

## THE MICHOACANAZO: A CASE-STUDY OF WRONGDOING IN THE MEXICAN FEDERAL JUDICIARY

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**ABSTRACT.** *The Michoacanazo was a federal criminal trial in Mexico prosecuted by the Attorney General's Office against local and state public officials from the state of Michoacán who were indicted for having ties with the local drug cartel formally known as "La Familia Michoacana." With the indictment, more than 30 public servants were arrested and sent to prison in a roundup carried out by the federal police in May 2009. Within a two-year period, all of those arrested were eventually released. This case had strong legal and political implications nationwide because it pitted the state of Michoacán against the federal government, as well as President Felipe Calderon's administration against the Mexican Federal Judiciary. The Michoacanazo provides a glimpse into the inner workings of the Mexican federal judiciary when powerful interests collide, and corruption intermingles with politics, a drug cartel, and the complexities of handling drug-related trials.*

**KEY WORDS:** *The Michoacanazo, Mexican Federal Judiciary (MFJ), judicial corruption, 'La Familia Michoacana' drug cartel, ethnography.*

**RESUMEN.** *El Michoacanazo fue un proceso penal federal promovido por la Procuraduría General de la República en contra de funcionarios estatales y municipales del estado de Michoacán acusados de tener vínculos con la organización delictiva conocida anteriormente como "La Familia Michoacana". Previo al juicio penal más de 30 funcionarios públicos fueron detenidos y enviados a un penal federal en una redada llevada a cabo por la policía federal en el mes de mayo del 2009. En un lapso de dos años siguientes a esa fecha, todos los detenidos fueron liberados. Este proceso penal tuvo y ha tenido repercusiones políticas*

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*y jurídicas en todo el país en virtud de que antagonizó el gobierno federal con el gobierno del estado de Michoacán, así como la administración del presidente Calderón y el poder judicial federal. Este caso permite vislumbrar las entrañas del Poder Judicial Federal en un contexto donde intereses políticos poderosos se enfrentaron, a la par donde la corrupción se entrelaza con la política, una organización criminal local y dificultades para procesar y sentenciar casos de narcotráfico de alto impacto.*

PALABRAS CLAVE: *El Michoacanazo, Poder Judicial Federal, corrupción judicial, organización criminal La Familia Michoacana, estudios etnográficos.*

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## I. INTRODUCTION

### 1. *On Judicial Corruption*

Corruption is a complicated phenomenon to study, define, and understand. It has plagued Mexico for centuries, even before the country became an independent nation from Spanish colonialism. Government efforts made by every new President over the past 30 years to tackle corruption have not changed the fact that Mexico is one of the most corrupt nations in the world according to Transparency International.<sup>1</sup> Different authors at different times have studied, depicted, analyzed, and suggested possible means to deal with this ubiquitous issue.<sup>2</sup> Despite these Presidential efforts and academic studies outlining potentials paths to address corruption, the problem continues unabated. Given the current state of affairs in the Peña Nieto administration as regards blatant cronyism, conflicts of interest, impunity, and political corruption, the problem will not be properly addressed or changed in the near future.

The present manuscript makes a contribution to the debate on this topic by studying and analyzing corruption in the Mexican Federal Judiciary. This essay depicts a case-study based on the Michoacanazo trial and the main hypothesis centers on the premise that judicial corruption and its plethora of manifestations—influence peddling, favoritism, cronyism, bribery, and political influence, among others things—all came together to have a significant bearing on the development and outcome of the Michoacanazo case.

Unlike political corruption or any other form of wrongdoing, judicial corruption has not been fully studied in Mexico as an independent and separate phenomenon because it is understood as a ramification of political corruption. Although this may be partially true, the reality is that judicial corruption has a nature and characteristics of its own that differ considerably from the general conceptualization of corruption and political corruption in particular.

Judicial corruption goes beyond its classic and stereotyped manifestation in which a party bribes a judge to obtain a favorable sentence. It is much more complicated because there are different degrees and subtleties throughout the judicial process where corruption can occur. It also depends on how this phenomenon is defined and even the jurisdiction where corruption takes place. Judicial corruption mainly happens in two common scenarios: The first one

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<sup>1</sup> Transparency International, Corruption Perception Index 2013, <http://www.transparency.org/cpi2013/results> (last visited June 10, 2014).

<sup>2</sup> EDGARDO BUSCAGLIA, *VACÍOS DE PODER EN MÉXICO* (Random House Mondadori, 2013). *PODER, DERECHO Y CORRUPCIÓN* (Miguel Carbonell & Rodolfo Vázquez eds., 2003). *VICIOS PÚBLICOS, VIRTUDES PRIVADAS: LA CORRUPCIÓN EN MÉXICO* (Claudio Lomnitz ed., 2000). STEPHEN D. MORRIS, *CORRUPTION & POLITICS IN CONTEMPORARY MEXICO* (The University of Alabama Press, 1991).

is to influence the judicial process to affect the impartiality of a trial in order to obtain an unjust outcome; and the second one is when corruption is used to navigate or circumvent bureaucracy or red tape.<sup>3</sup>

Regardless of the context of corruption there are two major types of judicial corruption: political interference and bribery. The former comprises various behaviors such as cronyism, influence peddling, use of connections, graft, and lobbying; the latter refers mostly to extortion (*concusión*) and bribery (*cohecho o soborno*). These modalities of wrongdoing are not exclusive to judicial corruption since they can occur in other realms of government corruption, but they are the most common ones to occur in the judicial process.<sup>4</sup>

In Mexico, the criminal law code does not classify judicial corruption per se as an independent legal typology; instead the federal criminal law code—and correlative penal statutes in every state—highlight specific public officials' behaviors, such as prevarication, extortion, and bribery, that fall under the category of judicial corruption. That being said, judicial corruption is defined here as “any inappropriate influence on the impartiality of the judicial process by any actor within the court system”.<sup>5</sup> This definition is broad enough to include bribery, influence peddling, political influence or any behavior intended to affect the outcome of a trial.<sup>6</sup>

Judicial corruption in Mexico is difficult to unearth and prosecute for multiple reasons. First, like any type of wrongdoing, judicial corruption usually occurs in secrecy which makes it challenging to collect evidence and charge the perpetrator. Second, all magistrates, judges, and most of the personnel working in courtrooms have law degrees. They know the law and most are experts in their field. If engaging in any wrongdoing, they are savvy enough to cover their tracks and actions, hampering any effort to detect and investigate the problem. Third, for centuries the nature of the Mexican legal system—undergoing a complete overhaul today—has been legalistic, rigid and dogmatic. Judges have to follow strict adherence to the letter of the law to decide cases while at the same time they enjoy discretionary decision-making power to evaluate and interpret evidence and facts. This discretionary power

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<sup>3</sup> TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2007: CORRUPTION IN JUDICIAL SYSTEMS (2007).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 21.

<sup>6</sup> Traditional petty wrongdoing such as grease payments (*mordidas*) are not included in this manuscript since this analysis addresses mostly high-impact corruption related to the Michoacanazo case. There is debate about whether or not *mordidas*—defined as grease payments to circumvent red tape—in courtrooms should be considered a form of corruption or not. Data collected from this research shows that some officials working on federal courtrooms consider *mordidas* a form of corruption while others think otherwise because—according to them—*mordidas* are usually used to circumvent bureaucracy only not to influence the final outcome of a trial. Regardless of the nature of this particular issue, it is not analyzed here since there is no evidence that *mordidas* took place in the Michoacanazo trial and interviewees make no mention of them at any time.

increases when the facts are blurry or the evidence is murky, thus creating a context in which corruption can take place without its being labeled as such. Fourth, there is a culture of impunity in the Mexican criminal justice system by which many crimes committed by public officials—or anyone for that matter—go unpunished. This trend has created a context where impunity has become the rule and prosecution and punishment the exception. Finally, the ambiguity of defining and understanding judicial corruption adds to the complexity of the problem. Phenomena such as cronyism (*compadrazgo*), the use of connections (*amiguismo*), and influence peddling (*influyentismo*) are often not considered corruption at all in courtrooms. Therefore, if there is no stigma attached to these practices but on the contrary they are admired, they can undermine judicial independence and encourage judicial corruption. Despite these shortcomings, it is possible to document incidents of judicial corruption under certain circumstances and contexts. One example is the case of the Michoacanazo trial that is analyzed in this manuscript.<sup>7</sup>

## 2. *The Michoacanazo*

The *Michoacanazo* case was a criminal trial against local and state public officials from the state of Michoacán who were indicted by the Attorney General's Office (AGO) for having ties with the local drug cartel known as “*La Familia Michoacana*” (LFM). More than 30 public servants were arrested and then sent to prison after a roundup led by the federal police in May 2009. Within a two-year period, all of those arrested were eventually freed. Besides the legal discussion supporting the facts of the case (e.g. corrupt local officials and official protection to organized crime), there were probably political motivations by the federal government (e.g. to influence state elections and to discredit the opposition party in Michoacán) to prosecute the local officials indicted in the case.

