise any real control over legal education.<sup>244</sup> As the de facto regulator of all Mexican law degrees, the federal government could drastically alter Mexican legal education by requiring trial advocacy professors to take part in a seminar

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239. *An Overview of Mexico's System of Legal Education*, *supra* note 29, at 56; *NAFTA and the Harmonization of Domestic Legal Systems*, *supra* note 147, at 422 n.40.

240. Barker, *supra* note 99, at 117; see *An Overview of Mexico's System of Legal Education*, *supra* note 29, at 66 (explaining that Mexican lawyers have established several bar organizations and membership is voluntary, but that "the school and not lawyers' associations or judicial branch" determines the requirements to obtain a license).

241. *An Overview of Mexico's System of Legal Education*, *supra* note 29, at 56–57 n.11 (listing the most pertinent federal laws).

242. 1917 Constitution art. 121, § V; Barker, *supra* note 99, at 116–17 (noting that Article 121, Section V of the 1917 Constitution, the equivalent of the Full Faith and Credit Clause in the U.S. Constitution, mandates that a professional degree obtained in one state will be respected in all others). By comparison, a Mexican lawyer who wanted to practice in the United States would be subject to different requirements in each U.S. state. See generally Carole Silver, *Regulating International Lawyers: The Legal Consultant Rules*, 27 HOUS. J. INT'L L. 527 (2005).

243. Juergen R. Ostertag, *Legal Education in Germany and the United States—A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301, 320–21 (1993) (noting the difficulty of introducing change in Germany's government controlled model).

244. See *An Overview of Mexico's System of Legal Education*, *supra* note 29, at 56–57 n.11 (noting "[t]here is no existing agency to regulate or provide guidelines for legal education." Therefore, the federal government is the only body capable of doing so.).

facilitated by U.S. law schools,<sup>245</sup> which are themselves subject to ABA regulations and guidelines.<sup>246</sup>

The federal government has issued regulations for law schools in the past and could do so now, making it mandatory for trial advocacy professors to train in a U.S. law school or with U.S. law professors.<sup>247</sup> If the Mexican federal government were to take up the mantle of legal education reform in such a way, it could signify the first of many steps taken to “achieve specific quality standards” for Mexican law schools.<sup>248</sup>

*b. Implementing new teaching methods*

Despite the lack of standards, many Mexican law schools have substantially similar curricula.<sup>249</sup> To provide an “encyclopedic education,” most Mexican law schools require between forty and seventy mandatory courses.<sup>250</sup> The subject matter and teaching style reflects the subject matter and teaching style used by the professors’ professors.<sup>251</sup> This is the reality of a system with very few full-time professors.<sup>252</sup> It also reflects the difficulty of introducing change to a system in which most professors simply do not have time to create new lesson plans or experiment with new teaching methods.<sup>253</sup> Those professors teach what they were taught, thus proliferating a system that relies almost exclusively on lectures and

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245. 1917 Constitution art. 121, § V.

246. See generally American Bar Association, *2009–2010 ABA Standards and Rules of Procedure for Approval of Law Schools* (2009), available at <http://www.abanet.org/legaled/standards/standards.html>.

247. See *An Overview of Mexico’s System of Legal Education*, supra note 29, at 56–57 n.11 (noting examples of the Mexican federal government regulating education, such as Articles 3 and 5 of the 1917 Constitution).

248. See *id.* at 54–66.

249. See *id.* at 68.

250. *Id.* at 69.

251. *Id.* at 68.

252. *Id.* (explaining that “most professors practice law and teach at the same time” and consequently “do not have enough time to prepare their classes.”); see also NACLE Curriculum Development Workshop, supra note 98.

