

Challenges, Inertia, and Corruption in the Mexican Federal Judiciary

by

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ABSTRACT

This thesis examines the Mexican federal judiciary and the problem of corruption in this institution, particularly related to cases of drug trafficking. Given the clandestine nature of corruption and the complexities of this investigation, ethnographic methods were used to collect data. I conducted fieldwork as a “returning member” to the site under study, based on my former experience and interaction with the federal judicial system. I interviewed 45 individuals who work in the federal courts in six different Mexican cities. I also studied case files associated with an important criminal trial of suspected narco-traffickers known in Mexico as “*El Michoacanazo*.” My study reveals the complicated nature of judicial corruption and how it can occur under certain circumstances. I conclude that the Mexican federal judiciary has become a more professional, efficient, and trustworthy institution over the past fifteen years, though institutionalized practices such as nepotism, cronyism, personal abuse of power, and gender inequalities still exist, tending to thwart the full professionalization of these courts and facilitating instances of misconduct and corruption. Although structural factors prevent full professionalization and corruption does occur in these courts, the system works better than it ever has before.

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Chapter 1

INTRODUCTION

The main focus of this dissertation is to investigate corruption in the Mexican Federal Judiciary (MFJ) using a qualitative approach via ethnographic methods. A particular goal is to research corruption related to drug trafficking and drug cartels in order to determine whether corruption exists, and if so, how prevalent it would be. After preliminary fieldwork in Mexico City during the spring of 2011, I realized that collecting data would be extremely complicated if I focused solely on the topic of corruption because judicial employees would be reluctant to talk about this subject, let alone talk about corruption in drug-related trials. In addition, feedback from people working in the federal courts during the preliminary fieldwork emphasized that I should present my research as a project to study the entire MFJ, and corruption as merely a part of it.

As a result, I decided to expand the scope of the research to include other topics that were important for interviewees in order to create a common ground for the conversation. Therefore, I shifted the framework of the research to study the Mexican Federal Judiciary as a whole, paying attention to particular phenomena, such as cronyism, traffic of influence, and influence peddling, which were indirectly intertwined with corruption. Had I just focused on the topic of corruption, most respondents would have been suspicious of my intentions.

This shift was strategic for two reasons: one, it led me to include themes, such as salaries, professionalization, and career civil service, of interest for

respondents, which eventually facilitated approaching the topic of corruption with them; two, the focus of the research became the institution itself rather than just corruption, which expanded the range of the study to gain more understanding of the setting. These two strategies permitted the gathering of in-depth information that allowed a better understanding of corruption, and related phenomena, in a contextualized setting.

The initial fieldwork plan was to interview only judicial employees working in criminal district courts, but the shift to broaden the research to the entire institution required the inclusion of a diverse sample. Thus, I had to include respondents from different trial and appellate courts as well as key informants who were knowledgeable about the MFJ.

Likewise, part of the research project was to collect archival documents to look for written records about how the MFJ has officially addressed corruption cases within the institution. The idea behind this strategy was to do a methodological triangulation of the collected information to compare and contrast it with official documents in order to have a more accurate depiction of the research topic. However, the quest for these records bore few results for several reasons. First, judicial corruption is not considered a major problem in the MFJ, and the official stance on the issue is that corruption is a bad apple phenomenon that only rarely occurs in the federal courts (Begné Guerra, 2007). Second, corruption is difficult to prove because it usually occurs clandestinely. This condition makes it hard to document cases of corruption in an institution in which

lawyers are the employees. Finally, the public record does not accurately represent the existence of corruption because government agencies tend to hide misconduct and wrongdoing to avoid public scrutiny. Additionally, there are not many archival documents related to corruption available to the public.

During fieldwork, I had the opportunity to examine the files of one of those rare cases where corruption can be documented. Thus, I decided to include in the research a case study called the *Michoacanazo*, which is a federal trial that became infamous in Mexican society for the misconduct and probable corruption of most parties involved in the trial, including federal judges. The core of this case was a criminal investigation against state and local officials from the state of Michoacán who were accused of having ties with a powerful drug cartel. The trial pitted the federal government against the state government of Michoacán and the federal judiciary. Chapter six consists of a thorough description and analysis of this case, its implications, and its aftermath.

Why Study Judicial Corruption?

My interest in researching corruption in the MFJ stems from a variety of academic concerns. First, corruption in Mexico is a common problem that has become so normalized that most people reluctantly tolerate it as a natural characteristic of Mexican culture. I believe that it is important to bring attention to the negative effects of corruption in order to raise awareness that can change people's attitudes and, eventually, create adequate policies to address this issue. Second, after experiencing corruption in the Mexican judicial system first-hand

for many years, I have been motivated to study, understand, and confront this problem from a scholarly perspective in pursuit of improvements to the Mexican judiciary. Finally, despite the widespread presence and tolerance of corruption in Mexican society, most people acknowledge that this practice is a self-defeating phenomenon because it thwarts any effort to consolidate the political, economic, and social systems.

It is important to mention that the perception of corruption in Mexico has a doubled sociocultural dimension: on the one hand, corruption is accepted and used by many people as an ordinary tool to deal with the bureaucracy, institutions, and government agents. On the other hand, corruption—official and unofficial—is a constant topic of conversation among Mexicans, who usually condemn it and imply that it should not be tolerated. This double dimension produces a sort of bipolar attitude towards corruption: if one offers money to a police officer to avoid a deserved ticket, this action is usually rationalized as a tip or gratuity, but not as corruption; conversely, when someone else does it, then it is defined as corruption. The implicit message of this example is that there are different social standards to measure corruption, and this complicates any attempts at change because corruption is both accepted and rejected at the same time. This mentality can be applied to any gubernatorial setting, such as the Mexican federal judiciary, and this research looks at unveiling how and why this mentality occurs in this institution. A vivid example of how people perceive corruption, particularly

judicial corruption and the system of courtrooms, is the story of a documentary released in early 2011, which neatly depicts people's perception of corruption.

The Social Perception of Corruption in the Mexican Judicial System

In late February 2011, a documentary called *Presunto Culpable* (Presumed Guilty) was released in Mexican theaters. The documentary tells the story of Antonio Zuñiga (a.k.a. Toño), a 26-year-old street vendor in Mexico City who was sentenced to 20 years in prison for a murder he did not commit. Toño contacted two young Mexican lawyers to help review his case. After a thorough study of the case, these lawyers found legal inconsistencies in the trial that led to an official reopening of the case and a new trial. The film captures the proceedings of the new trial and the interactions between the defendant, the witnesses, the judge, and the Mexican criminal justice system. The documentary presents the dysfunctions of crowded prisons in Mexico City and the struggle to prove the defendant's innocence.¹

A few days after the documentary began to play in theaters, controversy arose when a federal judge ordered that screenings of the film be halted (Mendez, Martínez, and Olivares, 2011). It turned out that one of the key witnesses in the case had requested that the film not be shown because he had not given his permission to be filmed during the retrial. Some media outlets and political pundits saw this judicial action as blatant censorship against the legitimate right to denounce and expose the injustices of the Mexican criminal justice system. Due

¹ The film can be watched online with English subtitles in YouTube under the tag: MEXICO CORRUPTO QUEMATELA.

to bureaucratic procedures, halting the exhibition of the documentary took several days, which kept the film in theaters. The controversy generated in the media encouraged thousands of people throughout the country to pour into cinemas to watch it, and the documentary became one of the most watched films in Mexico in recent history.

Watching *Presumed Guilty* confirmed many viewers' pre-existing view of the Mexican judicial system as an unfair, bureaucratic, discriminatory, and Kafkaesque institution. Although Mexican people are aware of the prevalence of corruption in societal and governmental settings, and of how corruption is used as a tool to navigate the political and social systems, the content of the documentary was still shocking in several ways. First, the storyline was compelling because of the context and circumstances of the main character. Second, it was a true story that resonated in the minds of Mexicans due to the familiarity of the case; that is, people believed it because similar stories are not uncommon in Mexico. Third, many people found the fact that a judge wanted to prohibit the showing of the film was suspicious—regardless of the legal justification behind the action—because they saw this action as a cover-up.

No other institution in Mexico generates as much discontent and lack of trust as the criminal justice system and its component agencies. These agencies are the police, the prosecutor's office, and the judicial system. When dealing with any of these agencies, most Mexicans assume that corruption plays a role at some point in the process and thus affects the outcome. For different reasons, many

Mexicans are unaware that the criminal justice system is not a monolithic institution but instead is a complex organization composed of an array of governmental agencies belonging to different branches (Ferreyra-Orozco, 2012). A common misunderstanding is to assume that the prosecutor's office belongs to, or is part of, the judicial system. There is a connection between the two of them because the work of the prosecutor affects and determines the work of the criminal courtrooms; however, these are two separate government agencies.

This confusion has led many people to think that when a criminal walks out of prison unpunished, during or after a trial, it is because the judicial system is corrupt or inefficient. This is not always the case; many times, legal technicalities ignored by the prosecutor before the indictment can force the judge to free someone who might be responsible for a crime. The reasons behind these legal technicalities can vary; they range from gathering evidence without adhering the rule of law (e.g. the use of torture to obtain confessions of crime), to exhibiting poor forensic science, to official corruption.

To make matters worse, the judicial system in Mexico is a branch of government with which many people are completely unfamiliar. During the authoritarian regime, the judicial system was subordinated to the President, with little or no political power and was defined as an inferior branch to the executive and the legislative branches. What most Mexican people know about the judicial system comes from negative news in the media due to injustices or to high-profile cases in which criminals walk away free. For instance, most people fail to

distinguish that there are two different jurisdictions and judicial systems operating simultaneously but separately. One is the federal judicial system in charge of federal trials and headed by the Supreme Court of Justice. The second is the network of state judiciaries, one in each of the 31 states in Mexico plus another one for the Federal District (Mexico City), all of which are in charge of trials that do not belong to the federal jurisdiction.

This lack of knowledge has led to misunderstandings. For example, the retrial and proceedings presented by the documentary *Presumed Guilty* take place in a state courtroom in Mexico City. However, the injunction that halted the showing of the film in theaters was issued by a federal judge based on an injunction derived from an *Amparo* suit (I explain this concept a few pages ahead). When society learned about the content and the controversy of the documentary, most people did not know that the judicial system that had sentenced Toño was different from the one that had ordered the injunction. Many Mexicans thought it was the same authority that wanted to keep the documentary out of view to hide wrongdoing.

When Mexican people are asked what they think about the judicial system, most of them confuse state and federal judiciaries and have a negative opinion about both of them. This attitude is illustrated by a 2008 survey from the Citizen Institute for Studies on Public Safety, which showed that only 8% percent of the population has high confidence in the judicial system (*Instituto Ciudadano e Estudios sobre la Inseguridad A.C.*, 2008). This means that the vast majority of

Mexicans distrust the judicial system as a whole, whether is at the local or federal level. This distrust is unfair because the federal judiciary has become a more independent and effective institution compared to most of the state judicial systems. This does not mean that the federal judiciary is free from flaws, but it has improved its performance in the last decades, and surely, it has higher standards of professionalism than state judiciaries.

Overview of Chapters

Chapter One and Two

The first chapter is the introduction and offers a brief description about the content of this dissertation. Chapter two provides an examination of the topic of corruption to introduce readers to an academic contextualization of this problem and prepare them for the discussion of the main findings of the research. The chapter begins with an explanation of why corruption has resurged, mostly in politics and economics, as an important topic of analysis. Next, there is a literature review on the different conceptualizations of corruption in political and economic scholarship. The final section argues for a change of paradigm in studying corruption, suggesting more interdisciplinary and holistic approaches that include people, cases, and direct information from those who deal with corruption in their everyday lives.

Chapter Three

The content of this chapter is meant to set up the methodological and theoretical tools as well as their mechanisms as they are used in this dissertation.

The chapter begins with a discussion of the challenges of studying corruption and the research methods used in this dissertation, which are basically three: first, returning membership; second, interviews; and third, a case study. The first refers to my experience as a former litigant in Mexico. In this role, I was part of the judicial world and had member knowledge. The second method, interviews, is the most important because it is the source of most of the data. In total, I interviewed 45 people during the fieldwork part of the study in six different Mexican cities: Nogales, Tijuana, Mexico City, Puebla, Acapulco, and Morelia. The third method is a case study called the *Michoacanazo*, which I have already briefly explained.

Next, there are different sections that address several themes: the kind of questionnaire used during interviews, the theoretical approach, the methodological practices, and four heuristic questions—instead of hypotheses. Then, there is a brief description of the intricacies of doing fieldwork in an institution such as the MFJ, which is characterized by hermetic rules and resistance to outside scrutiny. Following this description, there is a section addressing how access to potential interviewees took place and the use of a snowball approach as well as other strategies in order to obtain a higher rate of respondents. Finally, the last part of the chapter explains the criteria for selecting the six cities where fieldwork was conducted. There is also an itinerary and timetable, as well as a description of why the sample of interviewees and the interview locations are representative of the institution under study.

Chapter Four

The fourth chapter is a detailed description of the political and legal structure of the Mexican federal judiciary and its administrative organization. In order to place the current state of affairs of this institution in context, first there is a brief explanation of the differences between the state and the federal judiciaries. Then, there is an argument about the powerful influence the former authoritarian regime had on the judicial branch during the twentieth century. This authoritarian regime refers to the party-state called Institutional Revolutionary Party (*Partido Revolucionario Institucional—PRI*) that governed Mexico during the 71 years leading up to 2000, when an opposition party won the presidential election. This analysis includes a discussion on judicial independence as a yardstick to evaluate how independent the MFJ has been from the influence of the two other governmental branches.