This *Michoacanazo* trial provides an opportunity to perform a holistic analysis of the context and circumstances regarding how corruption can operate within the MFJ when certain criteria are met. On the one hand, the case

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<sup>7</sup> As part of a research project for graduate school, I conducted ethnographic work in the Mexican Federal Judiciary (MFJ) in summer of 2011. One of the goals of the research was to understand the institution from inside and hear first-hand what magistrates, judges, and personnel had to say about their jobs and daily routines, among other things.

<sup>1</sup> interviewed 45 people in total: 40 public officials working in the MFJ, three Mexican scholars whose expertise was related to this institution, and two attorneys whose work focused on federal courts. Out of the 45 people interviewed, 16 interviewees were females and 29 were males. Two-thirds of the interviews (32) took place at the interviewees' offices and one-third (12 interviews) in different settings, like coffee shops, restaurants, and the interviewees' homes. Interviews were conducted in six different cities in Mexico: Nogales, Tijuana, Mexico City, Puebla, Acapulco, and Morelia. It was during this fieldwork that I obtained access to the *Michoacanazo* file.

describes the social and political conditions that surround the federal administration of justice in Mexico. On the other hand, the case problematizes how judicial corruption is extremely difficult to track and why a combination of powerful interests (e.g. political, legal, criminal) still echo the institutional weaknesses that plagued the federal judicial system in the past during the authoritarian regime of the twentieth century. The aim of this case study is to gain a sharper understanding of the social and political contexts influencing the case, as well as why and how it happened.

The *Michoacanazo* case is also relevant because the political, legal, and criminal context in which it took place is far from over. Throughout 2014, several political public figures in Michoacán state were arrested—among them Jesus Reyna Garcia former Interim Governor and Minister of the Interior—for having close ties with the Knight Templars (formally known as *La Familia Michoacana* cartel). There are similarities between the *Michoacanazo* in 2009 and this new wave of local official arrests in 2014; a major difference though is that fact that now recorded meetings between those officials and Servando Gómez Martínez “La Tuta”, one of the main kingpins of the cartel, have been leaked to the media. Uproar from those videos have prompted the Attorney General’s Office—*Procuraduría General de la República* (PGR)—to initiate criminal investigations, and eventually indict, those public servants. I will address this issue in the final part of this article.

### 3. Access to Files

I first read about the *Michoacanazo* case in May 2009 when it became international news because of the number of people who were arrested and the context in which it took place. High-ranking state officials were among the detainees, and I personally knew two of them. One had been my classmate in law school, and I had met the other when I had worked as an attorney. Out of curiosity, I followed the case in the news to find out what the final decision in the federal courts would be. It is important to highlight that President Felipe Calderón was born in the state of Michoacán and most of his extended family lived there during his administration. Since he took office in 2006, he showed open interest in fighting the criminal organizations that operate in Michoacán. Apparently, the *Michoacanazo* case was of special interest to the President because it made it visible to society that his “war on drugs” approach was working, despite the huge increase in drug trafficking-related murders; however, it seems that other political motivation may have played a role in prosecuting this case.

During the final part of my fieldwork research, several interviewees brought up the *Michoacanazo* case as an example of potential corruption and influence peddling. Morelia was the place where the police operation to arrest the defendants in this case had been conducted. The district court that handled

most of the proceedings was located there. During my fieldwork in Morelia, some interviewees were familiar with the case, and once I heard about it, I began to question them. Several interviewees were reluctant to talk, arguing that they did not know anything about it, while others referred me to other potential respondents who had direct knowledge of the case. One of these referrals led me to interviewee Ignacio (in order to guarantee confidentiality, I am using pseudonyms throughout this manuscript, except when the person or fact is publically known in the media).

Ignacio has more than three decades of experience working in federal courts. He holds the MFJ in high esteem because he contends that the institution protects civil rights and keeps authorities who abuse their power at bay. Ignacio and I talked about the *Michoacanazo* case, and it turned out that he had direct knowledge of it and guided me to legally obtain copies of some proceedings and the verdicts. These documents from the original file and other public records available from different sources, such as media, journalists, informants, and political analyses are the base for this critical analysis.

## II. LA FAMILIA MICHOACANA (LFM) CARTEL (CURRENTLY KNOWN AS THE KNIGHT TEMPLARS—TKT)

It would not be possible to understand the *Michoacanazo* case study without first providing a brief background on the proliferation and powerful influence of the LFM drug cartel in the state of Michoacán and the surge of extreme violence in Mexico. Drug trafficking is a fundamental piece of the *Michoacanazo* case and it is intertwined with the performance of the federal judiciary because this problem is considered one of the most difficult social issues that Mexico has faced in modern history.<sup>8</sup>

Like other drug trafficking cartels that sprang up in the last decade, *La Familia Michoacana* or just “*La Familia*,” was born in the early 2000s as a collective of members from other cartels, such as *Los Zetas* and the Gulf, to fight local drug traffickers.<sup>9</sup> These members had a convenient alliance that mutually benefited everyone. Initially, the LFM cartel called itself *La Empresa* (The Company). Around 2006, *La Empresa* broke that alliance, severing ties with their former partners and got a new name—*La Familia Michoacana* (the Michoacán Family). The name comes from the idea that all members of the group were from the state of Michoacán and they would see themselves as a family. As a newly independent organization, LFM made its public debut in September 2006, when five severed heads were dropped onto a nightclub’s

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<sup>8</sup> Salvador Mora, *El narcotráfico en México: cinco problemas transversales*. CONTRALÍNEA (2012), available at <http://contralinea.info/archivo-revista/index.php/2012/09/09/el-narcotrafico-en-mexico-cinco-problemas-transversales/>.

<sup>9</sup> GEORGE W. GRAYSON, MEXICO: NARCO-VIOLENCE AND A FAILED STATE? 199-200 (Transaction Publishers, 2010).

dance floor in the city of Uruapan, Michoacán. The new cartel left a sign with a message to rivals, authorities, and society: “The Family doesn’t kill for money, it doesn’t kill women, it doesn’t kill innocent people—only those who deserve to die. Everyone should know: this is divine justice”.<sup>10</sup>

LFM used fear and intimidation to pursue their criminal activities while simultaneously using a double discourse to gain social acceptance. On one hand, LMF proclaimed itself as protector of Michoacán’s inhabitants against the criminals and drug dealers, usually pointing fingers at members of the *Los Zetas* cartel. On the other hand, the cartel kidnaped, extorted, sold drugs, and killed people who did not pay for ‘protection’. According to an expert on Mexican organized crime, “La Familia’s intense propaganda campaign [was] designed to intimidate foes, terrorize the local population, and inhibit action by the government. La Familia continually asserts its commitment to ridding the state of malefactors”.<sup>11</sup>

*La Familia* successfully built a social base in regions of Michoacán that were poorly developed. It used a religious cult-like approach that highlighted family values to brainwash members and create support. It also challenged state authority by creating a parallel government demanding “taxes” (called *cuota* in Spanish, meaning share) from businessmen, mediating in legal conflicts, financing municipal projects, and even fighting petty crime.<sup>12</sup>

Along with violence and intimidation, *La Familia* took a silver or lead (*plata o plomo*) approach to “persuade” state and municipal politicians and law enforcement agents to join the organization as well. This meant that authorities either accept bribes or they—and their families—will be murdered. LFM showed no mercy to those who refused to follow their demands. During President Calderon’s tenure, 21 local officials were killed in Michoacán.<sup>13</sup>

When the LFM cartel became an independent organization, it carried out an aggressive strategy to completely take control over small towns all over Michoacán. Convoys full of armed men arrived in these municipalities, outgunning the local police departments, and looking for the mayors. The LFM’s deputy would then say that *La Familia* wanted to work there, that there would be no trouble, crime, or drunkenness, and that they would not cause problems. Then, LFM would own the town and enforce its own rules.<sup>14</sup> Around 2006, in a short period of time and in a well-organized manner, this strategy quietly took effect. The state government knew of these criminal activities because most mayors panicked and asked the governor for help or guidance.

