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Jimmie V. Reyna
Miguel Jauregui Rojas
Judith Golub
Stuart Broom

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PANEL DISCUSSION: POST-NAFTA CONFLICTS
MODERATOR: JIMMIE V. REYNA, ESQ.
PANELISTS: LIC. MIGUEL JÁUREGUI ROJAS, JUDY GOLUB, ESQ., AND STUART BROOCH, ESQ.

MIGUEL JÁUREGUI ROJAS: Post-North American Free Trade Agreement (NAFTA) conflicts are a very important matter to be discussed. There are three issues that I would like to highlight and then discuss at length.

The first issue is the status of the transportation law and the amendments that are taking place and have been stalemated and delayed for years in Mexico. The second issue is the stance of the Mexican Government, and now the federal courts, regarding the prohibition against foreign investment in neutral shares of transportation companies. The third issue concerns those laws and amendments that involve or affect the transportation of goods and property by courier companies.

Beginning with the first issue, we have a difficult situation because the Mexican Congress has become very partisan, and the issue has become very complicated. The complications arise from the strength of the Cámara Nacional del Transporte (National Chamber of Transportation), and the strongly held Mexican view that the lack of access to the United States is significant. The access issue is now being dealt with by the courts and regulatory authorities, but as far as the Mexican transportation companies are concerned, they are still not open and satisfactory. That gave rise to a lengthy discussion in Congress as to how and whether they would allow the alleged sabotage in Mexico by foreign companies, and whether they would allow the opening that was provided for in NAFTA. As a result, the first issue is still unresolved. Today, the U.S. Government is dealing with the entry of Mexican transportation companies into the United States to transport goods and property, and there is a stalemate in the U.S. Congress regarding the law.

Now I will go to the second issue, the point of great opposition in Mexico during the last few years against the participation by foreigners in “neutral investment,” or neutral capital that does not count toward nationality. For those who do not understand what neutral investment is, in the Mexican foreign investment law there is a provision that states that in restricted areas of investment, one may apply to the Mexican Foreign Investment Commission for permission to purchase neutral investment shares, which have limited or no voting rights concerning specific projects that are destined only for Mexican capital. In this regard, the Mexican Ministry of the Economy has been very restrictive because of political pressure by parties to keep private capital from coming in, even though such shares will have limited or no voting rights.

This has given rise to other issues, such as whether or not neutral capital is really legal in Mexico. The answer to that is “yes” under the foreign investment law. Another issue is why foreign commerce and industry are not allowed to participate in neutral capital in areas that are restricted under the foreign investment law. The answer is that in many areas neutral capital is allowed, and in other areas it is not.
because of the political pressure and influence of Mexican interests in those restricted areas.

In my firm's representation of a foreign transportation company, we have succeeded in getting a couple of amparos (federal injunctions) that bar the order of the Foreign Investment Commission prohibiting neutral investment. Our client has had a few encounters with the authorities, who have been fearful of fully complying with the rulings of the federal courts regarding participation in neutral investment, because of the political influence of Mexican transportation companies.

This issue is still under scrutiny and discussion. We think it will be solved because it can only be healthy for Mexican transportation companies to have neutral investment, since it allows them to modernize and grow.

NAFTA negotiations basically took as one of the more important underpinnings the fact that courier companies such as United Parcel Service (UPS) could use large trucks. Now the question has arisen whether or not they are really "transportation" companies because of the size and number of products they transport. The reaction of the Congress and regulatory authorities in Mexico (which has been fostered by Mexican transportation companies) has been to restrict those companies from transporting as many goods as UPS does, and to limit them to letters and small packages. Consequently, such companies cannot transport computers or durable consumer goods, and cannot use the weight on the trucks that they currently do. The situation is undefined today, and UPS' position is that a courier company is a "courier" company, that the transportation of such goods and the use of such trucks is legal, and therefore it should be allowed as a regular practice in Mexico, not subject to the rules applicable to "transportation" companies.

Where is UPS stalemated? In having to create distribution centers while being denied the use of federal license plates on its trucks that transport goods and property. This denial by the Ministry of Communications and Transportation puts UPS at risk of regulatory non-compliance when using federal highways, so this will be UPS' next legal fight. The position of the Secretary of Transportation and Communications has been to wait for legal clarification before issuing the plates. As a result, companies are stalemated and in a situation where it is more expensive to transport packages, making it difficult for the companies to grow in a satisfactory, transparent and secure way, as required under NAFTA.