Next, there is an examination of a judicial reform that took place within the MFJ at the end of 1994 and beginning of 1995. This reform was a turning point that marked a new epoch for the federal judiciary because structural changes occurred, slowly but steadily, that transformed this institution into a different government setting. After more than 15 years of this reform, the changes are still reverberating and a lot of the data collected during fieldwork referred to this reform as the source of a more efficient and honest judiciary. Despite this reform, there are issues that persist from the inertia of the past, reflected in some practices such as cronyism and political influence in appointing justices and council

members. In the latter, there is still influence from the executive and legislative branches that affects the federal administration of justice, and an argument is presented to illustrate this process.

Additionally, to have a better understanding of the different layers and hierarchies of the MFJ, there is a detailed description of the system of courts that composes this institution, beginning with the Supreme Court down the hierarchical ladder to the lowest trial courts. This explanation includes an analysis of the Council of the Judiciary, the new unit created by the 1994-1995 reform in charge of administrative duties. This agency is important for this research project because it was constantly mentioned by respondents throughout the fieldwork as a controversial office that has brought up positive and negative effects within the MFJ. The final section discusses the structural mechanisms behind the strong hierarchies that characterize the MFJ. There is also a brief analysis of the demographics and how, despite the fact that women make up more than half of the labor force, only 20% of them occupy high-ranking positions.

Chapter Five

This chapter, which is divided into two parts, presents the main data from the research. Part one delves into internal practices within the MFJ that have become part of the institution. Not all of these practices—such as excessive workload, hectic work schedules, high salaries, and a management style among judges that may be defined as tyrannical—are necessarily negative. However, they are important because they have shaped how employees behave and how the

federal administration of justice is handled. Interviewees mentioned these phenomena as part of their everyday activities and defined them as distinctive and central to the federal judiciary.

Part two discusses phenomena—such as traffic of influence, the use of connections, and nepotism—which could be defined as wrongdoing under certain scenarios, but which might not have the same meaning at the MFJ due to their institutionalization. In the same vein, there is a description of a type of misconduct among high-ranking officials that does not seem to be prevalent but occurs. This misconduct derives from the fact that sometimes a justice, magistrate, or judge provides legal counseling to private parties in exchange for favors or economic benefits, a practice prohibited by law. To support this argument, I present the case of Justice Balderrama, including an interpretation of why this case is probably true.

Next, there is an analysis of corruption in the federal courts based on the collected data, explaining general trends about what respondents thought of this phenomenon. To make the data more visual, I include a detailed table of information highlighting whether or not corruption occurs, what the categories of corruption are, the frequency of corruption, where it happens, etcetera. Complementing this analysis is a discussion on how corruption is defined, the perception employees have of this problem, and how it relates to judicial independence.

Following, there is an examination of corruption in relation to drug trafficking trials with an argument suggesting that it is unlikely, but not impossible, that people working in the MFJ could accept bribes from drug cartel members. In relation to this argument, I explain how the MFJ has coped with the threat of drug cartels and what actions the institution has taken to protect its employees. The final part of the chapter contains a section discussing the significance of the findings from this research.

Chapter Six

The sixth chapter, also divided in two parts, focuses solely on the *Michoacanazo* case study. Part one opens with a brief explanation of what this case is about. Then, there is a justification to contextualize the sociopolitical setting where the *Michoacanazo* occurred. This contextualization is important because it provides readers with background on drug trafficking in Mexico, the proliferation of drug cartels, their use of extreme violence, and a summarized history of *La Familia Michoacana* (LFM), a drug cartel was operating in Michoacán when this case took place. Because the case study under analysis describes concrete facts and events only known to those who are familiar with the sociopolitical conditions of Mexico and the state of Michoacán, I considered it indispensable to explain this background.

This background explanation begins with a concise description of drug trafficking and how this activity has been tolerated by Mexican authorities for decades. Next, there is an account about the rising power of new drug cartels and

why they have become extremely violent and acquired a bad reputation as criminals. Part of the problem has been that drug traffickers have created strong alliances with politicians, resulting in a new phenomenon called narco-politics, which is explained here. For instance, the LFM drug cartel has used this strategy successfully to co-opt local and state officials; the *Michoacanazo* is a documented example of that approach. There is an argument about how this case happened in the first place and the reason why I undertook the analysis of this case.

Part two of the chapter examines the content of the *Michoacanazo* trial using copies of documents from the original file provided by one interviewee. First, I explain how I gained access to the file and written evidence, and then I provide an analysis of the police operation and subsequent legal actions that gave rise to the trial. Next, there is a discussion and analysis of all the evidence, such as police reports, witness testimonies, and other objects of information, presented by the prosecutor's office to support the indictment. Following, I argue that some federal judges (I call them *ad hoc* judges) tend to favor the Attorney General's Office requests to issue arrest warrants in cases that involve politicians from the opposing parties. I support my argument with a couple of similar high-profile cases, one of which is related to the *Michoacanazo* trial. After this, I discuss the proceedings of the trial and the different verdicts that acquitted all the defendants.

Based on information from interviewees, I assert that the judge in charge of the Fifteenth District Court in Morelia, where the *Michoacanazo* trial was decided had a reputation for being corrupt, and that given the circumstances in

which the case was handled, in all likelihood corruption played a role at some point in the proceedings. Despite the lack of conclusive evidence for this argument, the trial's context such as the powerful parties involved—including a local drug cartel, and the interests at stake—support the involvement of some sort of political corruption or bribery. I present several reasons for this argument.

Finally, the chapter concludes with a section called “The Good, the Bad, and the Ugly of the *Michoacanazo* Case.” The idea behind this section is to present the positive, negative, and unintended consequences of this case, and how despite efforts by the MFJ to eliminate corruption, when certain conditions are met, the possibilities that this phenomenon occurs are high.

Chapter Seven

The final chapter presents the conclusions of the dissertation. The first part addresses the four heuristic questions presented in chapter two, placing the responses under the following four headings: 1. The Ambiguity of Corruption, 2. Payoffs, 3. The Impact of the War on Drugs, and 4. Gift-giving in the Judicial Process. Each of these sections is intended to provide a closing argument for some of the major findings from the fieldwork by showing how all of this information is interconnected to wrongdoing and corruption. One way of supporting this evidence is by looking at the official response to corruption and other misconduct by the head of the MFJ. Under the headings *Institutional Accountability* and its *Limitations*, there is an analysis of the official response based on statistical data posted by the Council of the Judiciary on its website, which shows some

inconsistencies between complaints against employees and the outcome of those complaints.

Comparing and contrasting the collected data, it was possible to deduce the existence of old patterns and practices, such as antiquated legislation and procedures, which have thwarted some functions of the MFJ to become more effective and modern. This conclusion is discussed under the headings *New Council, Same Old Procedures* and *When the Rule of Law Leads to Impunity*. Next, there is an analysis of a generational gap among high-ranking officials that has led to administrative and justice conflicts within courtrooms that several respondents brought up and thought important to voice.

To support the argument that the institution cannot address corruption without first changing some practices that reinforce wrongdoing and misconduct, I introduce information found during the fieldwork not mentioned previously about institutional inequalities, gender discrimination, and sexual harassment. These practices have become normalized and, despite the acknowledgement by the head of the MFJ that they are inappropriate, the federal judiciary has done little or nothing to eliminate them. At the end of the chapter, I include a section on *What We Have Learned about Corruption* from this research, followed by a final discussion about the positive changes that have taken place after the 1994-1995 judicial reform, as well as the challenges ahead.

To reiterate, corruption in the Mexican federal judiciary is at the heart of this research, and given that this practice is prevalent in Mexican society, by

studying and understanding its mechanisms in this particular setting and context, it can be possible to conceive more effective solutions to address it. To have a more successful rate of interviewees, the research was expanded to study the entire federal judiciary. This shift turned out to be positive because it was possible to document other phenomena, such as nepotism and cronyism, which intertwine with corrupt practices. This ethnographic project is significant because it contributes to the literature of corruption from a singular qualitative approach that borrows from different social disciplines, such as sociology, law, anthropology, and political science. Let us proceed to chapter one.

Chapter 2

CONCEPTUALIZING CORRUPTION IN MEXICO

The aim of this chapter is to provide an analysis and discussion of the concept of corruption and its multi-faceted definition. Corruption can have multiple meanings depending on context, situation, culture, social rules, and other variables. Many of the existing approaches that study corruption have not examined exactly how people in particular settings actually think about the nature of corruption. One of the contributions of this research project is to include what people in the Mexican federal judiciary have to say about this phenomenon. Because the central theme is corruption from an ethnographic perspective, a discussion of this concept is unavoidable.

Corruption and its Resurgence Worldwide

To contextualize the general topic of corruption, the chapter begins with an analysis of corruption and why this problem has resurfaced in public debates during the last two decades. Etymologically, the word corruption comes from the Latin *corrompere* (Lomnitz, 2000) which means to destroy or break. According to Lomnitz, corruption has a long history that precedes the creation of nation-states, and the word has had many different meanings. Among them are the following: a) the state of being in decay or putrid; b) something or someone with extreme immorality or which has been depraved; c) something affected by venality; d) morally invaded by evil, perversion or malice; e) a text or language that has lost its original form; f) the loss of innocence; g) any kind of adulteration; and h) a

legal term used in civil codes or laws referring to dishonesty. In most of these cases, it is implicit that secrecy, discretion, and complicity are involved in carrying out corrupt acts (Lomnitz, 2000).

There are different approaches to why the problem of corruption has become part of the recent worldwide political agenda. Glynn, Kobrin, and Naím (1996) have summarized the best-known examination of this concept; they argue that corruption erupted in the worldwide arena during the 1990s because of the political and economic changes that took place during the decade's globalization process. They contend that at the end of the Cold War, democratization processes in Latin America, Eastern Europe, and Africa, as well as the digital transformation brought on by the Internet in terms of available knowledge and information, were all key factors in creating awareness of this issue. In particular, they assert, the pernicious effect of corruption in the world economy pushed the national governments to set up rules and coordinate efforts to tackle the problem at the institutional level. The rationale behind this course of action was that in an integrated global economy, corruption would negatively influence market competition and disrupt the free flow of investment and trade.

Within this perspective of economics, corruption was identified as a threat to capitalism because it interrupted the course of the "invisible hand," so to speak. The construction of this narrative was essentially a capitalistic view that industrialized countries imposed upon Third World nations that did not share the same political, social, and historical circumstances (Nuijten and Anders, 2007).

This effort to shed light on corruption as a worldwide problem was mostly carried out by international organizations, such as the International Monetary Fund (IMF), The World Bank (WB), the Organization for Economic Cooperation and Development (OECD), and Transparency International (TI). The mechanism used to implement this effort was based on anti-corruption campaigns in which the main objective was promoting domestic and institutional reforms with good governance and transparency.

These reforms focused on two realms: politics and economics. Political reforms promoted democracy and empowered citizens to elect governments that would be accountable and responsible. Economic reforms, on the other hand, “eliminated regulations and simplified bureaucracy while taking away the discretionary decision-making processes from dishonest public servants, thereby reducing the conditions necessary to extract bribes” (Elliot, 1997, p. 208).

One strong assumption underlying this economic analysis of corruption was that this problem is inextricably correlated to poverty, underdevelopment, authoritarian governments, and political unrest. In other words, corruption was a problem of Third World nations. Likewise, corruption was defined almost unanimously in terms of bribery: “the abuse of public office for private gain” (Haller and Shore, 2005). This definition excluded other forms of potential corruption, such as cronyism, traffic of influence, and exchange of favors, which can also be understood as bribery, according to a broader definition. This meant

that corruption was already defined within a preconceived notion that framed it as an economic problem, and that the policies designed to tackle it would proceed according to this paradigm (Williams and Beare, 1999).

Overall, conceptualizing corruption in terms of a unique economic model ignored social and cultural practices common in underdeveloped societies that are deeply intertwined with this phenomenon beyond the realm of economics.

Corruption [was] viewed by the international community in explicitly economic terms with little concern for its broader social and political implications. Furthermore, this economic framework [was] articulated in direct reference to the self-interested Western objective of democratization and liberalization of world trade and investment. (Williams and Beare, 1999, p. 124)

As a result, the remedy for addressing corruption was to privatize public enterprises and take as many responsibilities as possible out of the state's control. This also included establishing democracy and free market policies towards liberalization as a basic government principle.

I contend that corruption is more than an isolated act wherein individuals behave and act in ways dissociated from social and cultural processes; although a few corrupt acts may occur in isolation, individuals also respond to social stimuli whether they are encouraged by greed, need, or financial power. Corrupt acts “are not merely selfish and private but profoundly social, shaped by larger sociocultural notions of power, privilege, and responsibility” (Hasty, 2005, p. 271). This interconnectedness between corruption and other social and cultural phenomena suggests why context and setting are crucial when studying this problem.

Corruption as a Theoretical Problem

One of the reasons corruption has been so difficult for scholars to cope with is the common misunderstanding about what corruption actually means. As Kurer points out, “Any research effort dealing with corruption is heavily influenced by how it defines its subject. The conception of the nature of corruption circumscribes the analyses and defines the field of action, so to speak” (Kurer, 2005, p. 222). Some theoretical approaches imply that the idea of corruption can be grasped within a universal conceptualization that is usually associated with bribery. Others adopt the principle that corruption does not mean the same thing everywhere and that some social practices, such as gift-giving, have no negative connotation in some societies yet could be defined as corruption by Western standards (Rose-Ackerman, 1999).

Regardless of the approach, it is important to recognize that an intrinsic quality of any definition is that it ought to be a generalized description of a particular phenomenon that captures most of the attributes that characterize the essence of that phenomenon (Kurer, 2005). This means that a good definition has to be ambiguous enough to embrace most of the hypothetical situations that the definition is trying to incorporate, while still establishing some limitations to provide meaning and certainty to what is being defined.