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<sup>10</sup> William Finnegan, *Letter from Mexico: Silver or Lead*, THE NEW YORKER, May 31, 2010, at 40, available at <http://www.newyorker.com/magazine/2010/05/31/silver-or-lead>.

<sup>11</sup> Grayson, *supra* note 9.

<sup>12</sup> Finnegan, *supra* note 10.

<sup>13</sup> Jorge Grande, Grande, *Matan a 174 funcionarios en el sexenio; 83 eran jefes policiacos*, EXCÉLSIOR Nov 9, 2011, <http://www.excelsior.com.mx/2011/09/11/nacional/767638> (last visited May 20, 2014).

<sup>14</sup> Finnegan, *supra* note 10.



The state government turned a blind eye, however, either to avoid an open confrontation with a powerful organization or because the government was already infiltrated by the cartel.

The infiltration of the state government by the LFM cartel became public news soon after the *Michoacanazo* roundup, when the Attorney General's Office requested a warrant of arrest for Julio César Godoy Toscano—the Michoacán governor's half-brother—who had been recently elected to the lower house of Congress. He was accused of being part of LFM, providing information and offering political protection. He denied the accusations saying they were politically motivated. When this case became a source of public confrontation between the governor of Michoacán and the federal government, the Attorney General's Office leaked a conversation between Godoy Toscano and a kingpin of LFM to the media. The brand-new politician was eventually impeached by the House, losing his parliamentary immunity, which forced him to flee and become a fugitive.<sup>15</sup>

This is the context in which the *Michoacanazo* took place—a context in which criminal activities, politics, corruption, ideology, and a rigid criminal justice system all intertwined creating a dramatic legal confusion. Everything in the *Michoacanazo* files could be true, except that there is no conclusive evidence about whether or not the defendants are guilty or innocent. Or maybe there is enough evidence, but judicial rules or legalistic interpretations have limited its scope to convict defendants. Nevertheless, the case provides enough information to prove that some municipals and state officials had ties with LFM and that federal courts suffered from external pressure to rule on this case. To clarify, the LFM cartel changed its name to *Los Caballeros Templarios*—LCT (Knight Templars) in 2010 due to in-fights within the group and as a strategy to lower the profile of its leaders.

### III. THE *MICHOACANAZO* TRIAL

The *Michoacanazo* trial is a paradigmatic legal case of the tragic shortcomings of the Mexican criminal justice system. It shows the convergence of several problems that have plagued the country for decades or even centuries: influence peddling, abuse of power, political corruption, legalism, impunity, and connivance. At a closer look, the *Michoacanazo* case is a tangled web of controversy, inconsistent evidence, legal contradictions, half-truths, plus discretionary and legalistic interpretations of the law. After reading the evidence, it is impossible to tell whether the entire case is true or false. What is clear by the end of the trial is that all the defendants were freed. Mexican society will

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<sup>15</sup> Roberto Garduño & Enrique Méndez, *Era enlace entre La Familia y gobierno del estado de Michoacán, sostiene PGR*. LA JORNADA, December 15, 2010, available at <http://www.jornada.unam.mx/2010/12/15/politica/002n2pol>.

never know if the case was a genuine attempt at curbing organized crime, a simplistic political maneuver to gain electoral benefits, or a little bit of both.

### 1. *The Raid*

On May 26, 2009, the Mexican federal government arrested three dozen municipal and state employees in the state of Michoacán. The federal Attorney General's Office headed this operation and 11 Michoacán mayors, one public security director, numerous police officers, a state judge, and the Michoacán Attorney General were among the detainees who were brought in. The federal attorney's office argued that these officials had ties with or gave protection to the powerful regional cartel known as "*La Familia Michoacana*."<sup>16</sup> This episode was dubbed the *Michoacanazo* because it took place in the state of Michoacán and the detainees were all authorities from this state.

The arrests were made by federal forces without prior notice to state law enforcement agencies or the local government. The news of this event made headlines nationally and internationally, and created a deep political conflict between the state and the federal governments.<sup>17</sup> State elections would take place only a few months ahead, and because the state government was under control by the opposition party (*Partido de la Revolución Democrática, PRD*), some pundits viewed these arrests as politically motivated to discredit the PRD party and influence the election.<sup>18</sup>

The detainees were sent to Mexico City and put under a provisional "house arrest," which is called *arraigo* in Mexican law. The *arraigo* is a 40-day detention period allowed by the Federal Law against Organized Crime (*Ley Federal Contra la Delincuencia Organizada*) to give time to the Prosecutor's office to collect enough evidence to indict someone under organized crime accusations. After the *arraigo* ended, the detainees were formally indicted of organized crime encouragement (*delincuencia organizada en la modalidad de fomento*), and most of them were sent to a federal prison located in the city of Tepic in the state of Nayarit. Because organized crime is a federal crime, a federal prosecutor handled the indictment and the federal judiciary, the criminal trial.<sup>19</sup>

Once the defendants' lawyers began to challenge both the indictment and the evidence, the defendants were transferred to a prison in Morelia, the capi-

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<sup>16</sup> Ernesto Elorriaga & Gustavo Castillo, *Inusitada detención en Michoacán de 10 alcaldes, 17 funcionarios y un juez*, LA JORNADA, May 27, 2009, available at <http://www.jornada.unam.mx/2009/05/27/politica/003n1pol>.

<sup>17</sup> *Id.*

<sup>18</sup> Eduardo I. Aguirre, *Maniobra política y ministerial*, AGENCIA LATINOAMERICANA DE INFORMACIÓN, (2010), available at <http://alainet.org/active/43110&lang=es>.

<sup>19</sup> Michoacanazo File, Juzgado Primero de Distrito en el Estado, Causa Penal Número II-4/2010. Décimo Primer Circuito del Poder Judicial Federal [Mexican Federal Judiciary, Eleventh Circuit].

tal of Michoacán, and later on the case was also sent to a district court in this city. A year later, twenty suspects had been released, and eventually all of them were freed within a two-year period. This was mostly due to a lack of conclusive evidence as a result of legal technicalities, according to the MFJ. President Calderón defended the *Michoacanazo* operation, arguing that there was enough incriminatory evidence against all the detainees. After they were released, the President suggested that the judge who acquitted most of the defendants had not properly taken into account witness testimonies and telephone recordings, which were a crucial part of the indictment. Interestingly, this judge was dismissed later on by the Council of the Judiciary and is under federal investigation for money laundering. He is still at large.<sup>20</sup>

The trial evidence in the *Michoacanazo* case—and how it was interpreted by the federal courts—plays a crucial role in understanding the contradictions of the Mexican legal system and how corruption can operate within the realm of legality. These contradictions are the product of obsolete legislation and the rigidity of a legal system that requires strict adherence to the literalness of the law. The aforementioned contradictions are mostly reflected in a myriad of ways, such as discretionary interpretations of the law, the use of the prosecutor's office as a political tool, and rampant impunity.

## 2. *The Evidence*

Legislation dealing with organized crime in Mexico is relatively new. The current Federal Law against Organized Crime (FLAOC)<sup>21</sup> only dates back to 1996, when the last government of the authoritarian regime felt international pressure to take an active role against drug trafficking organizations. The law has forty-five articles, and has been amended many times in recent years. This high number of amendments shows that the government is trying to improve the law in order to better deal with criminal organizations, but it also displays how the law suffers from legal loopholes that make it quite unreliable.

Among the new legal statutes introduced by the FLAOC was a witness protection program (*programa de testigos protegidos*). Provision 35 of the FLAOC regulates when and how members of organized crime can collaborate with the prosecutor's office to incriminate other members and receive lesser sentences. The Mexican legal system had no prior experience of this program before 1996. It was basically borrowed from the US system and then adapted it to the Mexican reality. Little is known about how favorable the program has been given the secrecy and lack of transparency that characterizes law

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<sup>20</sup> Alfredo Méndez, *Otorgan protección contra la PGR a ex juez que liberó a implicados en el michoacanazo*. LA JORNADA, January 8, 2014, <http://www.jornada.unam.mx/2014/01/08/politica/013n1pol>.