The third issue I wish to discuss is that not only are the foreign companies being attacked by Mexican transportation companies and by the stalemate in Congress and on the regulatory and executive side, but they are also facing opposition from the Mexican postal system. The Constitution gives the Mexican postal system a monopoly over the movement of letters and written communication, but now the postal system claims that the processing of letters and small packages is a postal activity, not a courier activity. So there will probably be a debate as to whether or not this is part of the monopoly given to the postal system. Needless to say, the postal service of Mexico, despite its best effort, remains far from efficient. Everyone now uses couriers because of that inefficiency. Therefore, any kind of reduction in the use of courier companies to transport envelopes and small packages would be totally counterproductive for Mexico. Why is this issue arising? Because people are not facing the facts and passing the laws that may give clarity to this situation, nor are they supporting corrective regulatory measures.
JIMMIE V. REYNA: Miguel has underscored a post-NAFTA transition issue. This issue was supposed to have been resolved during the negotiations. The services chapter of NAFTA says that those measures apply to all services and all service providers. When you go to the World Trade Organization (WTO) level, it is much different. At the WTO level, every country was allowed to present a list of services that would be affected by the WTO obligations and commitments. In those services, countries were allowed to omit sections and sectors, and many countries omitted transportation, including Mexico. Thus in Mexico, they are not obligated to WTO-type commitments. The courier companies are saying that they are not transportation companies, that they provide a service when they pick up the package and deliver it, and that they have to conduct each one of a multitude of services in between those two points in order to provide the service. Furthermore, the couriers argue that if they have to use Mexican truckers or transportation companies once they get to the airport, they cannot make the delivery within the time guaranteed and the service is disrupted. Then they say they are being denied their ability to provide a service, and the requirement therefore violates NAFTA. It is legal under the WTO in certain cases. This is an extremely important issue, because it goes back to what countries can do after a free trade negotiation and after a transition period, with respect to definitions that were not specifically addressed during the negotiations.

RICARDO HERNÁNDEZ: I would like to raise an immigration issue that probably is not very closely related to NAFTA. Judy Golub talked about the DREAM Act, which is something that is very good for undocumented children in this country in order to pay tuition and education. It has been talked about, this program to regularize undocumented workers in the country so they can continue living here and working properly according to the law. However, there is also the CLEAR Act. The CLEAR Act would entitle law enforcement officers to take immigration actions against whomever they consider suspicious on their premises.

JUDY GOLUB: The CLEAR Act would allow state and local law enforcement to enforce civil violations of immigration law. Prior to that, they were enforcing

2. The WTO is an international organization established by the Uruguay Round of multilateral trade negotiations to oversee implementation of the General Agreement on Tariff and Trade and the agreements arising from the Uruguay Round. More information about the WTO is available at http://www.wto.org/ (last visited April 20, 2005).

3. Lic. Ricardo Hernández is the sub-secretary to the Mexican Consul at the Consulado de México in Albuquerque, New Mexico.

4. The Development, Relief, and Education for Alien Minors (DREAM) Act (S. 1545, 108th Cong., 1st Sess.) was proposed by Senators Orin Hatch (R-UT) and Richard Durban (D-IL). The Act provides relief to undocumented, non-citizen students attending U.S. educational institutions by offering the opportunity for legal permanent residence. The Act would eliminate the restrictions established in Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-587 (1996). Section 4(a) of Senate Bill 1545 would allow students who can show five years continuous physical presence, who are not yet sixteen, and can demonstrate "good moral character," to apply for conditional permanent residence. Other qualifying students are those who have graduated from a U.S. high school, been accepted to a U.S. college, or have received a general equivalency diploma. An applicant would be granted conditional residence for a six-year period and would be eligible for permanent residence by fulfilling any of the following conditions: graduation from a two-year or vocational college, two years of service in the U.S. armed forces, or 910 hours of community service.

5. The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671, 108th Cong., 1st Sess.) was proposed by Representative Charlie Norwood (R-GA). The Act would give state and local law enforcement officials the authority to enforce federal immigration laws.
criminal violations. This is one of the restrictionist measures that we have been fighting in Congress. There is a House and Senate variation on it. Happily, a lot of state and local police departments are opposing it for a couple of reasons. One, they are not getting any money to do it. Two, they know that they do not understand immigration law. Three, and probably most importantly, most of these departments have spent decades, if not more, trying to develop community policing. They know if they become a sort of immigration agent, they will lose the ability to work with immigrant groups. It only takes one time for that to happen. They have been trying to move this bill through, and we have thwarted them a couple of times, but again, in that environment I spoke about where we do not know what is going to be amended to what and what process they are going through, we are fearful that they are going to try to add the CLEAR Act or a version of it in another bill, so we are very watchful of it. It is a very, very bad piece of legislation.

ROLAN PELLETIER BARBARENA: I have questions for the panelists about energy and transportation. Regarding energy, you depicted a history of chaos in Mexico, along with a lack of clarity and regulations. You basically said the major corporations are left by themselves. So my question is, what is the situation for medium- and small-size corporations? Are they forced to be customers of the Comisión Federal de Electricidad (CFE) or do they have other alternatives?

