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Introductory Remarks from the ABA Mexican Law Committee

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Clients often come to see me because they want me to keep them out of jail when they go to Mexico. This reflects a distrusted perspective about Mexico that we, as professionals engaged in cross-border transactions, have a duty to clarify, to dispel the myths and look at the reality of the practice of law in Mexico and doing business in Mexico. I do not mean to minimize the frustration of people who have experienced the tougher side of the Mexican judicial system and its laws. However, I think that most of us have more positive experiences in Mexico than negative experiences. In the context of the millions of dollars of trade and transactions that take place between the United States and Mexico without any incident, I think the problem is often taken out of its proper perspective.

The U.S.-Mexico Law Institute and the National Law Center for Inter-American Free Trade, are unique institutions that induce greater knowledge of the judicial systems in both countries in an effort to get a better understanding and work from a knowledgeable point of view. I believe that is why the Institute deserves all of our support, both professionally as well as financially.

One example of ignorance in contractual negotiations is the choice of law clause in the contract. In many cases, American lawyers tend to say, "Well, we want U.S. law to apply and we want a U.S. venue for conflict resolution." Often we do not understand what Mexican law will provide; therefore, we insist on U.S. law. The reality is that we are able to demand U.S. laws less frequently.

In my own practice I have found mostly positive experiences in dealing with Mexico. I have been involved in many transactions ranging from simple contracts to joint ventures to litigation. I should note that I have never felt the judicial system to be biased against my clients because they were foreigners. On several occasions I have felt the opposite to be true in that there is a bias or certain degree of deference for the foreign client. Nonetheless, there is much work to be done to better understand the Mexican legal system before suggesting amendments that originate from within.

* Mr. DeSoto is a Co-Chairman of the Mexican Law Committee of the American Bar Association Section of International Law and Practice, a Director of the U.S.-Mexico Law Institute, a member of the ABA Committee on Foreign Investments in the United States, and a representative of the ABA on the Working Group with the Barra Mexicana de Abogados on the Settlement of International Disputes on Environmental Disputes under NAFTA.