253. *An Overview of Mexico’s System of Legal Education*, supra note 29, at 68.

memorization.<sup>254</sup> Such a system produces “poorly prepared lawyers who cannot possibly advance their society.”<sup>255</sup>

Mexican law students themselves have voiced a desire for more courses aimed at the practical application of principles learned in law school.<sup>256</sup> “It is a paradox that, on the one hand, most professors practice their profession, and students value this because of the knowledge they can transmit; but on the other hand, the main critique is the lack of practical education in the [law school experience].”<sup>257</sup>

Even though the necessity of change is widely accepted, efforts to improve so far have been frustrated.<sup>258</sup> The biggest obstacle to modernization of Mexican legal education is a lack of opportunity.<sup>259</sup> There is very little research on Mexican legal education that can be used to inspire changes to the system, and even if the research existed, most Mexican law professors are too busy to incorporate it into their classes.<sup>260</sup> Collaboration with U.S. law schools can change that.<sup>261</sup>

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254. *Id.*

255. Juny Montoya, *The Current State of Legal Education Reform in Latin America: A Critical Appraisal*, 59 J. LEGAL EDUC. 545, 547 (2010); see also *Transnationalizing Mexican Legal Education*, *supra* note 94, at 781–82 (citing one student’s reasoning for studying law in Mexico: “I like to read and memorize[.] it is easier than practical programs”).

256. Luis Fernando Pérez Hurtado, *The Next Generation of Mexican Lawyers: A Study of Mexico’s System of Legal Education and its Law Students*, 162–63 (2008) (Unpublished J.S.D. dissertation, Stanford Law School). One student’s statement is particularly pertinent: “When the penal and civil codes are reformed I would like to take an oratory class and an oral trial workshop”. *Id.* at 163 n.293.

257. *Id.* at 163.

258. See *An Overview of Mexico’s System of Legal Education*, *supra* note 29, at 68–69.

259. *Id.* at 68.

260. *Id.*

261. See Chicago-Kent Press Release, *supra* note 11 (“A ‘train-the-trainers’ program in substantive and procedural law and in pedagogical techniques will enable Mexican law professors to teach the advocacy curriculum and legal education certificate program.”); see also Matthew J. Wilson, *U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems*, 18 CARDOZO J. INT’L & COMP. L. 295, 356 (2010) (noting that interaction with U.S. law schools “using interactive methods and providing practical skills education” improves the educational experience at foreign law schools).

The partnerships already sponsored by USAID utilize “learn-by-doing programming,” such as clinics and externships.<sup>262</sup> Bringing that active learning approach to Mexican professors could have far-reaching consequences in a system where time-pressed law faculty “end up teaching what they were taught when they went to law school.”<sup>263</sup> Much like a uniform system of law school oversight, the integration of more active learning styles could go a long way toward modernizing Mexican legal education.<sup>264</sup>

##### 5. *What U.S. law schools can do to help*

In the nine years of its existence, NACLE has facilitated the exchange of only 169 students, a number that includes its Canadian campuses.<sup>265</sup> That number pales in comparison to the 240,000 law students in Mexico for any given year.<sup>266</sup> Though programs like NACLE are in general a good idea, they are not nearly enough to ensure Mexican lawyers are prepared to implement the 2008 Reforms.<sup>267</sup> Unless something can be done to create exponentially greater student participation, NACLE can only complement larger efforts.

Partnerships such as those engendered by USAID should be the tool used to train Mexican law students and retrain Mexican

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262. Emory News Release, *supra* note 180; *see also* Chicago-Kent Press Release, *supra* note 11 (noting that participants will receive “hands-on training” through work “on actual cases”); Southwestern Awarded Grant, *supra* note 172 (noting that participants will take part in “clinical and externship activities” and that the program will eventually bring its “practice-oriented approach” to Mexico).

263. *An Overview of Mexico’s System of Legal Education*, *supra* note 29, at 68.

264. *See* Mills & McLendon, *supra* note 27, at 15 (“Changes in curriculum are a basic tool of educational institutions that can affect a change.”).

265. *NACLE Student Exchange Statistical Data*, NORTH AMERICAN CONSORTIUM ON LEGAL EDUCATION, (2009), [http://www.nacle.org/images/stories/704\\_NACLE\\_Student\\_Exchange\\_Statistical\\_Data.xls](http://www.nacle.org/images/stories/704_NACLE_Student_Exchange_Statistical_Data.xls).