Regarding the transportation problem that you mentioned, Mr. Jáuregui, I would like some comment regarding the rule of law, because ten years after NAFTA such a major issue is apparently not left to the courts, but to politics and the unions. Is this a backlash from the way to deal in Mexico twenty years ago, or how is NAFTA helping us on this rule of law issue?

STUART BROOM: On the energy side for medium and small corporations, they are quite limited when talking about Mexico right now, because basically they are almost limited to self-supply or the CFE. So if the self-supply option is eliminated, they are going to be owners. They are either going to own the whole power plant outright, or they are going to be a very small minority owner trying to get self-consumption. That is where the law is. We do not have to go any further than that, because like almost every deal, it comes down to economics. Do the economics make sense? Do the risk allocations make sense? And if they do, there is something to rely on. If not, one is left out in the cold. It all comes down to economics.

JÁUREGUI: Regarding the rule of law, this is an example of where Mexico has been tampering with the rule of law and where the executive really has not seen eye-to-eye with the judiciary. The problem is that companies, citizens and the general public are worried about the rule of law in this area and many others. I believe that, in a way, the court system will end up allowing many of the openings that are necessary. To do that, we will end up destroying employers’ unions and unions in general. Yet to the extent that people are aware of the issues, people will support

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7. CFE is Mexico’s federal electricity utility.
the courts in their decisions breaking these monopolies and problems, and the courts are going to be safe. However, I do not think that the courts and the federal judges are comfortable issuing rulings so easily, because they do not know what social impact these rulings will have. Therefore, the rule of law is very much subject to the prevailing view of the public, and the support of the judiciary and the executive.

Regarding the backlash, I would say the United States and Mexico have been messing around for ten years. The problem with that is that you do not arrive at concrete conclusions as to how to deal with problems of transportation in a transparent and orderly way. Why? Because there is politicking in the United States, and there is politicking in Mexico. What the rule of NAFTA and therefore the rule of law says is one thing, but the application of those rules is another. There are very intelligent and creative ways of dealing with these problems as judicial issues through trials and lawsuits, and as regulatory issues with the authorities of both countries. So really what should happen, if we were not bickering all the time about these many issues, is that the United States and Mexico should jointly craft a realistic solution so that commerce, trade and investment can continue.

As a result of the bickering, the courier companies, as Mr. Reyna was saying, have resorted to calling their function a service, which it is by nature. Where the expansion and investments are occurring is in logistics because Mexico requires state-of-the-art logistics and good technology. The courier companies will be exempted from transportation, as they are not transportation companies at the end of the day.

REYNA: A real fundamental issue here is what is driving the rule of law. Is it September 11? Do we change our approach once there is a threat on the horizon? Is it political? Is it the unions? Is it changeover from a PRI system to democracy? Is it Supreme Court rulings holding economic initiatives unconstitutional?

CHRIS BAUMAN: I was going to ask Mr. Jáuregui whether he was talking about transportation or immigration, because his comments could have been equally applicable to the immigration issue. Messing around, not dealing with the issues, etc. It was a nice segue between the two issues.

JÁUREGUI: I really was not applying it to immigration because I am not an immigration expert by any stretch of the imagination. I am worried about immigration for the benefit of the two countries, and I am certainly respectful of the will of the U.S. Congress to enact laws as they see fit. However, I was only referring to transportation. I think it is fully applicable to both, really.

8. The Partido Revolucionario Institucional (PRI), or the Institutional Revolutionary Party, was in power for seventy-one years before Vicente Fox of the Partido Acción Nacional (PAN), or the National Action Party, was elected in 2000. The PRI was often seen as more of a regime or an "official" party than a "dominant" party. More information about the PRI is available at http://www.pri.org.mx/ (last visited April 20, 2005).

9. Chris Bauman is a partner in the firm of Bauman, Dow & León, P.C. in Albuquerque, New Mexico.
JOHN ROGERS: I had a question about liquefied natural gas (LNG) terminals. What is the process for off-take of the LNG from the tanker that brings it in? Will it be flexible enough to permit private companies to take portions of the LNG and transfer it through their own systems, or will all of this automatically go into Pemex’s distribution system?

BROOM: I really do not know, because I have not been asked by any clients to look into that particular issue yet.

JÁUREGUI: Basically, at the LNG plants that we know of, Shell’s and Sempra’s in the Ensenada area, everybody has built their own pipeline. So the gas line does not really rely on the gas lines of Pemex. Sempra has built its own, extending from Mexicali to Tijuana, Rosarito, and then down. It will be used to transport gas to Arizona and California. The issue with pipelines in Mexico is that they are authorized by the Comisión Reguladora de Energía (CRE) and in the United States it is the President that has to deal with it. Cross-border pipelines are very complicated systems to obtain permits for, especially because of the problem with the gas lines of Pemex, in that they were designed for outbound rather than inbound transportation. We are now using them for inbound natural gas. The other problem is that they were designed to take care of specific geographic areas that Pemex was interested in, but were not designed as a grid with logistics in mind. We are having a great deal of problems with distribution because of that design.