Although not always acknowledged by some academics, corruption is an extremely contested concept. This means that it has a diversity of meanings depending on variables such as the setting in which corruption happens, the epoch

of occurrence, the case under consideration, the type of corruption, the people involved, the value at stake, mores, local culture, and so on (Pritzl, 2000).

Therefore, a hallmark of corruption is that there is no consensus on what it means, or to put it in other words, corruption can mean many things in many different places.

Throughout history, the term “corruption” has had different meanings and connotations (Friedrich, 1999). What is considered to be corruption today, such as the practice of U.S. corporations giving bribes to officials in Third World countries to secure contracts from bids (e.g. Wal-Mart’s recent kickbacks in Mexico), was not defined as such in the past. Likewise, some practices (e.g. exchange of favors among public servants, cronyism, influence peddling, and nepotism) that are explicitly defined as corrupt acts in industrialized societies might not be understood as wrongdoing in Mexico, Argentina, or Nigeria. It is crucial then to take into account the context (e.g. local culture, particular historical processes, etc.) and the setting (e.g. political and social environment, government system, and singular circumstances) when defining corruption because these two elements can influence, and even determine, the meaning and definition of this phenomenon.

Some countries share similarities in corrupt practices so that it could be possible to propose a general definition of corruption applicable to them. For instance, analogous historical processes in Latin America, such as colonialism, dictatorships, and underdevelopment, have influenced how corruption is

experienced and defined in countries such as Brazil, Peru, Ecuador, and Mexico. Nevertheless, despite any similarities among these countries, each possesses a set of political, social, and cultural circumstances that makes it different from the others, and understanding these conditions is crucial to grasping the complexity of corruption at the local level.

This does not mean that comparative analyses of corruption cannot be done using quantitative approaches. Indeed, general definitions of corruption serve as launching pads to theorize and argue about it, and any scientific method capable of providing insights on these types of social issues should be used to shed light on these problems. However, from a qualitative approach, such as the one taken in this research, local context and setting must be taken into account in order to understand the complicated nature of corruption. Corruption is a political and economic problem, but it also a sociological, cultural, legal, and anthropological issue. This multifaceted feature of corruption is the theoretical point of departure of this qualitative approach. Qualitative approaches such as this one can render unexpected findings that contribute to the literature of corruption (Blundo, 2007; Haller and Shore, 2005; Kurer, 2005; Pritzl, 2000; Williams and Beare, 1999).

Universal vs. Non-Universal Definitions of Corruption

In a general sense, corruption indicates bribery, extortion, graft, embezzlement, and kickbacks. However, under certain scenarios, this concept also may or may not include acts such as favoritism, nepotism, cronyism, the use

of connections, patronage, political clientelism, the use of favors, gift-giving, influence peddling, and the like (Ferreyra-Orozco, 2010; Gupta, 1995; Lomnitz, 2000; Morris, 1991). Scholarly work about corruption has usually been defined according to particular social disciplines. Although these approaches have been useful in helping to theorize corruption, they have ignored the testimony of the people who engaged in this phenomenon as well as the context and setting in which it takes place.

Given the multiplicity of ideas about corruption, there is a need for an alternative option besides a one-size-fits-all concept. For instance, the classic definition provided by the World Bank “corruption is the abuse of public office for private gains” (Haller and Shore, 2005) could be applied in some cases of corruption, but it would be insufficient to understand the diversity of meanings and their implications in every single society. By not having a more comprehensive approach of this phenomenon, any policy or action for addressing it would be misguided because it would depart from a limited view of the problem. Thus, extrapolating scholarly formulas and typologies from one country to another could be useful but would fail to address the particular cultural and social circumstances of every society.

Universal approaches are incomplete at some point because most of them ignore the social conditions and circumstances where corruption occurs and how it is understood locally. Context and setting are important when defining corruption because they allow an understanding of the subtleties and sociocultural

elements behind the multiplicity of meanings of corruption. This variety of meanings appears to occur in different realms, such as politics, government agencies, state judicial systems, and society in general.

There is an overwhelming amount of international literature on corruption that has led to a proliferation of conceptualizations that suggest scholars cannot agree on what corruption means. “There is little accord about what constitutes a reasonably comprehensive and widely shared definition of corruption” (Chinhamo and Shumba, 2007, p.2). Corruption is not just a complicated issue to grasp, but it is also dependent on the kind of disciplines or perspectives with which scholars approach this issue. This does not mean that it is impossible to reach some agreement about it, but it is essential to find the best way to approach corruption in order to be more precise about what is being discussed. More accurate language for the notion of corruption will help devise better methods and ideas to address this problem. To create a more systematic theoretical discussion, I will next provide a general literature review on the concept of corruption, beginning with the author, Michael Johnston, who openly acknowledges that the causes and consequences of corruption can vary depending on the context.

Literature Review on Corruption

Syndromes of Corruption

Michael Johnston (2005) argues in his book *Syndromes of Corruption* that defining corruption as a “one size fits all” category is not addressing the problem properly. Johnston contends that different societies have different corruption

problems and that all nations, regardless of their level of development, have issues with this phenomenon at different degrees. He connects corruption with development and focuses on different settings and the way power and wealth are interrelated. Johnston suggests four syndromes for corruption, which can be used to describe and characterize countries that possess a combination of certain political and economic conditions with specific government and social institutions. The four syndromes are *Influence Markets*, *Elite Cartels*, *Oligarchs and Clans*, and *Official Moguls*. The idea of his proposal is to categorize the signs and symptoms—hence the named syndromes—that indicate a particular level of corruption. What Johnston ultimately proposes is an understanding and explanation of how the complexity of context and settings influences the diverse ways in which corruption operates. According to him, understanding this diversity is important in order to propose real reforms that can lead to combating corruption in accordance with each particular socio-political context and reality.

Despite the fact that Johnston criticizes one-size-fits-all definitions of corruption, he does suggest one, carefully warning about the controversy and disagreement attached to it. He defines corruption as “*the abuse of public roles or resources for private benefit* [italics in original], but emphasize[s] that ‘abuse,’ ‘public,’ and even ‘benefit,’ are matters of contention in many societies and there are varying degrees of ambiguity in most” (Johnston, 2005, p. 12). Johnston does not focus on corruption as a specific behavior or act, but as a systemic problem; he contends that corruption is inextricably related to economics, politics, and state

building. Countries with stronger institutions, healthy political systems, and thriving economies are less likely to suffer from systemic corruption than those lacking these features.

For Johnston, the dynamics between wealth, power, and institutions are essential in understanding the pervasiveness of corruption. Johnston's approach looks at the systemic problem of corruption as a whole, but does not pay attention to the numerous details of cultural traditions and social conditions of every society. In other words, it does not look at sociocultural context and setting. These traditions and social conditions are relevant in a society in which corruption is a social instrument, a sort of tool used to navigate everyday affairs, and where this concept has multiple definitions and understandings, as it does in Mexico (Lomnitz, 2000).

Changing the rules and setting up new institutions would not solve corruption by itself, because these actions would not affect the old social habits and long-term malfeasant attitudes that exist among individuals in societies in which corruption has been so widespread.

If a state already has a corrupt political economy, then it is not likely to enforce new rules aggressively. Simultaneously, and to the frustration of those wanting simple explanations, new rules and contexts can create new patterns of corrupt behavior at the same time that old patterns are at work. (Warner, 2007, p. 9)

Clearly, corruption cannot be properly addressed by merely implementing economic and political reforms without paying attention to the local culture and mores. Most conceptualizations of corruption have not taken into account the

local surrounding conditions because arguments from every culture are asymmetrical, making it difficult to make non-contradictory generalizations that can embrace all those differences. For instance, when citizens have more loyalty to relatives, friends, and community members than they have to government institutions, neither institutional reform nor the use of wealth and power can have much impact.

Johnston uses Mexico as one of his cases to explain one of his syndromes of corruption. In his discussion of the syndrome *Oligarch and Clans*, Johnston cites three cases: Russia, the Philippines, and Mexico. Regarding Mexico, he accurately describes the political conditions of the authoritarian regime that made corruption its favorite tool in maintaining strict control and stability. Johnston acknowledges that in this syndrome the concept of corruption is significantly broadened:

Where boundaries and distinctions between the public and the private, the state and society, and politics and the markets are indistinct and fluid, and where legal and social norms are contested or in flux, a wider range of activities become part of the problem. (Johnston, 2005, p. 153)

However, he does not address the meaning of corruption in itself because his focus is on the larger systemic problem that is interconnected to development and state building.

Political Scholarship on Corruption

The bulk of the literature regarding corruption is derived from political corruption studies and the assumption that the main—if not the only—form of

corruption is bribery. From a political perspective, the literature tends to focus on corruption as a pathology of the government. Whether there is a democracy or an authoritarian regime, political corruption has usually been defined as any behavior that deviates from the norm. This deviation is usually associated with a personal benefit at the expense of the public. Friedrich (1999) asserts that this is the core meaning of the concept of corruption and that this idea has been continuously used in most societies to explain corruption. Most of these conceptualizations can be summed up in the following statement: corruption refers to any abuse of a public office for private benefit. It is possible to deconstruct this definition in order to list its core elements and have a better understanding of it.

First, this perspective emphasizes the behavior of public officials rather than institutional or systematic patterns of corruption. From this point of view, corruption is first and foremost a “bad apple” problem, meaning it is an issue of individual behavior, not a flaw in the system. Second, the notion of public office focuses on the bureaucratic setting only and disregards the private sector where corruption can also occur. Third, this definition is normative, meaning that only those acts that the norms define as corrupt will be considered as such, while those acts that are not defined as illegal by the law (e.g. influence peddling and favoritism) even if they are corrupt, will be legal and permitted (Kurer, 2005). Finally, the definition is state-centric, implying that the term “public office” is conflated with the notion of state, which is problematic (Warren, 2004). However, the typical state has decentralized many of its functions, such as private hospitals

and schools. This implies that nowadays some corporations and non-governmental organizations exert roles and provide services to the public reserved in the past only for the government. As a result, this definition of corruption would not be applied to anyone who works for these institutions because they do not fit the criterion of public office.

One notion of political corruption suggested by Nye (1967) that became popular among scholars a few decades ago—and was even used as a theoretical model—summarizes the principle elements of political corruption. Nye said, “Corruption is behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence” (Nye, 1967, p. 419). This conceptualization was intended to be broad enough to embrace most instances of corruption. However, it only includes corrupt acts that deal with public servants, such as bribery, embezzlement, and extortion, but fails to address other types of corruption, such as favoritism, influence peddling, and cronyism. It also excludes corruption that takes place in nongovernmental settings, which is becoming a more common phenomenon among corporations and private institutions such as the Enron and WorldCom scandals on wrongdoing. Another criticism is that this definition is culturally biased (Johnston, 1986) because it neglects local context. Other scholars (Friedrich, 1999; Malem Seña, 2002; Morris, 1991; Noonan, 1984) who

have addressed corruption from a political and legal perspective adopted definitions of this phenomenon that are similar to Nye's definition.

Economic Scholarship on Corruption

The idea of corruption from an economic perspective is based on an approach that explains that the core of this phenomenon is a financial problem: corruption is motivated by selfishness. According to this view, regardless of the culture, values, and social norms, most human beings who engage in corrupt acts do so for pecuniary reasons. "There is one human motivator that is both universal and central when explaining the divergent experiences of different countries [dealing with corruption]. That motivator is self-interest" (Rose-Ackerman, 1999, p. 2). The corollary is that if the economic benefit was gone, corruption would be too. At the very least, it would be dramatically reduced.

Within this approach, corruption is seen as doing business in which the main actors pocket money to take advantage of bureaucracy or deficient management of the state's affairs. In this case, bribes are said to regulate a supply-and-demand mechanism between the state (as a provider of goods and services) and the public (as is entitled to them). Because many individuals are not willing to queue or may not have the right to receive those services and goods, they may be ready to pay "incentives" to obtain them (Lui, 1985). From this angle, a government office is seen as a commercial organization within which public servants do their best to extract the maximum self-benefit from their positions, which is always in detriment to the public good.

Klitgaard (1988) provides a point of view on this kind of corruption, and his definition summarizes similar stands from authors such as Lui (1985), Rose-Ackerman (1999), and Shleifer and Vishny (1993). Klitgaard argues that “illicit behavior flourishes when agents have monopoly power over clients, when agents have great discretion, and when accountability of agents to the principal is weak” (Klitgaard, 1988, p. 75). According to his perspective, the fact that a public servant maintains the control of a government service without enough supervision leads to corruption. This notion is consistent with the idea that supply and demand in a bureaucratic setting can be mediated by corruption. Klitgaard suggests a formula to represent the basic ingredients of this phenomenon: $\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$. This equation implies that corruption can be prevented by taking away the decision-making processes of public officials (shutting down the business) while exerting more control over their behavior (more supervision).

Overall, conceptualizing corruption, either from a political or economic approach, can be useful when viewing specific public offices or bureaucratic government settings in order to understand these kinds of corruption: bribery, extortion, kickbacks, and embezzlement. However, to explain the frequency of corruption, its hidden mechanisms, why it occurs, and whether or not sociocultural norms influence this phenomenon, a holistic approach is more desirable.

Broadening the Definition of Corruption

In the first decade of the twenty-first century, besides the traditional assessments from economists and political scientists, new research from other social scientists belonging to disciplines such as sociology, anthropology, law, psychology, and multidisciplinary programs has begun to study corruption (Blundo, 2007; Ferreyra-Orozco, 2010; Haller and Shore, 2005; Hasty, 2005; Lomnitz, 2000; Nuijten and Anders, 2007; Smith, 2007). These innovative views have addressed the idea of corruption from perspectives different from politics and economics, challenging the conventional assumption of conceptualizing corruption as a universal phenomenon.