<sup>21</sup> Ley Federal contra la Delincuencia Organizada [LFCDO] [Federal Law against Organized Crime]. Diario Oficial de la Federación [D.O.] 7 de noviembre de 1996 (Mex.).

enforcement agencies in Mexico. However, whether or not this program has been effective, on November 30, 2009, a protected witness—a former commander at the federal police named Édgar Enrique Bayardo del Villar—was murdered by hitmen when he asked his guards to stop to get coffee at a Starbucks in Mexico City. While working as a high-ranking official, this official was an informant for both the Sinaloa cartel and the Drug Enforcement Agency.<sup>22</sup> Yet another one of the key protected witnesses in the *Michoacanazo* trial was also murdered.<sup>23</sup> There have been similar cases in which protected witnesses have been murdered or have disappeared. These examples suggest that there are serious deficiencies in the program that need to be addressed if the government wants to use it as a reliable tool against criminal organizations.

#### A. Protected Witnesses (*testigos protegidos*)

Three key witnesses of the *Michoacanazo* case were in the witness protection program. According to the files, three former members of *La Familia Michoacana* cartel, nicknamed in the indictment as “Ricardo,” “Emilio,” and “Paco,” decided to cooperate with the federal Attorney General’s Office. They described the cartel’s criminal activities, naming the *Michoacanazo* case detainees as collaborators of this organization. According to these witnesses, this collaboration between officials and the LFM cartel was done in several different ways: providing police protection, acting as an informant, and turning a blind eye to criminal activities.<sup>24</sup>

#### B. Drug Trafficking Payroll (*narco-nómina*)

An important piece of evidence was a so-called *narco-nómina* (drug trafficking payroll) found in the truck of one of the sons of LFM’s kingpin during a police operation in the southern region of Michoacán. On January 27, 2009, federal police agents were conducting a criminal investigation in the Arteaga municipality to track Servando Gómez Martínez (a.k.a. *La Tuta*)’s illegal activities and arrest him. He had been the best-known face of this cartel, and the federal government wanted him behind bars. After a roundup, the kingpin was able to run away, but federal agents arrested his son Servando Gómez Patiño. Among the personal belongings in his possession, the son had

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<sup>22</sup> María de la Luz González, *Matan a testigo protegido de la PGR en Starbucks del DF*. EL UNIVERSAL, December 1, 2009, available at <http://www.eluniversal.com.mx/notas/643349.html>.

<sup>23</sup> *Asesinan a testigo de El Michoacanazo*. CAMBIO DE MICHOACÁN (2013), available at <http://www.cambiodemichoacan.com.mx/nota-195190>.

<sup>24</sup> Michoacanazo File, *supra* note 19.

a couple of handguns, an AK-47 rifle, ammunition, and some sheets of paper with a list of names, employment positions, cities, salaries, and liaisons. The information on the sheets was distributed into five columns with 101 entries. This document had the names of dozens of high-ranking state officials in law enforcement agencies, as well as mayors, commanders of the state police, police officers, and other officials. Among those names were most of the public servants indicted in the *Michoacanazo* trial. This written record became known as the *narco-nómina* because it allegedly described the monthly “salary” officials received from the LFM cartel for providing protection. This document was used by the prosecutor as a fundamental piece to support the indictment.<sup>25</sup>

### C. Police Reports (*partes policiacos*)

There were at least six police reports issued by federal agents conducting intelligence operations about the criminal activities of the LFM cartel during the first three months of 2009. One of these reports explains the police operation that led to the arrest of the kingpin’s son in January 2009. Other police reports provide information about different activities of LFM cartel members, such as searches and police reconnaissance operations. However, most of the content of these reports have general information about LFM, but nothing specifically about the defendants of the *Michoacanazo* case. The reports provide information on some of the cartel’s illegal activities and how it operates without naming specific individuals linked to these activities.<sup>26</sup>

### D. General Evidence (*pruebas generales*)

Other evidence includes a report from the federal prosecutor’s office about a search that took place in Mexico City in October 2008. During this search, a laptop computer containing several files of information regarding the LFM cartel was seized. Among these files were recorded conversations between LFM cartel members talking about their everyday criminal activities, using codes and the cartel’s slang to communicate. This information was directly related to the *Michoacanazo* trial because the prosecutor used these electronic tapes to support the argument that the LFM cartel had ties with some of the defendants in the trial. I read the transcriptions of these tapes, but the content of the information is sketchy, and the people talking were careful enough to avoid giving full names. Some surnames mentioned in several tapes matched those of some of the defendants, but there was no clear evidence that the content of the tapes directly referred to any of the defen-

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

dants. At least, the federal prosecutor did not make a good case out of these tapes. In addition, there was no expert witness saying that the voices in the tapes matched those of the accused parties.<sup>27</sup>

On December 15, 2008, an anonymous report was filed. The federal prosecutor argued that on this date an unknown person had called the SIEDO—the abbreviation for the *Subprocuraduría de Investigación Especializada en Delincuencia Organizada* (Assistant Attorney General's Office for Special Investigations on Organized Crime)—to denounce the criminal activities of the LFM cartel and how local authorities supported these activities. In this report, the unknown person named several individuals indicted in the *Michoacana*.<sup>28</sup>

This was all of the relevant evidence that the prosecutor's office used to indict and request an arrest warrant for the defendants in the *Michoacana* case. The warrants were issued because in the Mexican legal system a criminal judge does not need to have conclusive evidence to put someone on trial. The prosecutor only has to provide evidence leading to a convincing presumption of culpability of the accused party. The verdict, on the other hand, requires the establishment of guilt beyond a reasonable doubt.

### 3. Proceedings

As mentioned earlier, organized crime and drug trafficking are considered federal crimes in Mexico and that only the MFJ has jurisdiction over these cases. According to the federal criminal procedural law (*Código Federal de Procedimientos Penales*), district court jurisdiction (*Juzgados de Distrito*) is decided by one simple rule: they have legal authority to handle crimes that take place in the same venue where the district court is located (e.g. city, state, region). District courts receive indictments from the prosecutor's office based on territorial jurisdiction. However, when dealing with organized crime indictments, the law allows federal prosecutors a few exceptions. In other words, when dealing with dangerous defendants, they can send an indictment to a particular judge or jurisdiction regardless of where the crime was committed.

Because the arrest warrants in the *Michoacana* case were issued by judge Carlos Alberto Elorza Amores—whose district court was located in the state of Nayarit, the case and the defendants was sent there. Once the trial proceedings began, twelve of the defendants were released by a higher court due to a lack of conclusive evidence because of legal technicalities through *Amparo* suits. In the meantime, the rest of the defendants asked to be transferred to Michoacán where the crimes had occurred. This request took several months to be processed before being addressed by the judges. Eventually federal judges sided with the defendants in their request to have the *Michoacana* file

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

transferred to Michoacán. A district court in Morelia began handling the trial and the defendants were sent to this state.

It is important to mention that a collegiate court upheld the detention order of some of the defendants who had appealed the charges at the beginning of the trial proceedings. This means that there were contradictory legal decisions issued by several MFJ courts. While some courtrooms initially confirmed the legality of the evidence, others rejected the case arguing that the evidence had not been gathered in strict adherence to the law.<sup>29</sup>

The *Michoacanazo* file was sent to the First District Court in Morelia headed by Judge Efraín Cázares López at the beginning of 2010. This district court and this judge in particular played a pivotal role in this case because the judge released most of the defendants. He also issued an injunction favoring the governor's half-brother that allowed him to be sworn in as congressman and obtain parliamentary immunity, despite a detention order issued by another federal judge on felony charges.<sup>30</sup> During the ethnographic research, some interviewees said that this judge had a reputation for being corrupt and had favored the defendants of the *Michoacanazo* case one way or another.

#### 4. *Verdicts*

Before the case was sent to the First District Court in Morelia, at least three different federal courts had already ruled that the evidence in the *Michoacanazo* trial was too inconclusive to prosecute the accused parties.<sup>31</sup> The defendants were gradually released by using different legal strategies to overturn the indictments. For instance, a cluster of defendants requested an *Amparo* suit, while others appealed the indictment. Another cluster proceeded to fight the evidence using new evidence to file motions for dismissal. Some defendants hung on for the entire trial until they were released in the final verdict.<sup>32</sup>

The First District Court's judge freed twenty of the defendants in a period of several months. According to the judge, the witnesses' testimonies were unreliable because they did not comply with procedural law. The prosecution presented their protected witnesses as eyewitnesses, and the judge concluded that they had no credibility because their testimony was inconsistent. He said that witnesses failed to provide the context and relevant knowledge of how

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<sup>29</sup> *Edil de LC gana amparo contra auto de formal prisión* CAMBIO DE MICHOACÁN (2010), available at <http://www.cambiodemichoacan.com.mx/vernota.php?id=128206>.