The other problem is that when the transportation of gas was authorized, the necessary rights-of-way were not contemplated. For instance, Sempra was very wise. They bought the right-of-way prior to even thinking of the pipeline or disclosing the pipeline. Thus, that issue was solved. The problem is that many of the pipelines today are finding themselves stalemated, because one has to buy the right-of-way meter-by-meter. In the State of Toluca they have not been able to connect a gas line because there are about ten kilometers of property that cannot be connected. This is an important issue going forward, because it goes directly to the issue you are raising, and it affects private grids and the Pemex grid.

JOHN STEPHENSON: I am going to take a different approach to some of the discussion on immigration and rule of law that we have talked about today. I am going to present, not being an expert in this area, some ideas that have not been talked about. Number one, the immigration issue is very complicated. The issue on necessary workers in the United States is obviously very evident and important. The integration issue that we have been addressing bilaterally for the last five years is important. But we have on our books in the United States some laws that are not being followed. The comment that Ms. Golub made earlier about dysfunctional laws means that she does not agree with them, but they are there. We have a violation of

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10. John Rogers is a partner in the firm of Strasburger & Price, L.L.P. in Mexico City.
12. CRE is Mexico’s federal energy commission.
13. John Stephenson is a partner in the Business Transactions section and a member of the Energy Practice Group of Jackson Walker, Dallas, Texas.
the rule of law in the United States, much like there is in Mexico, on a continuing basis. We have the inability in Mexico, or the decision of its political parties, to do what should be done for its own people. In the United States we have people who are not racist in their ideas, but are defending what they think is right in the immigration rules. We have had today, I think, a completely one-sided look at that issue. I tried to get a party on the other side but was unable to do so, unfortunately.

The rule of law in the United States is being undermined by the illegal immigration issue. The rule of law is undermined when the states and cities thumb their nose at what the federal government says. It is undermined in the attacks against the people in the Border Patrol who are supposed to be doing their duties. It is undermined in the outcry at the idea of Immigration Service personnel doing what they are hired to do. This, to me, is an aberration. All of these things are very complex, and they are not simple to deal with. The issue of the Government of Mexico pursuing the *Matricula Consular*\(^\text{14}\) to help its people live in the United States in an environment that is difficult because they are not here legally will probably get addressed by Congress in some way.

All of these things are patchwork for the issues. What Mr. Jáuregui said earlier—messing around for the last ten years on both sides of the border—is true because these are difficult issues. They are not easy to face. I hope the United States-Mexico Law Institute can foster that development in a reasonable, legal, logical way, and not make it so political as I guess it is anyway. We need to deal with these issues in a balanced way. There are differing views about these things that ought to be addressed as a part of a process. In politics, these views all get skewed.

**REYNA:** Let me make a brief comment, then I know Ms. Golub wants to respond. Other than black-and-white contract issues, a lot of the issues that we address, especially in the trade environment, have a political nature to them. One way to begin addressing the legal end is to take the first step and address the issues. For a long time we have been wanting to expand the scope of our discussions at the Institute to include immigration, and we have done that here today. Certainly I think this is a topic that will persist and involve many different perspectives.

**GOLUB:** I appreciate your comments. Certainly the United States is a country with the rule of law, but I really have to say that the rule of law is not being undermined by illegal immigration; it is being undermined by bad law. One of the closest parallels to the current situation is *Prohibition*.\(^\text{15}\) Laws were passed. They were really stupid laws. Everyone violated those laws, and those laws were eventually rescinded when there was enough political ability to do so. That is the state we are in right now.

I have two comments to make. One, you do put officials of the Border Patrol, ports of entry, and other folks in an impossible situation when you have dysfunctional laws. Those who oppose my viewpoint want to take dysfunctional laws and just increase their enforcement. To me, if you enforce dysfunctional law,
you get more dysfunction. There is no social consensus, no political consensus, and no economic consensus around our current law. What you see from that dysfunction is all the problems we have right now that are beginning to surface. Because the United States is a country that respects the rule of law, we need to create laws that can be respected because they work and because they reflect our history, the need of families to be reunited, the need for American businesses to bring in the workers they need, and because they reflect our security concerns. Continuing to do what we are doing will just further deepen that dysfunction, and make everyone violate the laws because they are nonsensical.