Most of these scholars agree that the idea of corruption is malleable, given that it can be studied and defined from multiple perspectives and disciplines depending on which elements are highlighted and the kind of corruption under study. Although corruption may be similar in many forms, the mechanisms and cultural meanings of corruption that may apply and occur among law enforcement officers are never the same as the mechanisms and cultural meanings among judges or court staff. For instance, in Mexico bribing a patrol officer is socially accepted (Morris, 1991), but the same action is condemned if it occurs among court staff officials (Begné Guerra, 2007). In a similar situation, providing gifts to public officials is seen as a way to create social networks in China, with no social stigma attached to this behavior (Smart, 1993), but the same action would probably be condemned and criminalized in developed countries. Thus,

corruption varies according to setting, social status of the corruptor and corrupted, the matters involved, the societal and cultural mores, the value of the transaction, and so on.

The political and economic conceptualizations of corruption have usually described this problem as either a violation of the law (normative approach), the use of public positions as business (economic approach) or the abuse of public office for personal gains (political approach). However, the idea of corruption does not belong per se to any discipline in particular, whether it is politics, economics, law, or sociology. Every notion of corruption derived from any of these academic fields has always been an unfinished endeavor because each attempt usually explores only one side of the problem and leaves others untouched. These traditional approaches also fail to address the complexity of social relations and how individuals interact with institutions when the rule of law is less important than kinship affiliation, social networks, and local traditions—as is the case in many African and Latin American countries.

A holistic or more inclusive definition of corruption would not be intended to exhaust the nature of the phenomenon, but to serve as analytical tool to explore and expand theories and methods aimed to address corruption. By definition, most academic or theoretical proposals approaching corruption—or any other social problem for that matter—have methodological and empirical limitations because they are constrained by their own research principles. Additionally, it is understood by scholars that context, institutions, and culture matter when

describing and analyzing a particular social issue. I do not want to demonstrate these principles in this thesis; rather, my contribution is towards making the case that corruption cannot be fully understood without interrogating the parties involved and affected by this problem and making sense of their discourses. Obtaining meanings and different narratives from their voices can help to grasp corruption more accurately.

In this research, those voices belong to employees working at the Mexican federal judiciary, and listening to them facilitates the comprehension of corruption in this government branch by taking into account local context, institutional meanings, parties involved, and interests at stake. As Punch points out, “corruption is seen not as one thing but as a complex and shifting phenomenon taking many forms, proving remarkably resilient, altering over time and adapting to control regimes” (Punch, 2009, p. 225).

I do believe that one cannot fight something that it is unknown, and corruption seems elusive if researchers overlook ways to include the opinions of those affected by this problem. Thus, only when a particular phenomenon such corruption is known can one understand it to the point at which it becomes possible to change it (Coronel, 1999). Conceptualizing and understanding the scope of the meanings of corruption serves as a basis for a stronger foundation from which to address this problem effectively. Because corruption usually occurs in correlation to a larger set of systems of government, organizations, and practices, this research dovetails with a more holistic approach to the study of

judicial corruption by taking into account the aforementioned context and setting. The setting is the Mexican federal judiciary—district courts, in particular, where trial proceedings are carried out—and the context is Mexican society and its legal system, comprising institutions and practices inherited from the old authoritarian government of the twentieth century. The essential part of this dissertation is an ethnographic approach that collected data from employees and judges working in the federal courts. The following chapter explains at length how fieldwork was conducted and how access to interviewees and the federal judiciary was possible.

Chapter 3

METHODOLOGICAL PRACTICES, INTERVIEWS, FIELDWORK

The Challenges of Studying Corruption

As explained in chapter one, corruption is a complicated phenomenon to study. Most social scientists who have focused on this problem (Gupta, 1995; Haller and Shore, 2005; Klitgaard, 1988; Morris, 1991; Rose-Ackerman, 1999; Smith, 2007) agree that it is difficult to witness and research corruption first hand. This is not surprising given that one of the main characteristics of corruption is the secrecy in which it usually occurs. As Haller and Shore point out, “[i]t is often assumed that corruption takes place only in hidden, occult and unofficial settings, clandestinely, and with the knowledge of the immediate exchange-partners only” (2005, p. 11). Thus, if a researcher cannot directly collect data about the nature and modus operandi of a particular event, how do we learn about corruption? This is one of the major challenges when researching corruption using social sciences’ conventional research methods.

Challenges with researching corruption are similar to challenges researching topics such as drug abuse and prostitution. Just as individuals who engage in drugs or prostitution are unlikely to talk about their behavior because of the stigma and legal implications attached to such acts, so are those involved in acts that are deemed corrupt. As a result, scholars who conduct research on any of the aforementioned phenomena usually have to rely on secondary-order data to collect information. This information is a sort of second-hand knowledge:

participants do not have direct understanding of the problem, but rather talk about how they see and interpret it (Haller and Shore, 2005).

As explained earlier, corruption is a contested concept: it does not have the same meaning everywhere. Consequently, the study of corruption requires the understanding of social and cultural contexts in order to grasp the complexities of this problem (Blundo, 2007; Ferreyra-Orozco, 2010; Nuijten and Anders, 2007). The most suitable social science approach that would allow us to better grasp this socio-cultural context is to use the qualitative methods approach.

In social research, there are a wide variety of qualitative methods to collect data, from direct and participant observation to interviews, focus groups, and case studies. Among these methods, ethnography stands out as one of the best approaches to study and understand people's behavior and cultural phenomena because it looks in depth at everyday life and practice. For researching corruption, qualitative methods offer a practical tool to learn and grasp the social and cultural complexities of this phenomenon.

Traditional approaches to corruption have rarely asked those directly involved or affected by corruption about their perspective on the problem. Thus, the research project behind this dissertation is aimed at studying corruption through interviews with those who have witnessed or experienced corruption and have been affected by it within the Mexican Federal Judiciary (MFJ).

Many sensitive issues had to be considered to choose the most appropriate methods for this research. I had to take into consideration the nature of the setting

under study (government offices), the availability of interviewees (mostly busy public officials), and the main research topic (corruption). In short, the research methods used in this academic investigation are returning membership, interviews, and a case study.

Conducting Research as a Returning Member

Those who engage in ethnographic work look for information that members of the setting under study have, this is known as *member knowledge*. In this research project, I already have this member knowledge based on my background as a Mexican attorney and prior practice and training. Because of this membership knowledge, I conducted the fieldwork as a *Returning Member*, “a person who at one time had contextual member knowledge and now seek to return to study things in this setting” (John Johnson, personal communication). As an attorney who litigated in Mexican courts for several years, I experienced corruption first hand in the state judicial system as well as in the federal courts. Corruption in the state courts was mostly petty corruption, such as the well-known practice of *La mordida* and grease payments to circumvent the red tape or expedite legal proceedings (Ferreyra-Orozco, 2010). Sometimes I witnessed blatant bribery at the highest echelons, but only exceptionally.

In the federal judiciary, I knew of corruption through friends and colleagues working in district courts, who would confide in me when a trial was affected by corruption. This corruption was rare, though. Most of the time, I was able to confirm this information by reading the summary of the case sentence

(which is a public record) and by looking at the context of the trial. By context, I mean who the judge was, what interests were at stake, who the main stakeholders of the trial were, and who the attorney or law firm in charge of the case was. Context was important because by identifying it, one could figure out hidden connections or relations between stakeholders that could potentially lead to influence peddling, cronyism, and corruption. For instance, if a defendant's attorney in a criminal trial turned out to be a former classmate, acquaintance, or friend of the judge, this relation could facilitate corruption at some point. Likewise, if the interests at stake were high, more often than not both parties would use political and economic incentives to achieve a favorable judgment.

Interviews

Given the complexity of studying corruption among Mexican public officials, I decided that the best methodological approach was conducting semi-structured interviews. This type of interview allows the use of questionnaires to include specific topics essential for the researcher, using a loose format that allows the interviewee the freedom to expand on themes he or she personally feels are important. As explained by Bernard, "a semistructured interview is open ended, but follows a general script and covers a list of topics...in situations where you won't get more than one chance to interview someone, semistructured interviewing is best" (Bernard, 2002, p. 203-205).

I realized from my former experiences that Mexican officials would be reluctant to talk about their jobs if the conversation were being recorded. Any

possibility that their opinions could be exposed to public scrutiny would have undermined my efforts to recruit officials for interviews. Most of them fear that if they say what they really think—usually a criticism of their institution—and it is disclosed, they could lose their jobs. Consequently, I did not tape-record any of the interviews. To record the information I wrote their responses on paper using notes, sometimes using keywords to emphasize themes or ideas that the interviewee considered important. After every interview, I transcribed the notes onto a Word document using a netbook that I carried with me all the time. Because the transcription took place right after the interview, I was able to include most of the information provided by the interviewees based on the notes and fresh memories.

I interviewed 45 people in total: 40 public officials working in the MFJ, three Mexican scholars whose expertise related to the same 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 in the interviewees' offices and one-third (12 interviews) in different settings, such as coffee shops, restaurants, and the interviewees' homes. Interviews were conducted in six different cities in Mexico: Nogales, Tijuana, Mexico City, Puebla, Acapulco, and Morelia. Below, there is a table about interviewees' demographics, which highlights the most important information about them.

Table 1.1 Sample's Demographics

#	City	Name	Gender	Rank	Seniority
1	Nogales	Antonio	Male	Secretary of the Court	10 yrs.
2	Nogales	Bruno	Male	Judge	19 yrs.
3	Nogales	Carlos	Male	Process Server	20 yrs.
4	Nogales	Daniel	Male	Federal Public Defender	5 yrs.
5	Tijuana	Elizabeth	Female	Typist	22 yrs.
6	Tijuana	Felipe	Male	Secretary of the Court	8 yrs.
7	Tijuana	Gerardo	Male	Federal Public Defender	8 yrs.
8	Tijuana	Héctor	Male	Secretary of the Court	17.5 yrs.
9	Tijuana	Isabel	Female	Judge	22 yrs.
10	Tijuana	Jazmín	Female	Federal Public Defender	10 yrs.
11	Tijuana	Kevin	Male	Secretary of the court	11 years
12	Tijuana	Luis	Male	Judge	12.5 yrs.
13	Tijuana	Mónica	Female	Secretary of the court	19 yrs.
14	Tijuana	Magdalena	Female	Judge	32 yrs.
15	Mexico City	Natalia	Female	Secretary of the court	11.5 yrs.
16	Mexico City	Orlando	Male	Scholar	
17	Mexico City	Pedro	Male	Secretary of the court	11 yrs.
18	Mexico City	Quirina	Female	Scholar	
19	Mexico City	Ramón	Male	Scholar	
20	Mexico City	Santiago	Male	Secretary of the court	18 yrs.
21	Mexico City	Teresa	Female	Secretary of the court	9 yrs.
22	Mexico City	Victor	Male	Secretary of the court	9 yrs.
23	Mexico City	Wilfrido	Male	Secretary of the court	10 yrs.
24	Mexico City	Xavier	Male	Secretary of the Council	20 yrs.
25	Mexico City	Yanny	Male	Secretary of appellate court	15 yrs.
26	Mexico City	Zacarías	Male	Magistrate	40 yrs.
27	Puebla	Andrés	Male	Judge	11 yrs.
28	Acapulco	Baltasar	Male	Typist	1.5 yrs.
29	Acapulco	Carmen	Female	Typist	25 yrs.

30	Acapulco	Diego	Male	Judge	14 yrs.
31	Acapulco	Ernesto	Male	Secretary of the court	15 yrs.
32	Morelia	Fernando	Male	Secretary of the court	26 yrs.
33	Morelia	Gustavo	Male	Federal Public Defender	30 yrs.
34	Morelia	Hugo	Male	Magistrate	21 yrs.
35	Morelia	Ignacio	Male	Litigant in federal courts	36 yrs.
36	Morelia	Josefina	Female	Typist	5 yrs.
37	Morelia	Karla	Female	Process Server	9 yrs.
38	Morelia	Lourdes	Female	Secretary of appellate court	16 yrs.
39	Morelia	Miguel	Male	Secretary of the court	11 yrs.
40	Morelia	Nancy	Female	Secretary of appellate court	16 yrs.
41	Morelia	Oscar	Male	Secretary of appellate court	13 yrs.
42	Morelia	Patricia	Female	Litigant in federal courts	30 yrs.
43	Morelia	Quintiliano	Male	Magistrate	20 yrs.
44	Morelia	Raquel	Female	Typist	13 yrs.
45	Morelia	Sara	Female	Judge	17 yrs.

Besides interviews, I also conducted an archival research on a recent high-profile trial dubbed the *Michoacanazo*. Several interviewees in Morelia mentioned the *Michoacanazo* case as a paradigmatic example of corruption, politics, and drug-related issues in federal courts. For some interviewees, this case embraced the complexities and contradictions that the federal judicial system has to face regarding corruption and drug trafficking. I decided to use this trial as a case study for this dissertation to present an analysis of the connections between corruption, politics, and drug trafficking. Chapter six addresses this case study in detail, but I will briefly explain the main context of the case and how I obtained copies of the trial.

Case Study: The Michoacanazo

During the fieldwork, I asked some interviewees who had direct knowledge of this case about the context and legal foundations of the indictment. Through a chain of fortunate events, I was able to get direct access to copies of parts of the file and sentencing data, which enabled me to grasp a more accurate picture of the whole case. I also collected enough first-hand data and archival documents to conduct a thorough analysis of it. By knowing what happened, why it happened, and what it meant in the broader context of this institution, this case offered the opportunity to approach my research topic from a practical perspective while allowing a critical analysis of the MFJ.