<sup>30</sup> Gustavo Castillo García, *Sólo castigo administrativo al juez que frustró el michoacanazo, si prospera queja de la PGR*. LA JORNADA, October 3, 2010, available at <http://www.jornada.unam.mx/2010/10/03/politica/011n1pol>.

<sup>31</sup> Elly Castillo, *Reprochan uso político de michoacanazo*. EL UNIVERSAL, October 5, 2010, available at <http://www.eluniversal.com.mx/notas/713940.html>.

<sup>32</sup> Michoacanazo File, *supra* note 19.

and why the defendants had given protection and/or information to the LFM cartel (*circunstancias de modo, tiempo y lugar*). The judge argued that the witnesses' testimonies only included general information about matters of general interest regarding the LFM cartel and were not specific about the circumstances of the crime.<sup>33</sup>

In addition, the judge ruled that the prosecutor had failed to present the witnesses before the court for confrontation and cross-examination with the defendants, despite requests from the defense and a subpoena issued by the judge. The judge also concluded that two of the witnesses were hearsay witnesses because they testified about something that someone else had told them. Unlike in the United States, criminal procedural law does not allow these types of witnesses in Mexican courts and therefore their testimony cannot be considered credible.

The judge of the First District Court also dismissed the *narco-nómina* document, arguing that it was not credible enough given that it was not authored by anyone in particular and that the prosecutor had failed to demonstrate who wrote it. The police reports were also disqualified as evidence because their content was not supported by any other evidence. The judge deemed these police reports insufficient to prove the defendants' guilt. The same argument was applied to the electronic tapes and files found in the computer seized in Mexico City, as well as the rest of the evidence that was brought to support the indictment. To conclude his argument, the judge argued that since there was no hundred percent certainty the defendants were criminally responsible, he had to apply the legal principle *in dubio pro reo*. This meant the defendants could not be convicted if there was legal uncertainty about their guilt—similar to the principle of *Beyond Reasonable Doubt* in the US legal system.<sup>34</sup>

Although the law has set up specific guidelines on how to assess trial evidence, judges still enjoy discretionary decision-making power. This power is more important when the evidence is blurred and inconclusive because the verdict can be either guilty or innocent. Either way the verdict goes, it would still be considered legal. In the case under analysis, my personal interpretation<sup>35</sup> is that some defendants could have been convicted with the evidence on the file had the case not been politicized and subjected to external influence. The judge of the First District Court certainly had enough independence to decide the *Michoacanazo* case. That being said, data from interviewees and the judge's own dismissal of the case from the MFJ suggests that corruption might have played a role at some point in the trial.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> This legal interpretation is based on my several years of experience as a litigant in Mexican federal and state courtrooms.



#### IV. THE *MICHOACANAZO* FEDERAL JUDGE

According to information from the Council of the Judiciary, Judge Efraín Cázarez López received his law degree from the *Universidad Michoacana*, a public university located in Morelia. He worked in several government positions in the state of Michoacán, then as a litigant in his own law firm. Later on, he got a position in the MFJ as a secretary of a district court in Northern Mexico and eventually became a federal judge. In the early 2000s, he was appointed Judge in the First District Court in Morelia.<sup>36</sup>

Most federal judges enjoy independence and autonomy in their rulings. It is precisely because judges exert judicial independence when it comes to their duties that corrupt acts can occur. According to the interviewees in this research, corruption exists within the MFJ and although it is not a common practice, it could be as high as 10% or as low as 1%.<sup>37</sup> The clear message is that corruption happens. Even when the vast majority of interviewees agreed that corruption existed in the MFJ most of them avoided pointing fingers at those who engaged in such practices. However, in the case of Judge Efraín Cázarez López a few people suggested that he had a reputation of engaging in wrongdoing.

At least two respondents explicitly suggested that this judge was known for being corrupt. Interestingly enough, they did not mention the judge's name, but instead they just said that the judge in charge of this court had that reputation. One of those interviewees was a magistrate who said: "*Aquí tenemos un juez que tiene fama de ser así [corrupto], todo mundo lo sabe*" (We have a judge here who is known for being like that [corrupt]. Everyone knows it). Even if they acknowledged the existence of corruption, most senior officials at the MFJ would never mention the names of those who engage in these practices. There is an unwritten rule among these officials, a sort of code of silence (or judicial *Omertá* so to speak) by which they do not accuse their peers or senior officials of any wrongdoing—at least not directly and openly—because it affects the prestige of the institution. Yet, some interviewees were extremely critical of the traditional practices like nepotism that still plague the MFJ. For instance, interviewee Patricio said that the *Michoacanazo* trial was not free from external influence. He argued that this case was a typical example of blatant corruption from all the parties involved. Patricio said:

<sup>36</sup> Consejo de la Judicatura Federal <http://www.cjf.gob.mx/> (Last visited December 28, 2011).

<sup>37</sup> The reason for this broad range is that it is extremely difficult to quantify corruption. First, there are no official or unofficial data available to determine how prevalent the problem is. Second, even if data existed, it would not be reliable since people tend to underreport illegal behavior that is socially stigmatized, such as drug use, prostitution, and of course, corruption. Finally, since corruption occurs in secrecy, there are no witnesses to testify when it happens, and even if it were possible to infer its existence through other means, subjectivity shapes how people perceive the seriousness of the problem. Therefore, the degree of pervasiveness of judicial corruption varies but what does not change is its constant presence.

*El asunto del Michoacanazo es un caso típico de corrupción e intervención de muchos poderes, tanto a nivel federal como estatal. En los dos casos, tanto en el ministerio público como en los tribunales, para agarrar y soltar inculpados, intervino el poder del Estado. Una forma de deducir la existencia de corrupción se deriva de que existieron los mismos hechos, con las mismas fechas, pero se dieron diferentes resoluciones con criterios distintos.* (The Michoacanazo case is a typical example of corruption and external influence from different government sectors at state and federal levels. In both institutions, the Attorney General's Office and the MFJ, the State's power intervened in the arrest and release of the defendants. One way to know that corruption took place comes from the fact that the same evidence with the same dates [and this case in particular] was assessed differently [by several federal courts] using diverse legal criteria. There was never a unanimous decision from all of the judges who looked at it).<sup>38</sup>

Patricio referred to the existence of contradictory decisions by the district courts and collegiate courts that confirmed the detention orders and the legality of the arraignment at the beginning of the trial and the others that did exactly the opposite. He also emphasized that the district court in Morelia that had handled the case was suspicious because it tended to favor one of the parties. Patricio did not mention the judge's name directly but implied his identity by naming the district court.

I informally asked a litigant with close ties with the federal courts in Morelia whether or not Judge Efraín Cázares López's reputation was based on fact. This litigant did not want to be interviewed, but told me off record that she personally knew the First District Court judge and his reputation as a corrupt official was true. I asked her how the judge could get away with it if verdicts could be challenged through appeals. The litigant said that there were also magistrates in collegiate courts who could be "bought." However, in some cases that was not necessary—this litigant said—because the collegiate briefs submitted by prosecutors tended to be flawed due to chronic underfunding of their office. Collegiate courts could simply dismiss such cases on technicalities. Besides, she added, judges are not stupid and they know how to use their discretionary sentencing power to favor a party without appearing that they are bending the law. This power is easier to use when the case is controversial and the evidence is blurred, which is what happened in the *Michoacanazo* trial, according to this informant.

### *Silver or Lead (plata o plomo)*

Denouncing a judge as corrupt is a serious accusation that cannot be taken lightly. Normally, direct evidence would be necessary to prove that a particular judge has engaged in corrupt acts. For obvious reasons, this would be almost

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<sup>38</sup> Fieldwork Research, Interview with an interviewee named Patricio, Morelia, Mexico (summer 2011).

impossible to do because of the secrecy that characterizes and surrounds corruption. As a qualified professional of legal matters, a judge would make sure not to leave any shred of evidence if he or she dared to engage in wrongdoing. Nevertheless, it is still possible to infer whether corruption played a role in the case by looking at the context and circumstantial information available.

The *Michoacanazo* was a thorny case to handle for any of the judges who issued rulings before the trial was sent to Morelia because of the parties who were involved. The defendants were public officials, both federal and state governments had specific political interests at stake, and the powerful and dangerous local cartel LFM could use its influence to sway decisions. Since the defendants' arrests in May 2009, the case became a battleground between the federal government and the state government of Michoacán. On one hand, the President wanted to set a precedent that official protection to drug traffickers would not be tolerated anymore, and he put pressure on the Attorney General's Office to have a successful outcome. On the other hand, the state government assumed that the *Michoacanazo* was politically motivated and wanted to clear its name with an acquittal for its imprisoned public servants. Both governments were at odds with the case and were willing to invest any necessary means to reach their goals.