In the practice of immigration law, one day it is this, the next day it is that. It is practice by regulation largely. It does not make sense, and it is time to change it. But I also want to say that all of those people who oppose the kinds of views I have are not racist or restrictionist. We can disagree respectfully. What I was trying to say is that the anti-immigration movement has been taken over largely by the restrictionists and voices that have roots in the radical-environmental, negative-population, and eugenics movements.\(^\text{16}\)

**JÁUREGUI:** Taking this to our territory of trade and investment, we have to be worried about whether or not through these mechanisms we are respecting what I understand to be the espoused public policy of President Bush through Tom Ridge.\(^\text{17}\) That is, the issue of how we may keep private initiative and the private sector active and moving, without barriers, so that economic transactions are not mired by security measures. If that public policy is true and this is something that the United States has to be worried about, we have to cooperate on a solution.

**GOLUB:** Both Tom Ridge and Colin Powell\(^\text{18}\) were brought to Capitol Hill several times for hearings to deal with the concerns members of Congress have had about the 10-20% reduction in tourism, and the inability of goods and people to enter in a timely manner. They have pledged to try to reform that. Their first gesture was a mandate that border inspectors need to be polite.

**MANUEL RAJUNOV:**\(^\text{19}\) When one talks about immigration, one has to get into politics, unfortunately. My fear is the recognition that immigration from different sources is treated differently. You cannot treat immigration from Mexico the same as you treat immigration from Canada, the same as you treat immigration from Europe, the Middle East, or India. In trying to lump it all into immigration reform,

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17. On October 8, 2001, Tom Ridge was sworn in as the first Secretary of Homeland Security, an office established following the tragic events of September 11. He left office shortly after the re-election of President George W. Bush. See Secretary Ridge's biography at http://www.whitehouse.gov/homeland/ridgebio.html (last visited April 20, 2005).


it can be easily used for the benefit of terrorists who want to hurt us. It is just going to be as dysfunctional as it is right now.

GOLUB: Let me ask you a question. What do you mean by that? For instance, how would you differentiate a flow from “x” place and “y” place.

RAJUNOV: If you look at immigration trends, the majority of the people that immigrate to this country from Mexico are fulfilling a certain economic need of the United States. We have to recognize that reality. There is an economic need for some people to do certain tasks that Americans do not want to do, or are not sufficient to do. That is a flow of immigration that needs to be regulated differently than the flow of immigration of Europeans, high-tech Indian nationals, or especially from the Middle East. All these groups come to the United States to fill different jobs. Again, when we talk about immigration we talk about politics and my political bias is clearly obvious in what I am saying, but when you look at the whole issue of whether or not there should be racial profiling with immigration, as far as I understand, everything that happens outside the United States is not protected by the U.S. Constitution. So why should a citizen of Saudi Arabia be protected by the U.S. Constitution while he is in Saudi Arabia trying to get a visa to come into the United States the same way that I am protected by the U.S. Constitution, being a Mexican national living in the United States?

GOLUB: There are a couple of issues that you raise, and let me just take the last one first. I think that you were suggesting, from your comment, that people intending to come to the United States from the Middle East, like Saudi Arabia, may be more of a security issue than someone from another place.

RAJUNOV: There is a higher level of concern. I am not saying that every member of an Arab nation is a terrorist. I am not saying that, but what I am saying is that behavioral trends show that anybody that has tried to hurt the United States generally comes from an Arab nation. So should our awareness not be higher when you have immigration from those countries?

GOLUB: First, that is not totally true. Secondly, almost all the security experts I have talked to have said that it hurts our security to do profiling based on a group, and that it should be based on activity and individual intelligence. For the United States, we look at the immigration flows based on how best they help the United States. To that degree, looking at, say, a workplace, there will be people from Mexico, India, Canada, or from wherever. That is my first point. My second point is that the United States has in the past developed country-specific solutions that are very problematic. The American Immigration Lawyers Association (AILA) and other groups looking at that have come to the conclusion that, in general, country-based specifics are not the way to go. My third point is that in looking at the skill areas which the United States draws people from, looking at the H-1D visa holders by country, there is a significant number of them from Mexico.

Now, do I think there is a need to have a whole review of business-based immigration? Yes, I do. Do I think this is the climate and the time to have it? No. But given that, I do not think policy should be country-specific. Now, in looking at
the data, 50% of the American jobs that will need to be filled in the future are going to be for people with a high school education or less. So the need for essential workers, as they are called, is increasing over time, not decreasing.

REYNA: In talking about politics and the rule of law, I am working on an anti-dumping case in Mexico right now, and the belief on the U.S. side is that it is driven by agricultural interests in Mexico and that the law does not support the cases at all. Of course, as a practitioner representing U.S. interests that is my belief, and that is what I am arguing. We see that it is politics driving this. So you always have the political end of it. It is interesting to always review the legal aspects as well.