The events that led to this trial took place on May 26, 2009, when the Mexican federal government arrested several dozens of public servants in the state of Michoacán. The federal attorney's office (*Procuraduría General de la República, PGR*) argued that these officials had ties to, or gave protection to, the powerful regional cartel known as *La Familia Michoacana* (Elorriaga and Castillo, 2009). Among the detainees were a state judge, a former state attorney general, a close adviser to the governor, state police officers, and several mayors. Federal forces, without prior notice to state law enforcement agencies and the local government, made the arrests.

The news of this event made headlines nationally and internationally and created a deep political conflict between the state and the federal governments (Elorriaga and Castillo, 2009). State elections were approaching in the following

months, and because the state government was under control by the opposition party (*Partido de la Revolucion Democratica, PRD*), some pundits viewed these arrests as politically motivated to influence voters (Alemán, 2010). All detainees were indicted, but all of them were eventually released one to two years later when federal judges threw out the case for lack of conclusive evidence.

To provide a more accurate explanation of the case, I analyze in chapter six the social and legal context of drug trafficking in Mexico as well as the long-term relationship between politics and drug cartels. There is also a thorough discussion and close examination of the evidence from the trial to shed light on the hidden mechanisms that surround the connection between corruption and political power. Overall, the *Michoacanazo* case offers a unique opportunity to take a closer look at the federal judiciary and complement the data from fieldwork.

Questionnaires

I arrived at the questions asked during the fieldwork using two methods: one was an analysis of the setting under study and consideration of the kind of questions most appropriate and effective to elicit responses from MFJ employees. After I came up with a list of topics and questions, I set up the second method: I did a pretest of these topics and questions with intimates who worked at the federal judiciary. Their feedback helped me to eliminate inappropriate questions and be more subtle when addressing controversial themes. This feedback also suggested including an analysis of the institution as a whole, instead of focusing

on corruption only. According to my intimates, this new approach would encounter less resistance to talk from respondents and create friendlier interviews, which it turned out to be true.

I introduced questions regarding the everyday activities of these public servants working in the MFJ as a form of icebreaker. As I began my fieldwork, I noticed that, translated into Spanish, the original questions still sounded abrupt from a Mexican cultural perspective. It is considered impolite to ask a public official about corruption or wrongdoing because there is the assumption that the interviewer is suggesting this official is corrupt (Riding, 1985). Thus, I reworded the questions to introduce a more indirect approach and to avoid repetitions while leaving the topic of corruption for the final part of the interview.

This modified questionnaire made more sense because it began the interview with general questions about the institution, such as what was the most difficult task of working at the MFJ, what was the best part of the MFJ, and what needed to be improved in the MFJ. This approach showed interviewees that the interview was about knowing and understanding the federal judiciary as a whole, and not only the problem of corruption.

Theory

The theoretical approach that sustains this research project is based on the interpretive constructionist theory (Rubin and Rubin, 2005). This theory looks at describing and understanding social situations, using interpretation and meaningful context. Traditional approaches seeking answers to general questions

on corruption usually follow the methods used in the natural sciences. To understand how corruption is produced, however, demands a different approach. Interpretive constructionist theory (ICT) pays attention to people's view of their world, their jobs, and how they experience reality (Rubin and Rubin, 2005). Through ICT, it will be possible to *document the shared meanings and expectations these people have in common and how they interpret their experiences within a specific cultural circle*. The purpose of using this theoretical approach is to look at corruption and the Mexican federal judiciary through the lenses of the people who work in or have some knowledge of this government setting.

People who work and spend large amounts of time together share similar meanings of themselves, the job setting, and their everyday activities (Gubrium and Holstein, 1997). ICT is a more appropriate theoretical approach than those coming from a hypothesis-testing paradigm because it allows an analysis of the phenomenon of corruption in the MFJ as well as the institution itself. ICT takes into account individuals' opinions and views of those who have a direct knowledge of the problem and looks for a holistic comprehension of what is under study. This theory is inclusive because it embraces the voices of those who have been ignored in the academic debate of corruption: the people who deal and face with complex social issues in their everyday activities (Gubrium and Holstein, 1997).

Interpretative constructionist theory is not free from criticism, though. Critics of the theory argue that this approach can lead to absolute relativism because it tends to focus on describing a multiplicity of viewpoints; consequently, none of these perspectives will be truer than any other (Tashakkori and Teddlie, 2010). However, researchers who use ICT analyze the experience of different people and then evaluate contrasting versions of these perspectives to present the best explanation. In addition, the analysis of the collected data is tested to show accuracy, thoroughness, and believability, which leads to scientific and credible conclusions (Rubin and Rubin, 2005).

Finally, interpretive constructionist theory dovetails with qualitative research, in particular with an interviewing model, such as the one used in this dissertation. Both ICT and semi-structured interviews look for a deep understanding of the topic of research by focusing on meaning, context, setting, and situations. To reach these goals, both the research project and the theory supporting it must be flexible enough to integrate new findings into the project and redesign the interviews (Rubin and Rubin, 2005). This flexibility was a great asset during the fieldwork because it allowed me to include other themes related to corruption, such as abuse of power, nepotism, and gender discrimination that I did not anticipate when designing the interview questionnaires.

Methodological Practices

Given the complexities of studying corruption within a government branch that is reluctant to disclose its everyday practices to the public, I seek the

combination of different methodological practices to provide a *substantive triangulation* of information (John Johnson, personal communication). It is important to emphasize that this dissertation is written by a *returning member* with relevant sociocultural knowledge of the topic, the setting, and the people under study.

The first methodological practice used here is *contextual triangulation*, which means that the narratives and stories collected from the interviews are discussed and analyzed vis-à-vis the knowledge and cultural understandings from my prior experiences. At a different level, the accounts from some respondents are compared and contrasted with other respondents from the same jurisdiction or similar rank, to find patterns of behavior and confirm the veracity of the facts; this second methodological practice is named *informant triangulation*. A third methodological practice is *documentary triangulation* by which books, articles, and public documents of the MFJ are used to verify the collected information. Interestingly, the *Michoacanazo* case study mentioned earlier, embraces these three triangulations altogether for the following reasons: a) It was suggested as a paradigmatic trial by respondents, 2) this information was confirmed by other interviewees, and 3) it was possible to obtain public records to have a closer look at it.

The combination of these methods is the best approach to address the issue of corruption in the federal courts because the goal is to achieve embedded, contextual understandings of the problem, given the known complexities of

studying judicial corruption. By triangulating three different sources of information, it is possible to guarantee the reliability and validity of the methodological process.

Heuristic Questions

Rather than proposing hypotheses, as is usually the case in traditional research projects, I decided to come up with heuristic questions, based on a suggestion by one of my committee members (John Johnson, personal communication). Hypothesis is a term that belongs mostly to methods of the natural sciences, which is a different paradigm from what is intended here. Heuristic questions refer to matters that are more experience-based and present a more flexible problem-solving methodology. There are four heuristic questions for this research, and they arose from different sources: I. The literature discussed in chapter one, II. The methods used to conduct the research, III. Personal experience in dealing with the MFJ, and IV. Feedback prior to the research from people working at this institution:

1. Judges and judicial staff working in the MFJ define corruption in different ways depending on context and setting. Bribery and extortion will be clearly defined as corrupt acts. However, influence peddling, cronyism, and favoritism are less likely to be defined in the stark moral language of corruption because of institutional rationality and cultural norms.

2. The impact of judicial corruption occurs mostly through subtle mechanisms by which some politicians and high-ranking officials influence

judges or judicial staff to provide benefits in the trials for some cartel members. These benefits include mitigated sentences, parole benefits, privileges in prison, and sentencing cartel members to state prisons rather than to high-security federal prisons. Rampant judicial corruption, such as an acquittal despite strong evidence, does not occur.

3. The use of death threats by drug cartels against judges and judicial staff is becoming more frequent in drug-related cases. The MFJ has effectively responded to these threats, principally through the protection of personnel (e.g. armored vehicles, bodyguards, and keeping employees' personal information confidential).

4. Judicial corruption in the MFJ involves cliques and social networks. Elite attorneys working for drug cartel members influence judicial staff, judges, or justices through gift-giving and political support. Benefits to these officials include political connections and promises to move up the hierarchy, expensive gifts (e.g. golden watches, expensive bottles of alcohol, luxurious cars), money channeled to third parties (e.g. judges' friends, relatives, girlfriends), and paid services (e.g. expensive travel, luxurious restaurants and clubs).

In the conclusion of this dissertation (chapter seven), I address each of these heuristic questions to show whether the collected data and its analysis confirms their validity regarding corruption in the MFJ. In addition, a detailed assessment is provided to explain why these questions may have failed to account for the existence of corruption.

Intricacies of the Fieldwork Setting: The Federal Courtrooms

Most federal courts are overwhelmed with excessive workloads. The demand for justice from citizens often exceeds the capacity of the federal judiciary to cope with legal petitions, proceedings, and trials in a timely manner. This is not by any means an exclusive problem of these courts. As a rule, the judicial system in Mexico, at both the state and federal levels, has traditionally been clogged with backlogs due to scarcity of personnel, resources, and lack of attention. In the federal courts, however, the backlog never was as bad as in state judiciaries. Because the federal courts have more resources and are better organized, they accomplish their legal duties more efficiently.

The MFJ is a hierarchical and bureaucratic institution in the traditional sense of these words. As a bureaucracy, it divides the work into specific categories. The work is carried out by specialized individuals according to pre-established rules set up by the federal constitution and bylaws. As a hierarchy, it is an organization that has strict, arranged ranks among individuals and between lower and higher courts that reflect a compartmentalized mentality. There are advantages and disadvantages to these arrangements. In the past, bureaucracy and hierarchy allowed the existence of a highly centralized judicial branch that maintained strict control of the institution in a top-down structure. This form of control reproduced features of the authoritarian regime, such as coopting dissidents, suppressing self-criticism, and keeping sentencing guidelines that

avored the undemocratic system. By doing this, the MFJ contributed to the most crucial element of the authoritarian regime: political stability (Domingo, 2000).

In a more democratic era, this arrangement was problematic. The hierarchy and bureaucracy thwarted freedom of speech and the independence of judges and magistrates because they were subordinated to high-ranking officials. It also created an institutional atmosphere in which obedience, subordination, and loyalty to the boss were more important than either the institution itself or the public interest. Cronyism, influence peddling, and patronage had become deeply embedded within the federal judiciary because these acquired practices became normalized (Schatz, Concha, and Magaloni Kerpel, 2007).

The authoritarian regime waned at the end of the twentieth century and the Mexican Federal Judiciary transformed dramatically in the past 15 years. Now, a more democratic and egalitarian judicial branch is emerging, but not without difficulties and arduous resistance from within (Mayer-Serra and Magaloni, 2010). Bureaucracy and hierarchy are still a supporting and centralizing part of the federal judicial system, although in a different way than in the past. The categorization of people at the different echelons is not as prominent as it used to be during the undemocratic government though. Employees, judges, and high-ranking members are still arranged in ranks of seniority, power, and social status according to the jobs they perform in the institution. These clear-cut divisions between lower, middle, and high-ranking members of the judicial branch manifest themselves in a myriad of ways. The organization of the courtroom, job duties,

distribution of space, social interaction, salaries, gender roles, and language usage are all intertwined and conditioned by the hierarchical and bureaucratic order that prevails (Mayer-Serra and Magaloni, 2010).

Sometimes these features are immediately visible to an outsider by just looking at how the setting has been arranged and where every person sits and works. Other times, hierarchies and bureaucracy are more subtle or hidden and only detectable by paying close attention to events and activities that are usually taken for granted, such as employees' demeanors, boss and worker interactions, and official rituals.

A Hermetic Federal Judiciary

The MFJ is an elite institution that avoids any outside scrutiny as a result of these hierarchies. As part of a centralized culture, the federal judiciary prefers to deal internally with issues affecting its members, image, policies, and any other problem that could imply some criticism. These policies have led the institution to turn inward and be relatively closed to outsiders (Mayer-Serra and Magaloni, 2010).

By adopting a reserved attitude towards those who do not have the credentials or the knowledge to interact or be part of the organization, the MFJ has remained inaccessible to a certain extent. In this context, being inaccessible means that the institution has kept strict control of its internal culture, policies, social relations, and everyday affairs. Only those who are familiar with the MFJ

know how and why the institution does what it does and the rationale behind it. Consequently, Mexican society knows little about the federal judiciary.

What most people know about the MFJ does not reflect the nature and organization of the judicial branch. The technical language used in trials and proceedings has kept the MFJ out of reach because most people do not understand this technical terminology. Due to its aversion to external scrutiny, it is necessary to explain how I got access to people working at the MFJ to conduct the fieldwork and interviews during the summer of 2011.

How I Got Member Knowledge

I studied law in Morelia Mexico and became an attorney during the mid-1990s. As a law student, I did several internships at the state judicial system that gave me first-hand experience and an inside perspective about this branch of government. First, I joined the third civil courtroom in Morelia (*Juzgado Tercero de lo Civil de Primera Instancia*). My commercial law professor was the judge in this court, and she invited me to join it. Later, I did another internship at the prosecutor's office assigned to the fourth criminal appellate court (*Cuarta Sala Penal del Supremo Tribunal de Justicia del Estado*). Finally, a year before graduation I joined as an intern the office of the public defender assigned to the fourth criminal courtroom of Morelia (*Juzgado Cuarto de lo Penal de Primera Instancia*), located adjacent to the state prison.

I spent almost three years working as a trainee at the State Supreme Tribunal of Michoacán (*Supremo Tribunal de Justicia de Michoacán*), gaining

practical experience about law and litigation to better understand the judicial system. In particular, I engaged in socialization processes, such as spending time outside the office with other peers, attending celebrations relevant to people in the judicial system, and creating closer bonds with coworkers. These activities allowed me to figure out how important connections and friendships are in such a bureaucratic setting. This helped me later on during my litigation years as well as with future academic projects such as this one. The state judicial system is not the same as the federal judiciary, but there are some similarities between the two of them, such as the existence of hierarchies, bureaucracy, and lower and appellate courts (Vargas, 2008). The experience I gained at the state judicial system was fundamental in having easier and smoother access to the federal judicial system as an attorney as well as for the fieldwork of this research.