266. *Transnationalizing Mexican Legal Education*, *supra* note 94, at 768 (noting that, by 2007, law school enrollment in Mexico increased to 240,000 students, indicating a trend of continued growth).

267. *See id.* (explaining that “current efforts to transform legal education tend to consider only international components to incorporate into the law programs” but that these efforts also need to “explore ways to incorporate the students’ ideas, interests and experiences into their students . . . to improve the program” and “stimulate the students and increase their motivation”).

lawyers. Such programs represent the best way to reach the most people in as little time as possible. They are focused on teaching trial advocacy to Mexican lawyers and law professors—the idea, of course, being that the Mexican lawyers and law professors can eventually take their new knowledge of trial advocacy and teach it to Mexican law students.<sup>268</sup>

Mexican law schools have neither the resources nor the expertise to retrain thousands of Mexican attorneys in trial advocacy.<sup>269</sup> In turn, those attorneys, who often double as law professors, cannot prepare Mexican law students to implement the 2008 Reforms.<sup>270</sup> Even the growing number of U.S. law schools is puny in comparison to the sheer number of Mexican law students, and it becomes even more insignificant when attorneys who must be retrained are also considered.<sup>271</sup>

The ideal solution is a hybrid program that takes the intensive collaboration fostered by USAID and utilizes it through the network of international partnerships born in NACLE. Such a program would be relatively inexpensive because no new partnerships would need to be created; existing partnerships would simply be refocused.<sup>272</sup> Such a simple refocusing of existing partnerships would also be relatively quick. With hundreds of thousands of lawyers and law students to train by the 2016 deadline, it is essential for training programs to hit the ground running. There is no time for the administrative inefficiencies that would result from the growing pains of new university partnerships.<sup>273</sup> Thus, the most efficient and effective course of action is for U.S. law schools to utilize the relationships with Mexican law schools engendered through

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268. Southwestern Awarded Grant, *supra* note 172 (citing the program's objective of "provid[ing] oral advocacy training to individuals who will become trainers in turn.").

269. See Pusey, *supra* note 84, at 49.

270. See *An Overview of Mexico's System of Legal Education*, *supra*, note 29, at 68 (explaining that professors practice law in addition to teaching, giving them limited time to prepare for class and consequently teach only what they were taught).

271. Mark Greenbaum, Op-Ed., *No More Room at the Bench*, L.A. TIMES, Jan. 8, 2010, available at 2010 WLNR 388882 ("Today there are 200 ABA-accredited law schools in the [United States], with more on the way, as many have been awarded provisional accreditation.").

272. See Catá Backer, *supra* note 156, at 84.

273. See *id.*

NACLE to create intensive training programs for Mexican law professors, who will then train Mexican law students and practicing attorneys on the new criminal procedure.

## VI. CONCLUSION

*“[P]art of the pleasure in a wrestling event depends on the possibility and indefinite deferment of the moment of revelation.”*<sup>274</sup>

To properly train the next generation of Mexican lawyers to implement the 2008 Reforms, Mexican law schools must overhaul their curricula and shift at least some of their methodological focus from lectures to clinics. Future lawyers as well as practicing attorneys need training in preparation for the new criminal trial. U.S. law schools are well positioned to relieve Mexican law schools of some of that burden. The United States has an interest in strengthening the rule of law in Mexico and should take this opportunity to do just that.

The dark suits and robes of a courtroom are a far cry from the brightly colored masks and costumes of a *lucha libre* match. Cross-examinations and oral arguments are nothing like the ringside *gritos* (yells). But Mexican courts have so far retained one important similarity to *lucha libre* matches: the actors involved have remained hidden behind the mask of closed-door criminal proceedings. With help from U.S. law schools, however, the Mexican criminal trial can emerge from that mask while maintaining—and even increasing—its ringside appeal.

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274. Levi, *supra* note 1, at 65.