VALERIE J. PREST: Ms. Golub, you have said that you are not in favor of country-specific immigration regulations, yet as we talk about NAFTA and trade and commerce, we should be looking at reciprocal arrangements for immigration with countries in our hemisphere with whom we have trade agreements. I am interested in the panel’s thoughts on that. At the same time, I am interested in the panel’s thoughts as to what lessons the European Union (E.U.) may have for us in looking at the movement of workers across country borders.

REYNA: In Washington, D.C., where I practice law, the predominant Hispanic population is Salvadoran. A lot of the Salvadorans were made permanent residents under U.S. laws and a series of amnesty steps, and then finally were granted the opportunity to become citizens. I know that this is one area where the United States has gone through the regulatory process to make illegal immigrants permanent citizens.

GOLUB: In crafting the SOLVE Act—the immigration reform proposal introduced a couple of weeks ago—there was some prior discussion about country-specific solutions, and then we decided the criteria would not work and it would not be helpful to our country to do it. Immigration processing has been so flummoxed that it will not be until 2028 that some people get their processing through, because it is moving at such a glacial pace. They are speeding it up a little, but there are problems with that. The region-specific solution for Central America came out of concerns about Cubans getting a different kind of fix than others. We have just made a mess in our history of country-specific fixes. That is not to say that Mexico was totally ignored in those country-specific fixes and Cuba was not. That is a classic example of when politics and law come together and cannot be divided up, and it has just been very problematic. But I have come to the conclusion that you cannot have law without politics. They are so mixed together, I do not know of any law where the two are not together.

20. Valerie J. Prest is a solo practitioner in Lighthouse Point, Florida.
21. The Safe, Orderly Legal Visas and Enforcement (SOLVE) Act (S. 2381/H.R. 4262, 108th Cong., 2nd Sess.) is a comprehensive immigration reform bill. The bill includes such measures as an earned adjustment for eligible people already living and working in the United States, family reunification through backlog reduction, and a temporary worker program.
REYNA: In the process of the formation of the E.U., there was a highly sensitive issue in the 1980's whether to admit Spain and Portugal. Why? The heavily industrialized countries looked at Spain and Portugal and saw disparate economies, workers that were not well trained, low productivity, and a lot of racial and social issues existent then. There was tremendous opposition to bringing Spain and Portugal into the E.U. In fact, when the E.U. was recently enlarged by ten countries a couple of months ago, we saw again that some of these issues were there. But they were not as intense. Why? Because it turned out that Spain and Portugal added to the E.U., increased its gross domestic product, and made it more powerful, so it is no longer an issue. Now laborers from Spain and Portugal can travel throughout the E.U. and get a job anywhere else.

JÁUREGUI: I would like to return to where this morning’s panels and presentations started. That is, not thinking as some politicians on both sides of the border are thinking, that NAFTA has to be reviewed. First of all, we know that NAFTA cannot be reviewed or else it will collapse for political reasons. But this is also the perfect example of all that we have said this morning as to why the convergence of the two countries, whether we like it or not, is there, and why we should prosper and move our dialogue forward concerning the improvement of NAFTA.

I am a great admirer of the Treaty of Rome. I am a great admirer of the Europeans and the way they have integrated. They have their misgivings, as we all do, but without copying anybody else’s pattern, I think we need to extend NAFTA. The reason to extend NAFTA is because of these issues that we see on the table today. A lot of the immigration problems, transportation problems, and energy issues could be fixed if we were sitting down again and doing what we did ten years ago: developing ways to get along and prosper together.

Another issue is to not repeat the mistakes of the E.U. regarding immigration. Now they have to worry about not having enough work force, and now they are going to have to start thinking about how to amend their fortress. We should learn from those lessons and try to improve on them.

ERNESTO VELARDE: My comment has to do with U.S. immigration policies. As the rationale and justification for US-VISIT, the U.S. Government is claiming that this program is being implemented in order to prevent terrorists from entering into the United States. What we know now is that one or a few of the terrorists came into the United States through Canada, not through Mexico. The terrorists may be anything you want, but they are not idiots. They will not go through Mexico

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23. Ernesto Velarde is a partner at the Ernesto Velarde-Danache law firm in Brownsville, Texas.
24. The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program was announced by then Secretary of Homeland Security Tom Ridge on April 29, 2003. The program was instituted under Section 1008 of the US PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272. Initially described as a “check in/check out” system, the program gathers information concerning non-citizens on criminal, immigration, and security-related matters. The program also uses scanning equipment to collect “biometric identifiers” such as fingerprints and photographs at major sea and air ports of entry.
because there are thousands of Border Patrol agents patrolling the border, and there are heat detectors, boats, helicopters, horses, and all kind of technological devices to detect people going across the border. There are also the immigration checkpoints.