After my graduation, I worked for two law firms and practiced property, criminal, and civil law in the state of Michoacán, mostly in its capital Morelia. A few years later, having saved enough money to move on, I created my own law firm and personally litigated for more than six years in state and federal courtrooms. Litigation before federal courts was mostly *Amparo* cases in both district (lower) and collegiate (appellate) courts. During these years, as part of my duties as an attorney, I gained access to court staff, judges, and magistrates. Because this setting is immersed in a strong hierarchical structure, it was important to maintain respect and deference towards these public officials while dealing with them. Familiarity with technical language, appropriate demeanor,

and formal clothing were three basic elements that were and still are valued in the federal judiciary. Knowing how to use them appropriately takes time, but there is the reward of becoming an insider once they are learned.

Over the years, some of my former classmates, acquaintances, and friends from law school began working at the federal judicial system and filled positions there. As is true of most people who get jobs at the MFJ, they initially began working at the lower echelons of the institution, and they made their way up the hierarchy until they began holding middle and high ranking positions. This meant moving out to different cities and working in various courtrooms in order to gain experience and senior positions. During this time, I always kept in touch with my social network of school friends, by either visiting them at their employment setting or getting together with them during the holiday season. Around Christmas, most of them would be back in Morelia to spend time with family, and we would reunite for dinner or just coffee to catch up and nurture our friendships.

Approaching People in the Federal Courtrooms

Snowball Approach

I used my extended network of friends who work at the federal judiciary to contact and interview a little more than half of my sample. Some of those interviewees were my own friends who volunteered to be interviewed. Others were friends or acquaintances of my friends who accepted the interviews because I had been recommended (Adler and Clark, 2011). In the second round of

interviewees, I used a snowball approach to contact interviewees recommended by friends and acquaintances.

Having my friends mediating to contact potential interviewees was an extremely useful formula for interviewing more people. As a result, and despite their busy schedules, the interviewees were willing to sit and talk with me for an hour or more. For some of the interviews, I had to wait for hours before we could start the interview because of the interviewee being called away on short notice. Eventually, however, the interview would be conducted.

The fact that I was recommended by a mutual friend created a sort of commitment to do the interview, and this saved me time and energy, which helped me reach more individuals according to my research timetable. Conversely, when I lacked the recommendation of a friend, I was not able to secure as many interviews when I approached potential interviewees by myself.

The Problem of Accessing Interviewees

As with most bureaucratic organizations in Mexico, the MFJ is a complicated institution to get access to. In general, public employees tend to mistrust those who do not share the same affiliation because they are seen as outsiders. Federal court employees are even more suspicious of outsiders due to the nature of their work. Having a friend or acquaintance mediating between an employee and an outsider is extremely helpful in creating trust and rapport, but without a mediator, other measures are needed. I conducted fieldwork in some federal courtrooms where I did not know anyone personally, mostly in cities, such

as Nogales and Tijuana, which are located on the Mexico-U.S. border. To have a higher successful rate of interviews where a referral from a friend was not possible, I designed a personal strategy to create rapport (Adler and Clark, 2011) and convince these public officials to be interviewed. This strategy was divided into four rubrics: appearance, language (verbal and body), credentials, and research project.

Appearance: My background as an attorney reminded me how important clothing and personal appearance are for good first impressions. When I first met with my potential interviewees to request an interview, I wore semi-casual clothes and I showed up early, around 9:00 in the morning, when these public servants open the courts to the public and they are usually not so busy.

Body and Verbal Language: The use of body and verbal language were two important elements that communicated self-assurance and formality at the beginning of conversations. For body language, I was aware that a handshake is almost a mandatory ritual in Mexican culture when two people meet or greet each other, and meeting a public official for the first time could not have been the exception. For verbal language, I used formal words in Spanish and the traditional way of addressing people who are older or unknown to you. When talking to these officials, I always included their job title added to their last names to signify respect and acknowledge their official positions (Riding, 1985).

Credentials: I presented myself as a graduate student and former attorney from Michoacán state conducting research on the federal judiciary. Initially, I did

not say I was an ASU student in order to avoid suspicion for being a potential outsider. I just said that I was a PhD student (*estudiante de posgrado*) doing fieldwork, without being specific about my affiliation. Sometimes “gatekeepers” (e.g. judge’s secretaries) would ask me to provide my affiliation in order to inform the potential interviewee where I was coming from, and I would provide my former law school affiliation: *Universidad Michoacana* (Michoacán University).

Once I was in the presence of a future interviewee, and after the usual protocol of salutations, I explained to him/her that I had litigated for several years in Michoacán state, and that I wanted to explore other realms of law. I also mentioned that I was currently finishing a PhD in Sociology. It would have been complicated to explain my major as Justice Studies because there is no equivalent in Mexican academia for this discipline. I figured Sociology would be the closest subject most interviewees would recognize as the field of study supporting my research on the federal judicial system.

Research Project: In order to convince potential interviewees to agree to the interviews, I realized that I had to make my research project attractive to them. To do this, I had to tackle two major obstacles: public officials’ busy schedules and the topic of corruption. When I began to entertain the idea of studying corruption at the MFJ, I knew that these public servants—who are extremely busy—would not easily give up their time for interviews. I also knew that I could

not tell them openly that I was conducting a research on corruption because most of them would have turned down the interviews (Haller and Shore, 2005).

As I mentioned earlier, my strategy to make the research appealing was to incorporate other topics and issues related to the MFJ that could be interesting to my potential interviewees. Thus, when I first talked to future interviewees, I explained to them that I was conducting research on the federal judicial system to better understand the institution. I said that a fundamental part of the interview was to hear what they personally had to say about their workplace, whether good or bad. I emphasized that confidentiality would be guaranteed, that no questions would be asked about any trial or case under their consideration, and that names of people and personal information would not be recorded. I also said that I was planning to publish the findings of the research in the future in order to let the public know about it.

Fieldwork: Criteria for Selecting Settings

I conducted fieldwork in six different Mexican cities: Nogales, Tijuana, Mexico City, Acapulco, and Morelia. The rationale behind choosing these six cities to conduct interviews had two main goals: 1. to have a representative sample of the institution and people under study; and 2. to compare and contrast dissimilar jurisdictions of the MFJ and be able to achieve a holistic understanding of the institution and the problem of corruption.

Federal courts are not the same in Mexico City as in any other jurisdiction far away from the capital. The MFJ is a centralized institution, and economic and

human resources favor the capital of the country where the head of the MFJ is located. This means that people who work in the federal courts of Mexico City enjoy better work settings and more opportunities to move up the echelons. Therefore, their perspectives on corruption and the institution could be different from someone who works in the district court of a small town located in the Mexico-U.S. border.

Since jurisdictions in border towns would be included in the fieldwork, I picked up Nogales and Tijuana as places to conduct interviews. These two towns would be better fieldwork settings than other border cities, such as Ciudad Juarez and Nuevo Laredo. First, they were located nearer Phoenix, where I live, and would be within closer reach. Second, given the high levels of violence in some states of Mexico, such as Chihuahua and Tamaulipas where Ciudad Juarez and Nuevo Laredo are located, I did not want to risk personal safety by spending time in these cities. Finally, Tijuana is the largest city located at the Mexico-U.S. border and has the largest number of district courts of any border city.

Geography influences the type of work that federal courts do. For instance, district courts located in border towns south of the U.S. have many trials related to drug and arms trafficking, human smuggling, and contraband. In addition, federal courts located in cities such as Acapulco and Morelia, where drug trafficking has been part of the local economy, have high crime rates related to drug cartel violence. Based on this criterion, I picked up Acapulco and Morelia

as settings for conducting interviews because the experience and stories that MFJ employees could tell about the research project would be significantly different.

Mexico City concentrates the largest number of federal courts and archival resources; in addition, I have several intimates working on these courts. Then, picking this city as another place for conducting fieldwork was necessary. Puebla City, which is located close to Mexico City, also had plenty of resources and potential for finding respondents. I selected it for the same reasons that I included Mexico City. Finally, my hometown Morelia offered me the chance to interview many individuals because I had the largest social network there.

The city of Morelia is known for its colonial heritage, and the local university—*Universidad Michoacana*—and its School of Law in particular, have a positive reputation within the federal judiciary because many of its graduates end up working in this institution. Morelia feels like a college town, but as the capital of the state of Michoacán, it suffers from the same urban problems (e.g. intense traffic, crime, unemployment) as any other large city. Morelia is located approximately 150 miles west of Mexico City, and it is well connected to the rest of the country with highways, an international airport, and public buses.

Itinerary and Timetable

I started fieldwork on April 15, 2011, in Nogales, where I interviewed four individuals. On April 25, I traveled to Tijuana. Tijuana is the largest Mexican city located on the Mexico-U.S border. Due to its proximity to the U.S., federal crimes, such as drug trafficking, human smuggling, and arms trafficking, occur at

high rates. There are eight district courts in Tijuana in total, and no other border town has as many courts as Tijuana does. I interviewed ten people there, and then I went to Mexico City.

Fieldwork in Mexico City was one of the most exciting experiences during my summer of research. I was able to interview high-ranking officials and obtain great information for my research project, both during interviews and in my archival searches. Here, I interviewed nine people at different levels of the hierarchy from both lower and higher courts. I also interviewed three individuals from academia whose area of expertise was the federal judicial system and the Supreme Court. Mexico City concentrates the highest number of federal courts in Mexico, which should not come as a surprise since is the capital of the country where the seat of the federal powers lies. There are 79 district courts, 60 collegiate courts, and 9 unitary courts in Mexico City alone (*Consejo de la Judicatura*, 2011). All of these courts are specialized by subject such as criminal, administrative, civil, and labor. Courts are located throughout the city, but following a particular pattern. The Supreme Court is located downtown, most criminal district courts are adjacent to the prisons (known as *Reclusorios*), and most civil and labor district courts are concentrated in a sort of judicial city called *San Lázaro*, north of downtown Mexico City. There are nearly ten *Reclusorios* in the capital and most of them have district courts. I conducted almost half of my interviews in this city in one of these *Reclusorios*, a few others in *San Lázaro*, and the rest in academic settings and restaurants when the interviewees requested a

setting other than their offices for meeting with me. From this city, I went to Puebla where I could interview one senior official only.

After Puebla, I went to Acapulco and interviewed four individuals. It was difficult to schedule interviews in this city because most potential respondents were discouraged from talking. Reluctance to be interviewed stemmed from a combination of several factors. First, most courts—at the lower and higher ranks—were overwhelmed with work, which made it difficult for these public servants to give away time for an interview. Second, for several years Acapulco has been the scene of a violent and bloody drug war between rival cartels that has left hundreds of people dead. Dismembered and decapitated bodies appear every day on the streets of this Pacific port, and regular shootings occur in major touristic centers and intersections. On December 2008, one process server working in the federal courts of Acapulco was found dead, with a shot in his head and evidence of torture (García Parra, 2008). Nobody knows why this happened to him. Nevertheless, people working in the federal courts in Acapulco are constantly worried and live in fear as a result of this bloody war between cartels. I assumed that these elements intertwined to inhibit potential interviewees from talking with me.

Finally, I moved to Morelia as the last place of fieldwork. Having this city as the final stage of the research was rewarding because my social network here was more extensive and I was able to interview more people in a shorter time. I knew I could contact potential interviewees outside the courts as well as during

the vacationing period during the last two weeks of July. I interviewed 14 people in Morelia. Among them were two individuals who were attorneys in major law firms that handled cases in federal courts. Their expertise provided a different perspective on the MFJ.

Sample and Representativeness

By collecting data in these six contrasting cities, I wanted to guarantee a distribution of demographic variables that included different perspectives based on the location of courts (Bernard, 2002). These six urban locations do represent the range of cities where federal courts are located, which are large, medium, and small jurisdictions. Large jurisdictions include huge urban settings such as Mexico City and Monterrey while medium size jurisdictions include places such as Acapulco and Morelia. Small jurisdictions refer to local towns, such as border cities like Nogales or Nuevo Laredo, which have no large population but concentrate high rates of federal crimes. Mexico City represents large jurisdictions, Acapulco and Morelia medium-sized jurisdictions, and Nogales a small town jurisdiction. Tijuana has a mixed categorization, representing small and medium-sized jurisdictions because many of its employees have moved around in Northern Mexico between different jurisdictions, having experience in both medium-sized and small jurisdiction. Morelia also has employees who have worked in the city of Uruapan, a small town located 60 miles to the south with high rates of drug-related crimes, which makes this jurisdiction between medium and small as well.

A crucial factor to take into account is that most interviewees had spent time in different jurisdictions because mobility is part of the process of advancement. They had worked in several jurisdictions and federal courts, performing different duties under a variety of judging styles, depending on the location of the courts and the people in charge of them. This variety of duties has given interviewees broad experience on the topics approached during the interview, especially the topic of corruption, because they knew where and how this phenomenon could occur and go undetected.

Having 45 interviews was a sufficient sample to present a credible and reliable representative selection of the population under examination because I reached what social researchers called *theoretical saturation* (Adler and Clark, 2011), the point at which I was hearing little new information. Fieldwork was based on qualitative interviewing, which goes beyond simply learning about a single topic and including information that is important for those being studied (Rubin and Rubin, 2005). Unlike quantitative approaches that highlight statistical precision and the quantification of data, qualitative research pays attention to shared meanings and the different interpretations of social reality held by respondents. In this research, 45 interviews provide more than enough information to understand the *cultural arena* (Rubin and Rubin, 2005), the setting in which MFJ employees work and interact routinely by mutually sharing their *Weltanschauung* (worldview). By combining different individuals' interpretations of particular issues, such as nepotism, inequalities, and corruption within the MFJ,

and how they are perceived, it is possible to put together a single narrative that makes sense of all them. Chapters five, six, and seven describe this narrative derived from the personal accounts of these 45 interviewees combined with archival information and my experience as a returning member of the federal judiciary.