The federal government wanted the trial to be handled in a jurisdiction other than Michoacán because governors have influence and power in their states, sometimes even over federal institutions with branches in the state. The federal government gained the upper hand at the beginning of the trial by sending the file to a district court in the state of Nayarit. Once the case was moved to Morelia, the balance of power favored the governor—and the defendants—because the legal dispute went to state territory where powerful law firms, connections, and local politics could intervene, even if the trial was under federal court jurisdiction. More importantly, Morelia (the capital of Michoacán state and where the First District Court was located) was one of the most critical strongholds of LFM cartel. No doubt these facts put extra pressure on the federal judge handling the trial. This pressure is an important factor to take into account given the previous threats from the LFM cartel against senior MFJ officials in Morelia.

During fieldwork in Morelia, a couple of interviewees mentioned that senior officials in the Michoacán jurisdiction had recently been threatened by a drug cartel. According to these interviewees, officials did not mention any of this to anyone, not even to junior officials so as to avoid panic. None of these interviewees knew exactly what kind of threat was made or when it was received, but they knew that it had happened. It turned out that one of the last interviewees, Oscar, knew a little bit more about these threats. He explained that the LFM cartel had sent out a letter not too long ago to all judges and magistrates in the Michoacán jurisdiction with a short text reading: “*La Familia* los está observando” (The Family [cartel] is watching you). Oscar confirmed that both judges and magistrates agreed not to tell anyone about it to

prevent fear or anxiety in their employees, but the news leaked somehow and many junior officials like him ended up finding out about it.

It is known that the LFM cartel had instilled fear with its *silver or lead* approach to buying or controlling local authorities.<sup>39</sup> It is not difficult to imagine, then, the mounting pressure that was put on the judge who handled the *Michoacanazo* trial. Whether or not the judge was explicitly told to rule in favor of the defendants, he must have been wary enough of upsetting this criminal organization during the course of the *Michoacanazo* proceedings.

Interestingly, Judge Efraín Cázarez López went to law school and graduated from the local public university in Morelia. This meant that many of his former classmates and colleagues lived and worked in that city. Furthermore, former peers and classmates would be well-established litigants who came into contact with him as part of their everyday activities. It is also important to keep in mind that before becoming a federal judge he had been a state employee, which means he had a network of acquaintances and friends linked to state officials, a common situation in Mexican politics and among public officials.<sup>40</sup> All of these details are not silly assumptions about this judge's background, but important implications that help to understand how external forces may have influenced the results of the *Michoacanazo* case. From a Mexican legalistic perspective, these assumptions would be inadmissible since there is no concrete evidence to support them. However, they can be logically deduced from the records available because there is nothing that contradicts the information but much to confirm it.

## V. THE PROSECUTOR'S OFFICE

Interviewee Ignacio had in-depth knowledge of the *Michoacanazo* case. In general, he praised the MFJ, but he argued that sometimes federal judges followed orders by the Attorney General's Office and issued arrest warrants without sufficient legal grounds. Ignacio called these judges *jueces de consigna* (*ad hoc* judges) because they systematically sided with all of the prosecutor's requests. He explained that the reason for this was that judges either lacked experience or feared pressure from the SIEDO. Ignacio did not suggest that corruption or influence peddling were used by the SIEDO to gain the support of the judges. He said that in general federal judges are well trained and most enjoy independence in their verdicts —as confirmed by most interviewees. However, evidence from this research suggests that *ad hoc* judges do exist in the MFJ and that sometimes the Attorney General's Office does depend on them to indict certain people.

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<sup>39</sup> Finnegan, *supra* note 10.

<sup>40</sup> PETER H. SMITH, *LABYRINTHS OF POWER: POLITICAL RECRUITMENT IN THE TWENTIETH-CENTURY MEXICO*, (Princeton University Press, 1979).

The federal judge who issued the arrest warrant in the *Michoacanazo* case was Carlos Alberto Elorza Amores, who was located in the jurisdiction of the state of Nayarit in Western Mexico back then. He suffered an armed attack in August 2009 where one of his bodyguards died and he himself barely made it out alive. There is some suspicion that this judge favored requests from the Attorney General's Office to prosecute people without legal grounds. In May 2010, a year after the *Michoacanazo* roundup, the SIEDO wanted to arrest Gregorio Sanchez, the mayor of Cancun, a beach resort in the Caribbean. He was running for governor on behalf of the Party of the Democratic Revolution, the same party that governed the state of Michoacán at the time. He was accused of allegedly being linked to drug cartels and money laundering. It turns out that the SIEDO originally requested an arrest warrant against this politician from the Sixth District Court located in the state of Mexico. The federal judge there denied the warrant arguing that there was no evidence in the case, not even enough to arrest the politician under presumption as allowed by law.<sup>41</sup>

Later on, the SIEDO requested a second arrest warrant, this time sending the indictment to Judge Carlos Alberto Elorza Amores, the same judge who initially handled the *Michoacanazo* case. The warrant was issued this time and the politician was sent to jail. Fourteen months later he was acquitted by a collegiate court and released.<sup>42</sup> This case holds some resemblance to the *Michoacanazo* case. In both cases, politicians from the opposition party were arrested before a state election. Both indictments relied on testimonies from former drug cartel members who were part of the witness protection program. In both cases, the arrest warrants were issued by the same federal judge. Lastly, in both trials the defendants were released due to a lack of evidence.

Although it would be difficult to demonstrate with conclusive evidence that *ad hoc* judges exist, the aforementioned cases suggest some sort of favoritism towards the Attorney General's Office, by some federal judges at least. The reason for this apparent favoritism and whether or not this is a common phenomenon remains unknown.

It is well-known that during the rule of the authoritarian government, the prosecutor's office was used as a tool to pursue political outcomes either by falsely accusing opponents of the regime or by jailing dissents who opposed the government.<sup>43</sup> It seems opportunistic and suspicious that during election time the federal government pulled out indictments against members of opposition parties in the states they controlled. Whether these indictments ended up convicting the defendants is a different story since apparently the

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<sup>41</sup> Francisco Reséndiz, *Juez negó a PGR orden de arresto*. EL UNIVERSAL, May 27, 2010, available at <http://www.eluniversal.com.mx/nacion/177981.html>.

<sup>42</sup> *Id.*

<sup>43</sup> REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO (Wayne A. Cornelius & David A. Shirk eds., 2007).

goal was to have an impact on the media in order to vilify a political party or politician, and hence, influence the election.

This manipulation of the prosecutor's office is not difficult to carry out because the criminal procedural law requires only presumptive evidence of guilt to issue an arrest warrant. As mentioned previously, there are legal rules that dictate how to proceed, but judges have ample discretionary power when assessing the evidence of a case. A good analogy is the common expression of the glass of water being half-empty or half-full. A legal decision or verdict can be interpreted either way in some cases: as legally sufficient for a particular judge to issue an arrest warrant, while in the same instance, another judge could come up with an opposite perspective using different, yet valid arguments. I would not say that this is a common practice in the MFJ because in most trials the evidence is crystal clear, but given how the procedural law has been set up the door is always open to different interpretations and indeed potential manipulation.

*Legal Inconsistencies in the 1<sup>st</sup> District Court in Morelia, Michoacán*

The Attorney General's Office (AGO) began to notice a pattern of favoritism towards the defendants and the state government when the First District Court by means of an *Amparo* suit allowed the governor's half-brother to be sworn in as a congressman—which gave him parliamentary immunity—despite the arrest warrant he had for organized criminal charges. There were other trials in the same district court in which the judge systematically rejected the federal prosecutor's petitions to allow the arrest of the governor's half-brother. These judge's rulings did not mean that the actions were illegal or the result of corruption, but they signaled red flags that suggested potential partiality against the AGO.<sup>44</sup>

The Attorney General's Office became suspicious of the judge's impartiality when all of the governor's half-brother's *Amparo* suits were “coincidentally” sent to the First District Court. According to the AGO, the judge also exceeded his authority by offering the half-brother legal benefits that were not allowed under the criminal code, such as keeping his political rights intact to avoid being arrested. In addition, the judge had freed several of the defendants of the *Michoacanazo* through motions of dismissal, which was unusual in organized crime trials due to the complexity and seriousness of the matters. Acquittals in these cases are normally granted at the end of the trial.<sup>45</sup> The straw that broke the camel's back was when the same judge authorized a joinder by which all the trials against the kingpin's son—the one arrested in January 2009 and who was found with the *narco-nómina*—would be jointed

<sup>44</sup> *PGR culpa al juez por pifia en michoacanazo*, MILENIO October 1, 2010, available at <http://impreso.milenio.com/node/8841155>.