My belief, and that of many others, is that the United States is just trying to prevent immigration from Mexico and from other Latin American countries by implementing these rules. For a Canadian national to enter the United States, it only takes a driver's license, and that person can stay for six months or longer, because there is no control over returning to Canada. For a Mexican national to enter the United States, he or she has to apply for a permit to go beyond the border. To stay more than seventy-two hours, Mexican nationals have to come up with a stack of documents about ten inches thick, and I am not exaggerating. They have to bring bank account statements, electric bills, the deed to their homes or lease agreements, and their employment and social security information.

I have seen people, for instance from Monterrey, that have U.S. $20-$30 million in the bank. They meet with an immigration official in the United States who requests an additional document. The person has come from Monterrey and does not have it. He does not want to go back to get it, and even if he did, when he comes back there may be another official asking for something else or asking for nothing, telling the person that there was no need to go back to Monterrey to bring the additional documents.

Now my question for you, Ms. Golub, is very simple. Is there a way that the discretion that immigration officials have can be somehow reduced? They are not qualified. I see them every day. They do not have the talent or training necessary to perform those services, and that is hurting the economy on both sides of the border.

GOLUB: On the discretion at the border, we agree with you about the problem and about the need for training. That is why we talked about the need to have access to counsel at the border, which does not exist right now. It is a huge problem, and since September 11 more changes have occurred at our ports of entry than in other places. A lot of these officials are not very good because they are not well-trained. That is why we are looking at access to counsel. But these officials are going to keep that discretion, so we have to make sure that they are better trained, that there is access to counsel, and that the databases are accurate and interoperable.

But you are very right about US-VISIT. By the way, we think that expedited removal is a law that should be repealed, especially in this era of heightened security concerns. Why would you want to have someone enter and then immediately remove them? If they are suspicious, you want to keep them and their passport. We know that Al Qaeda has certain caches that they are using to try to get in. So if it does not work, you do not want the person to go right back and say, "Okay it did not work, we want to try someone else." If you pick up someone who has been smuggled in, you do not want to deport the person summarily. You want to know more about the smuggling ring. So expedited removal should also be

25. See IIRIRA supra note 4. The IIRIRA established the expedited removal procedure for the quick removal of certain inadmissible aliens, such as those attempting to enter the United States by using fraudulent documents. It also allowed removal by order of a Department of Homeland Security officer, rather than by order of an immigration judge. See 8 U.S.C. § 1225(b)(1).
repealed, notwithstanding our concern that people who should be allowed into this country and do not have the right papers because they are in safe haven would be deported as well.

Another issue is about US-VISIT. In terms of the Entry-Exit programs, we have always been concerned about their ability to improve security. In fact, in 1998 there was a report issued by the Judiciary Committee indicating that Entry-Exit helped smuggling and decreased security. The report found that it would be of no help. You are seeing US-VISIT moving along because Congress has to give the American people something. It is a political need to address. The different treatment of Mexicans and Canadians may be lessened over time by putting more restrictions on Canadians; it is only a matter of time and capacity to do it.

PABLO RIÓN: I would like to suggest that with immigration, we look at the forest and not the trees. The American economy is poised to grow at more than 3-4% going forward. The population of the United States grows at 1%, maybe. The Mexican demographic growth now is 1.2% only, but we have a lot of people who were born when we grew at 3.3%. So Americans need Mexicans, and will take them one way or another. That is how the American economy grows, with Mexicans and people who come from other countries. The Japanese want to imitate the U.S. system of immigration because the Japanese had zero growth for ten years, and they are opening immigration to Malaysians and Vietnamese. Why? Because they need people to grow their economy, so immigration is going to happen. I think it is a good idea.

On the gas pipeline issues, I will tell you about two private businesses in Mexico. One is Last Mile Tubing with the Pemex lines, which is the business of connecting the last mile. That is a very good business, and it may be done as a private company. The other business installs fuel generators for private businesses that want to get a cheaper rate during peak hours.

REYNA: There you have it. Whoever said that there are no post-NAFTA conflicts or complications should have been here at this presentation.

26. Section 110 of the IIRIRA governs current Entry-Exit programs, specifically land programs. These programs use the I-94 form that is filled out by aliens upon entry and departure to track their stay in the United States. The implementing regulations for air and sea programs are found at 8 C.F.R. § 231.