To maintain the diversity of experiences from interviewees, I explored different levels of the MFJ hierarchy in the fieldwork. I interviewed individuals from the bottom of the echelons (typists) to the top (a magistrate who was a former head of the highest electoral tribunal). This wide range of respondents provided a rich narrative in which different and contrasting narratives were recorded. Because of job rotation, most of the respondents had been in different jurisdictions prior to the interview, and this brought even more information and expertise to the conversation.

In addition, the number of interviews per city was different because in each jurisdiction the number of federal courts varies. Most of the interviews took place in Tijuana (10), Mexico City (9), and Morelia (14), which happens to be cities with large numbers of courts. Nogales and Acapulco are relatively small jurisdictions and I interviewed four people in each of them. Puebla is a special case because it has an important judicature but time constraints prohibited me from staying longer there. Thus, I was able to interview one senior official only.

Having only four interviews in Nogales and four in Acapulco was the result of fieldwork complications that are part of the dynamics of this research

method. Many times the encounter between the researcher and the respondent is mediated by setting, culture, and particular circumstances that make it difficult to arrange an interview. In the case of Nogales, it was the first city where interviews took place, and it was extremely challenging to convince people to talk. First, I did not know anyone there. Second, employees were reluctant to commit to interviews. However, weeks later I was able to interview ten people in Tijuana, which made up for the few interviews in Nogales. Combining the interviews from both Tijuana and Nogales provides adequate representation of the context and issues most federal courts face in the jurisdiction of the Mexico-U.S border.

In the case of Acapulco, as I said earlier, people were reluctant to talk. However, the high number of interviews in Morelia made up for Acapulco because the places have many similarities. Both locations have high levels of drug-related crime, local cartels in control of the territory, and both are medium-sized jurisdictions. As I said, the fact that most respondents have worked in different federal courts because of a job rotation policy gives interviewees a broad perspective on their understanding and experiences of the MFJ.

Regarding gender ratio in the data, I wanted to have a gendered balance in my sample to look for potential trends or patterns between genders, considering that more than 50% of the employees in the federal judiciary are women. Unfortunately, many female employees that I asked for interviews declined my requests. After several women in a row refused my requests for interviews, I realized that many of them did not feel comfortable talking about the work setting

or any other matter with a stranger. Other women just did not want to “waste” their time in interviews. Despite this resistance, 16 out of the 45 interviews I ended up conducting were with females.

Caveats of Fieldwork

Regarding the analysis of the collected data, it should be noted that sometimes information or ideas attributed to respondents were not explicitly stated by them, but gathered through my interpretation of the content (facts and data) of the interview. Because the research method used to collect data consisted of semi-structured interviews, sometimes an interview did not follow the guidelines of the questionnaire but took its own path based on the respondent’s background, seniority, availability of time, and so on. As a result, not all interviewees responded to the same questions or provided the same information. For instance, in chapter five I discuss the definition of corruption used by MFJ employees. Most often, they describe corruption as bribery, but sometimes they also defined it as tips, nepotism, or influence peddling. Not all interviewees explicitly responded with a definition of corruption, and when they did, not all categorically referred to corruption as a specific behavior. In these cases, I interpreted the content, context, and narrative of the interview and deduced what the respondent meant corruption to be based on that.

To guarantee confidentiality, I did not use any respondents’ real names. Instead, I assigned a letter of the alphabet to every interviewee, using a chronological pattern, and then came up with a Hispanic name. Thus, the first

respondent I interviewed received the letter “A” and his name in the analysis of the data is Antonio. I repeated the same procedure using the 26 letters of the alphabet, and started all over again with the interviewee listed as number 27 on my fieldwork list. To avoid confusion, I keep gender consistency, meaning that female respondents received female pseudonyms and male interviewees male pseudonyms.

Regarding the names of federal judges and parties involved in the *Michoacanazo* case, I maintain confidentiality as well, except for a few individuals, such as the judge in Nayarit state who suffered a machine gun attack and the Michoacán governor’s half-brother who was accused of wrongdoing. Those particular names and events related to our case study are publically known and used in the mass media, so there was no need to hide the identity of such individuals.

I do use verbatim quotes from interviewees throughout the dissertation to emphasize some points and voice the perspectives of those who were interviewed. To clarify, those quotes are not always the interviewees’ exact words. During the interviews, in order for me to capture the core of what respondents were saying, I had to ignore some words, such as articles, pronouns, stylistic expressions, and idioms in order to record the most important information. Once each interview was over, I reconstructed some of the respondent’s words while transcribing my fieldwork notes into a Word document in order to create a logical narrative. Nonetheless, the interviewees’ words quoted throughout this dissertation certainly

reflect the meaning of what they said. The next chapter presents an overview of the Mexican Federal Judiciary, in which fieldwork took place, to provide a contextualization of the institution as a whole.

Chapter 4

AN OVERVIEW OF THE MEXICAN FEDERAL JUDICIARY

Similar to the U.S. federal system, Mexico's political authority is composed of a central government located in the Federal District (Mexico City) and 31 self-governing political divisions called states. Each state has its own constitution, governor, legislature, and judicial system. The state judicial systems are organized in a two-tier hierarchical structure of lower courts (*juzgados*) and appellate courts (*salas*). The former are headed by state judges (*jueces del fuero común*) and the latter by state magistrates (*magistrados del fuero común*). There is also a State Supreme Court that is the highest authority of each state judiciary, and most states now have a State Judiciary Council (*Consejo de la Judicatura Estatal*) in charge of managing the budget, career civil service, and administrative affairs. The jurisdiction of state judiciaries is based on a sort of default principle: everything that does not fall under the umbrella of federal courts belongs to state courts (Mexican Federal Constitution, articles 40-44, 2012). Hence, federal legislation, such as the civil and the criminal codes, explicitly defines which legal matters will be handled by the federal judiciary. Everything else belongs to the jurisdiction of state judiciaries.

On the other hand, the federal judiciary is one of the branches of the central government, the judicial branch, which is part of the governing model based on the separation of powers. The Supreme Court of Justice is the highest authority of this institution. Lower and appellate courts distributed throughout the

country are in charge of federal matters, such as drug related crimes, human smuggling, and arms trafficking. Compared to state judiciaries, the federal judicial system enjoys a better social status and recognition by the community of law firms, attorneys at law, and citizens who have litigated and know both the federal and state judiciaries.

The prestige of the federal judiciary comes from two sources. First, as a federal authority, its budget is considerably larger than any of the state judiciaries', which allows it to have more available human and material resources and to provide better service to the community. Second, the federal judiciary has jurisdiction over the constitutional guarantee for civil rights protection called *Amparo*. *Amparo* is “a constitutional provision peculiar to Mexico which resembles United States writs of prohibition, certiorari, injunction, and habeas corpus” (Robb, 1979, p. 74). *Amparo* means “protection, aid, or shelter” in Spanish. Although the *Amparo* was an original Mexican creation, it combines national and international influences from legal principles, such as the habeas corpus, injunction, certiorari, and error of mandamus (Schatz, Concha, and Kerpel, 2007).

Society in general trusts the *Amparo* as a reliable legal action to combat government abuses and violations of due process. It is a sort of judicial review against any authority that infringes the Bill of Rights (*garantías individuales*). Although not all Mexicans have access to this suit due to lack of resources to hire an attorney, the *Amparo* is considered a social institution because it is seen as a

reliable recourse against civil rights violations (Schatz, Concha, and Magaloni Kerpel, 2007). To better understand the MFJ, it is important to explain the political environment of the past that influenced this institution.

The Federal Judiciary under the Undemocratic Government

Social and political unrest in Mexico led to a revolution in 1910. As a result of radical political change, a new constitution was endorsed in 1917. The new document reflected the concerns of the revolutionary period. Besides the incorporation of workers' rights, agrarian reform, and term limitations, the federal judicial system was consolidated to assure a positive equilibrium between the three branches of government. The 1917 constitution embraced judicial independence, transparency, separation of powers, and a more efficient Supreme Court (Cabrera, 1968).

Throughout the post-revolutionary period, the role of the federal judiciary was usually eclipsed by the presidential system and the authoritarian regime that controlled Mexico during most of the twentieth century. As Schatz, Concha, and Magaloni Kerpel accurately remark, "The judicial power remained subordinate to the executive branch as the post-revolutionary regime was transformed into a unique Mexican-style authoritarianism, in which particular practices and forms of organization—as opposed to written laws contained in the Constitution—endowed the executive branch of government with almost unlimited political power" (2007, p.199). This unlimited power included the phenomenon of loyalty

and subordination from the entire bureaucracy to the President, a feature that would eventually lessen the credibility of the federal judicial system.

Mexico experienced 71 years of an authoritarian regime that remained in place for most of the twentieth century. The federal judiciary was part of this political establishment, allowing the system to remain in power by legitimizing and sanctioning the status quo. Strictly speaking, the political regime at this time was not a dictatorship. The separation of powers remained an official policy, and the three branches of government performed their roles according to the federal constitution. However, the executive branch exercised absolute dominance over the other two branches. This supremacy of the President nullified the system of checks and balances that usually brings balance to power in democratic societies.

The federal judiciary was left with limited independence. Justices, magistrates, and judges were appointed on a political basis rather than on merit and professionalism. The unwritten rule among the autocratic establishment was that as long as the judges did not affect or contradict the political and economic interests of the incumbent President and his clique, there would be some judicial independence. As Domingo has stated, “The Mexican Supreme Court has been traditionally characterized by its passive political role, and its subservience to the will of the executive, in a system which has concentrated most political power, both formal and de facto, in the hands of the presidency” (2000, p.706). The nature of the authoritarian regime and the limited political autonomy of the judicial branch thwarted any possibility of a counterbalancing function. Justices

and federal judges knew this pragmatic principle and followed it in their judicial decisions.

There are different explanations for why the federal judiciary was so long subordinated to the executive branch. One is that the Mexican legal system is based on the Roman law tradition or on civil law inherited by the Spaniards. This tradition requires that the law to be susceptible to frequent change to keep up with social developments. The response in civil-law systems to this view of law has been legislative drafting of lengthy written codes. Legislation, not judicial interpretation, becomes the basis for law reform. Mexico, in deference to this tradition, has often rewritten its codes, laws, and the federal constitution.

As a result, it has been relatively easy to modify the Mexican constitution. This has been facilitated by the political establishment's absolute control. Many of the legal reforms encouraged by different presidents and the official party targeted the judicial branch to restrict and control its independence and scope of influence. The official justification for these reforms was the need to improve the role of the federal judiciary. Although sometimes these reforms did ameliorate the administration of justice in favor of the citizenry, the real goal was to benefit the President. As Taylor explains,

We can learn much about the origins of Mexico's judicial weakness through a historical review of reforms to Mexico's Constitution of 1917. Four discouraging patterns emerge from Mexico's Constitutional reforms. From 1917 to the present, reforms show: (1) an attempt to undercut judicial prestige; (2) an effort to curtail the autonomy of the Supreme Court; (3) an adherence to overly rigid theories of law; and (4) a mistrust of the judiciary. (1997, p. 144)

The most important constitutional reforms took place in 1928, 1934, and as recently as 1994-1995. Most of these changes were the products of specific political, economic, and social needs that depended on the President in power. Despite the authoritarian nature of the political system, it always looked for legitimacy to justify its dominant power. More often than not, the Mexican political system ignored the rule of law as a basic republican concept, but defended the principle of legality as a justification of its own political chicanery (Domingo, 2000). This meant that, in order for the government to defend arbitrary decisions, it usually changed the law to fit its political needs. If changing the law were not possible, the government would promote the appearance of legality by forcing the Supreme Court to interpret the law favorably to the regime. This resource of disguised legitimation was a powerful incentive to keep the federal judiciary under control.

The relationship between the judicial and the executive branches during the rule of the official party, *Partido Revolucionario Institucional* (PRI) can be divided into five different phases (Domingo, 2000):

- ❖ Relative independence when the constitution was adopted. From 1917 until 1928;
- ❖ Subordination to the executive power, when military men became presidents. From 1928 until 1944;

- ❖ Institutional and administrative consolidation of the federal judiciary with less influence from the other two branches. From 1944 to 1986;
- ❖ Democratic changes that led to judicial reforms to enhance the separations of powers. From 1986 to 1994-1995;
- ❖ A new Mexican federal judiciary with almost complete judicial independence and political autonomy, but still struggling to leave behind the influence of the executive and legislative powers. From 1994 to date.

Judicial Independence as the Yardstick

In any democratic country, a well-functioning judicial branch guarantees respect for legality and constitutionality while maintaining the checks and balances between the different branches of government. In addition, the judiciary provides justice to citizens by protecting their rights and resolving legal controversies according to the law. Independence of the judiciary is a necessary feature because it protects it against pernicious influence from other political powers or private interests. Impartiality, due process, and judicial review are the most important manifestations of judicial independence. However, it is not easy to measure or quantify how much independence a particular judiciary has. Absolute judicial independence is problematical because the nature of checks and balances requires that judges too be accountable for their decisions (Domingo, 2000).