<sup>45</sup> *Id.*

into the *Michoacanazo* trial and decided by the First District Court in Morelia. This last decision was later reversed by a higher court, and the joinder did not take place.<sup>46</sup> Based on these events, the AGO filed a formal complaint before the Council of the Judiciary against the judge, but the Council found nothing illegal at that time and the complaint was dismissed. It was not until October 2012 that the head of the MFJ finally dismissed Judge Efraín Cázarez López for gross misconduct.<sup>47</sup>

Overall, taking into account the political, social, legal, and drug cartel-related context of the *Michoacanazo* case, there is no doubt that there were clear intentions from most parties to influence the outcome of the trial by any means possible. Whether it was political corruption, influence peddling, abuse of power, fear of a drug cartel, bribery, or a combination of all of the above, the case was plagued with controversial decisions and sketchy legal facts disguised as strict adherence to the Rule of Law.

This wrongdoing can be identified in many different aspects of the *Michoacanazo* trial. First, the federal government acted wrongly by opportunistically rushing an indictment against the local government to gain political and electoral benefits without first building a solid case that would lead to clear-cut convictions. Second, the state government acted wrongly by framing the *Michoacanazo* case as politically motivated and by ignoring the possible ties between its public officials and the LFM cartel. It also engaged in a media campaign to challenge the case and providing active support for the defendants while ignoring the legal evidence that showed their officials were providing protection to LFM. Third, the defendants themselves acted wrongly first, by having ties with this criminal organization and second, for using their connections, money, and political power to find loopholes in the case and be freed. Finally, it may be difficult to determine to what extent the LFM cartel actively intimidated or bribed the *Michoacanazo*'s judge to help the governor's half-brother and the defendants. Given its reputation as a violent and ruthless organization and its total control of Michoacán territory, the cartel's reputation alone could have been enough to frighten any judge handling the cartel's criminal activities. Maybe it was a combination of both fear and bribery.

After analyzing the judge's background and his reputation as a crooked official, a conclusion could be drawn that he probably favored the defendants and the governor's half-brother to a certain point. The judge was actually dismissed for those reasons, although the head of the MFJ never explained the exact cause for dismissal. Unfortunately, in the Mexican criminal justice system sometimes bribery is used to make sure a particular outcome for a verdict is guaranteed, and certainly this is easier to do when the evidence is

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<sup>46</sup> *Invalida tribunal resolución favorable al hijo de la "LaTuta."*, EL SIGLO DE TORREÓN February 1, 2011, available at <http://www.elsiglodetorreon.com.mx/mobile/?n=596451>.

<sup>47</sup> Jorge Carrasco Araizaga & Patricia Dávila, *Contra jueces, embate electorero*, PROCESO, June 10, 2012.

inconclusive, contradictory, and prone to multiple interpretations—as in the *Michoacanazo* case.<sup>48</sup>

## VI. THE VERDICTS FROM COLLEGIATE COURTS

(*TRIBUNALES COLEGIADOS*)

I read two rulings from a higher court that had upheld the release of several defendants of the *Michoacanazo* case, and they were notoriously suspicious when it came to crucial legal grounds. Both rulings came from the same magistrate, and in both cases, the verdict did not take into account all the legal arguments that the prosecutor had included in the collegiate briefs. The prosecutor's arguments were dismissed based on technicalities, but the magistrate's legal reasoning showed a lack of a thorough analysis of the disputed evidence. The main argument for the dismissal (which in judicial argon is called *puntos finos*—fine points) was written in a couple of pages. Given the context and dimension of the trial, which consisted of thousands of accumulated pages, it was remarkable to read such a shallow argument in the collegiate verdict. After this court decision, the federal prosecutor did not have any other legal option with which to challenge the magistrate's verdicts.<sup>49</sup>

Contradictory rulings based on the same evidence and facts suggest the existence of corruption, or at least political influence, because these rulings did not occur between lower and collegiate courts, but among lower courts and then among collegiate courts. In democratic court systems it is not uncommon for lower court decisions to be overturned by collegiate courts based on different interpretations of the facts and the law. However, in the *Michoacanazo* trial, different lower courts ruled in opposing ways at different stages of the legal process using the same facts and information. For instance, at the beginning of the trial some district court judges accepted the evidence as legal while others did not. When some defendants appealed their indictments, some collegiate court magistrates upheld the decisions while others did not.<sup>50</sup> These inconsistent rulings suggest some sort of influence/corruption or a systematic lack of judicial criteria pervading the entire Mexican Federal Judiciary.

## VII. CONCLUSIONS

### 1. *The Predicaments of the Mexican Federal Judiciary*

The *Michoacanazo* provides a dramatic example that the MFJ cannot always guarantee a judge's impartiality in trials involving powerful parties like

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<sup>48</sup> Cornelius and Shirk, *supra* note 43.

<sup>49</sup> *Michoacanazo* File, *supra* note 19.

<sup>50</sup> *Id.*



the government, public officials, and drug cartels. This was not a typical trial in organized crime-related charges, nor was it the first time a state government and the President had a confrontation in a federal court. However, the political animosity and confrontational positions between the executive and judicial branches was unheard of in Mexico.

When the Attorney General's Office complained about the misconduct of federal judges in the *Michoacanazo* case, the head of the federal judiciary dismissed these criticisms as nonsense. Then President Calderon raised the issue and publically denounced that some federal judges were corrupt; the MFJ responded politically by requesting respect for the separation of powers principle and judicial independence.<sup>51</sup> The MFJ did not thoroughly investigate the judge or looked at the *Michoacanazo* trial early on to verify whether or not any wrongdoing had taken place. It was not until many months later that the MFJ conducted an internal investigation and found serious misconduct in the judge's actions. He was placed on administrative leave and was eventually fired.<sup>52</sup> What is astonishing is the reluctance of the MFJ to admit, first of all, that corruption occurs within the institution; and second, the lack of efficient and timely mechanisms to prevent, detect, and deal with bribery and wrongdoing.

Likewise, the different and contradictory rulings between judges and magistrates throughout this trial show a lack of unified judicial criteria in the MFJ to decide on controversial cases. Although this disparity of rulings could be interpreted as an expression of judicial independence, it is more a reflection of poor legal consistency and little supervision to maintain high standards in sentencing guidelines. It seems as if trial courts and collegiate courts have their own legal agendas based on judges' personalities rather than on institutional norms and values. Because the same facts, evidence, and circumstances of the trial were interpreted differently, using an extensive variety of legal perspectives did not contribute to the principles of certainty and legality that should characterize the judicial system, and sentencing in particular. The *Michoacanazo* confirms what most Mexicans think of the judicial system: that corruption exists in the MFJ. The misconduct of the judge in charge of this trial is a clear indication of this. Unfortunately, this is not the only instance where federal judges have engaged in wrongdoing. Recently, a judge and two magistrates were put on administrative leave while a criminal investigation was under way after the head of the MFJ found that they have favored a casino owner in northern Mexico in exchange for economic benefits.<sup>53</sup>

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<sup>51</sup> Jorge Carrasco Araizaga, *Ministro de la Corte responde a Calderón sus reproches y críticas*, PROCESO, December 15, 2011, available at <http://www.proceso.com.mx/?p=291500> (Last visited June 7, 2014).

<sup>52</sup> Méndez, *supra* note 20.

<sup>53</sup> Alfredo Méndez, *Suspenden a dos magistrados y un juez por presuntos nexos con el zar de los casinos*, LA JORNADA, May 9, 2014, available at <http://www.jornada.unam.mx/2014/05/09/politica/013n1pol>.