27. Pablo Riión is an investment banker at Pablo Riión y Asociados, Lomas de Chapultepec, México, D.F. 11000.
R. Stuart Broom, Esq. is a partner in the Energy Practice Team at Williams Mullen, 1666 K St. NW, Suite 1200, Washington, DC, 20006; Telephone: 202-293-8110; Fax: 202-293-5939; E-mail: rsbroom@williamsmullen.com. Mr. Broom concentrates his business in the areas of energy, environmental and tax law. He specializes in municipal and project finance of energy and environmental facilities. This representation involves planning, procuring, negotiating, contracting, permitting, and financing cogeneration and independent power production projects, water and wastewater treatment facilities, and solid waste management facilities, including landfill, waste-to-energy, and material recovery facilities. Mr. Broom has also represented national and international clients negotiating energy purchase and sales contracts. He received a B.A. Degree from the University of Alabama and a J.D. Degree from the University of Tennessee. He also received an M.L. Degree from George Washington University. He is admitted to the District of Columbia Bar and the Tennessee Bar.

Judith Golub is the Senior Director of Advocacy and Public Affairs for the American Immigration Lawyers Association, 918 F Street NW, Washington, D.C. 20004; Telephone: 202-216-2403; Fax: 202-783-7853; E-mail: golub@aila.org. Ms. Golub joined AILA in 1997. AILA’s National Office in Washington, D.C. represents the immigration bar and its clients before Congress, the Administration, and federal agencies. While at AILA, Ms. Golub has focused on a wide range of immigration issues including due process and civil liberties issues, legalization, future flows, family backlog reduction, immigration and national security, reform of U.S. immigration functions, and student adjustment. Prior to joining AILA, Ms. Golub directed advocacy and legislative efforts for several national organizations where she focused on civil rights, First Amendment, immigration and refugee issues. She is a graduate of Barnard College and the University of London.

Jimmie V. Reyna, Esq. is an international trade attorney and partner in the Washington office of Williams Mullen, 1666 K St. NW, Suite 1200, Washington, DC, 20006; Telephone: 202-293-8128; Fax: 202-293-5939; E-mail: jreyna@williamsmullen.com.

Mr. Reyna has a wide range of experience in international trade related matters, including: trade policy and trade regulation (antidumping and countervailing duty cases); trade agreements (GATT, GATS, WTO, NAFTA, FTAA); investment and commercial law; technical barriers to trade (standards), and customs. He has authored two books (Passport to North American Trade, Rules of Origin and Customs Procedures Under the NAFTA; The GATT Uruguay Round: A Negotiating History 1986-1992: SERVICES). Mr. Reyna is a member of the Washington, D.C., and New Mexico State Bar Associations, the National Hispanic Bar Association (Chairman of the International Law Committee), the American Bar Association (International Law and Practice Section: former Chair of the Mexican Law Committee; Chair of the Subcommittee on U.S.-Mexico Foreign Trade) (Section on Dispute Resolution: Co-Chair of the Subcommittee on MERCOSUR of the International Committee). Mr. Reyna is licensed to practice before the U.S. Court
of Appeals, Tenth Circuit; the U.S. Court of Appeals for the Federal District; the
U.S. Court of International Trade; the Court of Appeals for the District of
Columbia; the U.S. District Court, District of New Mexico; and the Supreme Court,
State of New Mexico. He received a B.A. from the University of Rochester in 1975
and a J.D. from the University of New Mexico School of Law in 1978. He is
admitted to the bars of New Mexico and the District of Columbia.

*Lic. Miguel Jáuregui Rojas* is a founder and member of the firm of Jáuregui,
Navarrete, Nader y Rojas, Torre Arcos, Paseo de los Tamarindos 400B, Pisos 8 y
9, Col. Bosque de las Lomas, 05120 Mexico, D.F.; Telephone: 52-5-267-4500; Fax:
52-5-258-0348; E-mail: mjr@jnnr.com.mx. Lic. Jáuregui’s main areas of practice
include mergers and acquisitions, taxation, telecommunications, energy,
infrastructure and trade. He is a member of the *Academia Mexicana de Derecho
Internacional* (Mexican Academy of International Law), *Barra Mexicana, Colegio
de Abogados* (Mexican Bar Association), the American Bar Association, the
*Asociación Nacional de Abogados de Empresa* (National Association of Corporate
Counsels), the World Presidents’ Organization and the Chief Executives
Organization. He is the Chairman of the *Sección de Europa Central y Oriental*
(Section of Central and Eastern Europe) of the *Consejo Empresarial Mexicano para
Asuntos Internacionales* (Mexican Businessmen’s Council for International
Affairs), Chairman of the Legal Framework Group and Member of the Executive
Committee of the *Consejo Empresarial México-Unión Europea* (Mexico-European
Union Business Council) and Observer to the Board of the American Chamber of
Commerce of Mexico. He is a Trustee of the Board of Governors of the American-
British Cowdray Hospital and Treasurer of the *Fundación Mexicana para la Salud*
(Mexican Foundation for Health) and an honorary officer of the Order of the British
Empire. Lic. Jáuregui received his law degree from the *Universidad Nacional
Autónoma de México* and was admitted to the Mexican bar in 1965.