A courtroom offers many opportunities to attract corrupt practices—which are certainly more prevalent in criminal than in civil courts—because of the interests at stake. Several cases in recent years<sup>54</sup> have shown that corruption in the MFJ is more pervasive than previously thought; yet the institution's official version is that this phenomenon does not exist, and if found, it is a matter of personal dishonesty, a “rotten apple” problem and not an institutional issue. By denying that corruption exists, even if it is a minor problem, the MFJ is shooting itself in the foot because it ignores the reality and dynamics of litigation, and powerful interests in high profile trials that encourage this practice. There is a sociocultural context in Mexican society where nepotism, cronyism, and favoritism are part of informal norms and social conventionalisms. Directly or indirectly, these norms and conventions shape and influence judges' decisions; by ignoring them, the head of the MFJ reproduces the problem and relinquishes its responsibility of addressing wrongdoing holistically and efficiently. This official attitude also contributes to the lack of trust and confidence Mexican society holds towards the judiciary because the MFJ's official policy does not reflect an honest and transparent institution when dealing with internal corruption.

Depending on whom you talk to, the *Michoacanazo* case can be seen as a fiasco, a case of corruption, an example of judicial independence or a typical political maneuver to get rid of political opponents. The difficulty on drawing a systematic interpretation of the trial derives from the complexity of the case itself, but also from the way it was handled by the federal and state governments, prosecutors, the federal judiciary, and the media. The case became politicized because it was convenient for all parties involved: they looked for their own personal, political, and institutional interests. Meanwhile, the facts, evidence, and legal elements of the trial acquired less importance or were lost.

This politicization was evident from the beginning of the case when the federal government's decision to prosecute local and state officials in Michoacán was rushed to influence the state elections. The evidence of the criminal investigation was weak and inconclusive while the raid to arrest the defendants seemed to be advertised in the media—nationally and internationally—to improve President Calderon's declining support for his “war on drugs” approach to deal with organized crime.

Likewise, the Michoacán state government and all the defendants argued that the prosecution was politically motivated because the President wanted his political party to win the coming local elections in Michoacán, which apparently turned out to be true since the President's sister—Luisa Maria Calderón—ended up as the official party's candidate for governor of Micho-

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<sup>54</sup> Alfredo Méndez, *Investiga el Consejo de la Judicatura a 14 jueces y magistrados federales*. LA JORNADA, August 11, 2014, available at <http://www.jornada.unam.mx/2014/08/11/opinion/011n1pol>.

acán. However this politicization was not the whole story since some of the defendants did have ties with the LFM cartel.

Regardless of the political and social outcomes of the trial, what is clear is that impunity prevails when prosecuting public officials in Mexico. It has been long documented that in Mexico impunity is the rule and not the exception.<sup>55</sup> There is mounting evidence that this phenomenon has been widespread throughout the entire Mexican criminal justice, regardless of the type of crime involved. However, during the Calderon administration, some high profile cases suggest that the federal government fabricated, criminalized, and politicized some criminal investigations motivated by political and personal interests.<sup>56</sup> The *Michoacanazo* case falls under this category.

It is revealing that despite the evidence available, the Attorney General's Office failed to produce a convincing case to prosecute officials with links to dangerous criminals. Even if judicial corruption played a role in the eventual acquittal of all defendants, there is no doubt that the prosecutor's office did a poor job in the criminal investigation and the handling of the case, thus failing to secure a conviction. The most obvious failure was the acquittal of the governor's half-brother. His voice was unmistakably distinguishable when the Attorney General's Office leaked the tape in which he was caught chatting with a LFM kingpin. This failure of the Attorney General's Office should not be a great surprise, however, given that prosecutors in Mexico have been traditionally underfunded and prone to be politically influenced.

## 2. *The Michoacanazo 2.0: Déjà Vu*

Even if one wanted to draw some positive outcomes from the *Michoacanazo* case, such as creating a deterrent effect and a precedent in order to let municipal and state authorities know that colluding with drug cartels is unacceptable, this is not the case. The current legal and political conditions in Michoacán state resemblances a new version of the *Michoacanazo* case, but with new ingredients. In 2014, at least 5 army majors, the Secretary of the Interior (Jesús Reyna García who acted as interim governor for six months in 2013), a former state lawmaker belonging to the PRI party, and former Governor Fausto Vallejo's son (Rodrigo Vallejo Mora) have been arrested for having ties with the Knight Templars (TKT). The charges were filed by the Attorney General's Office after a handful of leaked videos showed the defendants at different moments and in various situations meeting with Servando Gómez Martínez, a.k.a. "La Tuta", one of the leaders of TKT. Interestingly, videos of "La Tuta" and local public figures were still being leaked at the end of 2014, to the point that pundits have dubbed these videos "La Tutoteca,"

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<sup>55</sup> GUILLERMO Z. LEUCONA, *CRIMEN SIN CASTIGO* (FCE & Cidac, 2004).

<sup>56</sup> RICARDO REVELES, *EL AFFAIR CASSEZ* (Planeta, 2013).

a concept coined of the words ‘La Tuta’ and ‘videoteca’ —video library in Spanish— to refer to “La Tuta’s” personal collection of videos.

Municipal elections in the state of Michoacán were held in November 2011. When the new mayors took office on January 1, 2012, dozens of them began receiving threats from the former *La Familia Michoacana* criminal organization. These mayors contacted the state and federal governments requesting help and guidance. In early February 2012, the President sent 4,000 soldiers to protect those municipalities threatened by organized crime.<sup>57</sup> However these actions were probably too late since the Knight Templars’ cartel had already co-opted and influenced the local elections to make a *de facto* alliance with many mayors and well known politicians who later became high ranking public servants.<sup>58</sup>

There are similarities and differences between these latest detentions of public servants and the *Michoacanazo* case. Among the similarities, we can find the same charges brought against the defendants, the involvement of local and state officials from the state of Michoacán, the same drug trafficking organization (albeit using another name), and apparently a large number of public servants at all levels of government providing protection or having ties with the cartel. Among the differences, we find that this time there is visual evidence about the crimes committed (leaked videos), the federal government did not rush to indict the public officials, there is no political motivation behind the arrests, the media has not overemphasized the arrests, and local, state, and federal governments are working together to create a common front to this new set of indictments. It remains to be seen whether or not the new trials will result in a criminal conviction against these officials.

One aspect that is imperative to highlight in this new wave of detentions of public officials in Michoacán is the existence of a new component in the conflict that was absent in the *Michoacanazo*: vigilante groups. The LMF and TKT stronghold has been the lowlands (*Tierra Caliente*) of Michoacán and many communities fed up with the exploitation and criminal activities of drug cartels have armed themselves to fight these cartels off. They formed self-defense groups (*Autodefensas*) in early 2013 and began armed confrontations to expel the Knight Templars from their communities. Eventually other communities joined the movement and many towns were cleared of drug cartel members. This movement led to the capture or death of most leaders of the Knight Templars and their criminal operatives. However, under pressure from the federal government, the movement eventually was transformed into a Rural Police group. The problem is that since its inception some of these

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<sup>57</sup> Luis Prados, *El Gobierno mexicano envía 4.000 soldados más a Michoacán*. EL PAÍS, February 3, 2012, available at [http://internacional.elpais.com/internacional/2012/02/03/actualidad/1328295885\\_247024.html](http://internacional.elpais.com/internacional/2012/02/03/actualidad/1328295885_247024.html).

<sup>58</sup> Ricardo Alemán, *Fausto Vallejo: ¿hasta cuándo será solapado?*, EL UNIVERSAL, April 28, 2014, available at <http://www.eluniversalmas.com.mx/columnas/2014/04/106668.php>.

self-defense groups were infiltrated by members from other drug cartels and even by ex-members of the Knight Templars organization.<sup>59</sup>

The current situation in Michoacán is one of tense calm under a new governor—with no political affiliation—recently appointed in the summer of 2014. Local elections will be held in June 2015 and the administration of President Peña Nieto wants to perform background checks on all candidates to make sure none of them has criminal records or ties with organized crime syndicates. The root of the problem, however, is not whether or not there is a vetting process for political candidates; the central problem is the social, economic, political, and cultural context that produces and reproduces drug trafficking, corruption, violence, poverty, and lack of employment in Michoacán. Decades of social and economic abandonment of regions in central and southern Michoacán cannot be changed overnight. Drug trafficking in Michoacán has been a source of employment, income, and social status for entire communities and towns for so long that reversing this trend seems insurmountable. Only if these phenomena are addressed with a long-term vision to overhaul the problems that have plagued the state, a solution would be viable. Otherwise, circumstances like the one leading to the *Michoacanazo* trial and the gross violence that has engulfed the state will repeat themselves over and over again.

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<sup>59</sup> Tracy Wilkinson, *Mexico vigilantes register weapons, are to disband*. L.A TIMES, May 12, 2014, available at <http://www.latimes.com/world/mexico-americas/la-ig-michoacan-violence-2014-0512-story.html#page=1>.

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