Political theorists describe several elements basic to an independent judiciary. Among them, the most frequently noted are objective and fair

appointment procedures, competitive salaries, long tenures (*inamobilidad*), financial self-determination, and political insulation. Despite political interference from the powerful presidency during the authoritarian regime, the Mexican federal judiciary managed to enjoy some relative judicial independence. This independence was most visible in administering justice for the average Mexican citizen. When two equal parties came and submitted a petition to the federal judiciary to solve a legal issue between them, the federal courts—and the Supreme Court as the highest authority of this branch—usually decided a verdict based on the available evidence. In such cases, judges tended to honor the principles of judicial independence and due process. As Domingo notes, a functional system existed: “Despite the prevailing image of lack of impartiality and corruption as characteristics identified with the administration of justice in Mexico, a functional and unified court system operate[d] and there [was] in place a well-established and sophisticated legal tradition” (Domingo, 2000, p. 726).

The situation was very different when the political establishment (the President, his clique, or a powerful politician) had particular interests in the case. In these situations, the judicial branch would favor the most powerful party. This favoritism or arbitrariness would always be justified as adherence to law, however far-fetched the interpretation (López-Ayllón, 1995; Schatz, Concha, and Magaloni Kerpel, 2007; Taylor, 1997). In sensitive affairs for the regime, such as political and economic matters, the federal judiciary—in particular the Supreme Court—would not dare to rule against the government. One subtle but effective form of

submission to the executive branch was the reluctance of the Supreme Court to admit or rule on petitions that could undermine the credibility and stability of the undemocratic regime.

The political environment in which a legal system operates inevitably affects its performance. Therefore, it should not be surprising that the undemocratic order in Mexico conditioned the scope of judicial independence available to the federal judiciary. What is less obvious is how the federal judiciary legitimized the authoritarian government through its subtle prevention of the law: “[D]ominant party rule secured the complicity of the judicial branch in the hegemonic rule of the PRI. The judiciary played a crucial role in the legitimization of the Mexican political system” (Domingo, 2000, p. 726).

In short, judicial independence was a complicated and thorny issue in the federal judiciary for most of the 71 years of one-party incumbency. Sometimes this independence was severely restricted by the President and sometimes it was looser, but in general, the judicial branch censored its own performance to avoid disputes with the executive. Political stability was the most serious concern for the regime, and the Supreme Court guaranteed this stability through judicial review. When this stability began to disappear during the 1990s, the President had to adopt some political changes in order for the regime to survive, which led to a democratic transition that demanded an overhaul of the judicial system. Among those changes was the 1994-1995 judicial reform that overhauled the entire

judicial branch. From then on, the influence of the executive over the federal judiciary began to wane, slowly but steadily.

The 1994-1995 Judicial Reform: A Watershed

In the mid-1990s, Mexico was experiencing a severe political and economic disaster because of long-term social inequalities, lack of democracy, and mishandling of government affairs. Between 1993 and 1994, several high-profile assassinations occurred—among them the presidential candidate of the party in power, a Cardinal, and the coordinator of the House of Representatives. This created unprecedented political instability. In addition, an indigenous armed rebellion began on January 1, 1994, in Chiapas, one of the poorest states in Southern Mexico, shocking the political establishment and Mexican society. A sudden devaluation of the Mexican currency in December of 1994 produced a deep economic crisis that forced the U.S. government to intervene—literally bailing out Mexico—in order to avoid a regional financial calamity. The combination of these three factors plus a long period of social and political discontent generated a climate conducive to change and legal reforms (Castañeda, 1995).

On December 1, 1994, Ernesto Zedillo was sworn in as the new President of Mexico. Because he was the replacement of the murdered presidential candidate, Zedillo did not have the traditional political obligations to the *ancien régime*. He was a sort of “last-minute president,” and this gave him advantage to carry out audacious reforms in an atmosphere of crisis. Within weeks of taking

office, President Zedillo submitted a constitutional reform to overhaul the entire federal judiciary. This reform attempted to tackle the problems that had traditionally undermined the judicial branch, such as corruption, impunity, cronyism, and the devious application of the rule of law. It aimed to consolidate the federal judiciary and make it a real political power equal to the executive and legislative powers and capable of performing the checks and balances demanded by a more democratic social order. As Staton points out, “[T]he 1994 reform was a means of convincing an increasingly relevant electorate that the government was becoming more willing to respect the rule of law and thus worthy of electoral reform” (2007, p. 276)

Zedillo’s proposal modified 27 articles of Mexico’s 1917 constitution. These reforms were adopted and became effective on January 1, 1995 (*Diario Oficial de la Federación*, 1994). Among the most significant changes was the transformation of Mexico’s Supreme Court of Justice. The reform reduced the number of Justices from 26 to 11 and demanded higher standards of competency. Tenure on the court was reduced to 15 years and the process of appointment was modified to take away decision-making powers formerly held by the President. The jurisdiction of the Supreme Court was reshaped to include greater judicial review powers, and a new institution was created, the Council of the Federal Judiciary (*Consejo de la Judicatura Federal*). This new council would be in charge of administrating the entire judicial branch, except the Supreme Court (Vargas, 2008).

These changes at the top of the judiciary were eventually transplanted to the rest of the institution by establishing new rules for civil service careers in the MFJ, a better internal organization, more available resources, and the professionalization of judges and court staff. The reform granted the federal judiciary, the Supreme Court in particular, new constitutional jurisdiction and powers that established the court as an equal branch of government. Staton explains that,

[T]he action of unconstitutionality grants the Supreme Court the power to set general effects in a certain class of cases, as long as eight of the eleven ministers [Supreme Court justices] adopt the majority proposal. The reform also enhanced the Court's power in constitutional controversies, an action under which the Supreme Court rules on conflicts arising between two branches of the same level of government and disputes between governments of distinct levels in Mexico's federal system. The Zedillo reform drastically changed the institutional structure of the federal judiciary. Perhaps most important, by requiring the resignation of all then-current members, the reform paved the way for a new set of judges to revitalize the third branch of government. (2007, p. 280)

In a country where the rule of law and legitimacy had long been ignored in the name of personal or political interests, not surprisingly, these reforms took some time to take root. It took several years for the judicial branch to acquire a more prominent and independent role in the Mexican political system and be regarded as an authentic institution in charge of administering justice. The problem of legitimacy has been even more pronounced at lower levels in the system, but at this point, the judicial branch has achieved some political activism

and public presence by ruling in high-profile cases, such as mass killings against peasants and indigenous people. In the *Aguas Blancas* and the *Acteal* massacres, for example, the Supreme Court took on an unusual role, conducting an investigation to find out who the murderers were and if any government authority had been directly involved with the killers (Domingo, 2000). In the last 15 years, significant court decisions have included trials challenging the federal constitution in tax and labor laws as well as personal rights in criminal cases. Many of these rulings have been decided against the interest of the state, showing to society that judicial independence is real. “The Court has adopted controversial positions and made rulings which have captured the public attention in an unprecedented manner, not only with regard of its new review powers, but also in *amparo* suits” (Domingo, 2000, p. 732).

In the last few years, the federal judiciary has engaged in public controversies with current President Felipe Calderon regarding the performance of district judges in drug-related trials. The controversy stems from the fact that some drug traffickers have been released from jail based on technicalities and the strict application of the law, even when there is evidence that they are probably responsible for criminal acts. The President has publicly accused federal judges of corruption and wrongdoing without presenting any proof to support his claim. He argues simply that the prosecutor’s office, law enforcement agencies, and the army work hard to capture criminals and drug-traffickers, but once these offenders are sent to the federal courts they are freed (Carrasco Araizaga, 2011).

Despite all the good intentions in the 1994-1995 reform, however, politics still affects the appointment of justices and how the court deals with some politically sensitive topics. Constitutional scholars (Domingo, 2000; Fix-Fierro, 1998; Mayer-Serra and Magaloni Kerpel, 2010; Staton, 2007; Taylor, 1997; Vargas, 2008) debate how independent the court system is, but most of them agree that the 1994-1995 reform has helped the Supreme Court become more independent from external political influences. Nevertheless, there is also consensus among these scholars that political intervention from the executive and legislative branches still exists. This intervention stems from the federal constitution itself and how the executive branch introduced the judicial reform, which is the subject of the next section.

The Politics of Appointing Justices and Council Members

The tenure and the appointment system for members of the Supreme Court was a contested issue throughout the undemocratic regime of the previous century. The original procedure to appoint justices established in the 1917 constitution did not allow any intervention from the executive branch. Subsequent constitutional reforms in 1928, 1934, and 1944, however, introduced a presidential appointment system that gave the executive power almost absolute control over the federal judiciary. The federal constitution required the approval of the Senate to appoint justices, but in fact, the process was under the President's control. "[T]he consolidation of the dominant party rule effectively signified that Supreme Court appointments were virtually in the hands of the executive. Here

began the process of subordination of the Court to the executive” (Domingo, 2000, p.712). The tenure of judges was also reduced, from life tenure in the 1917 constitution, to a six-year term in 1934. Life tenure was reinstated in 1944 and remained until the latest reform in 1994-1995, which established a 15-year term.

While the 1994 reforms limited the influence of the President in judicial appointments, it kept a subtle but effective mechanism of political intervention in which the Senate elects each justice of the Supreme Court from a list of three candidates submitted by the President. A two-thirds majority is required to appoint a candidate. If the Senate rejects the President’s candidates, he or she must offer another trio of candidates. If this second list is turned down, the President can appoint one justice from this last list of candidates. This has not been an effective mechanism to strengthen the Supreme Court because party ideologies in the Senate now determine what candidate is appointed.

Politics also influence the selection of Council members. The Council of the Judiciary is composed of seven Counselors, three of whom are appointed by the executive and legislative branches, with two selected by the Senate and one by the President (Mexican Federal Constitution, 2012). The fact that the President still has some power to determine who should be part of the Supreme Court and the Council of the Judiciary weakens the principle of separation of powers and subordinates the judicial branch.

The influence of the undemocratic past was evident in the 1994-1995 judicial reforms in subtle ways. Allowing the executive branch to name a trio of

candidates for the Supreme Court gave the President a way to exert indirect control of the appointment system. Making the Senate part of the process was a democratic gesture, but an ineffective one. There are too many political parties for anyone to have a two-thirds majority vote, which has led to sterile inter-party disputes, governmental stalemate, and a politicized Supreme Court.

Inter-party disagreement in the Senate has also affected the composition of the Supreme Court in other ways. On September 2010, one justice died of a heart attack. The President sent a list of three female candidates to the Senate a few months later (El Universal, 2010). Having another woman justice would have increased the number of women to three of the eleven sitting justices, creating a more gender-balanced Supreme Court. However, the three main political parties in the Senate collided over which candidate to support and so no one obtained the required two-thirds majority vote, despite consensus that any of the three had the qualifications to become a member of the Supreme Court. Weeks later, the president sent another list, this time of male candidates, and the Senate appointed a new justice from that list. This gender gap on the Supreme Court is reflected in the judiciary at large: only 20% of either judges or magistrates are women despite the fact that they compose more than 50% of the total employees.

Mayer-Serra and Magaloni (2010), two Mexican scholars who have studied the Mexican Supreme Court extensively, contend that legal formalities, such as the appointment process and judicial tenure, negatively impact who is appointed and what kind of political ideology the appointee will employ in future

court decisions. The authors consider that the 1994-1995 judicial reform, although innovative, did not really break with the practice of executive interference in the judicial branch. For instance, the eleven new justices elected after the reform, Mayer-Serra and Magaloni assert, were selected from among then-current federal judges who had been already indoctrinated to think within the authoritarian legal mindset (2010, p. 37). The newly constituted Supreme Court thus has maintained the old mindset in its jurisprudence.

Mayer-Serra and Magaloni also criticize the appointment procedure, arguing that a trio of candidates presented by the President forces the candidates to compete among themselves, encouraging them to lobby for political support. This competition could affect judicial independence through demands for paybacks. In fact, the political parties have already had confrontations in the Senate based on the appointment procedure, such as the one mentioned above. Each party wants to appoint the candidate that best fits its political ideology.

Political disputes between parties and the President to appoint members of the Supreme Court and the Council have reinforced traditional practices, such as cronyism, the use of connections and cliques, which negatively affect the federal judiciary (Mayer-Serra and Magaloni, 2010). These disputes create groups within the MFJ in search for support to be nominated as justice or council member, which strengthen social networking and camaraderie in each of these groups. Eventually these relations translate into potential cronyism, influence peddling, and even political corruption because favors are expected to be paid.

Political support to become a justice can also be paid by turning a blind eye to peers' misconduct among high-ranking officials. An example of this phenomenon can be pointed out with the case of Justice Balderrama (which will be explained in next chapter). Despite the fact that Justice Balderrama has probably engaged in misconduct and abuse of power, he remains unmolested because there is little or no political willingness from the Supreme Court to investigate him. Other favors, such as hiring friends, relatives, and acquaintances, have become a regular practice among judges and magistrates, as will be explained in chapters five and seven. These favors and connections are usually encouraged because of the existence of different groups that battle for power and control within the MFJ, reproducing cronyism, nepotism, and wrongdoing. To better understand how these groups are formed and divided, it is crucial to look at the organization and structure of this institution.

Structure and Organization of the Federal Judiciary

The organization and makeup of the Mexican federal judiciary is defined by the Mexican federal constitution (*Constitución Política de los Estados Unidos Mexicanos*). The constitution is composed of 136 articles, and it follows the European model (Vargas, 2008). Although there have been many reforms and amendments (more than 500) since its adoption in 1917, the initial provisions and structure still remain.

Title Three, Chapter IV, of the federal constitution sets forth the powers of the judiciary and its organization. Article 94 prescribes that the “Judicial Power of

the Federation [*Poder Judicial Federal*] is vested in a Supreme Court of Justice, in an Electoral Tribunal, Circuit Collegiate and Unitary Courts and in District Courts” (Mexican Federal Constitution, 2011, p.58). This article provides that the discipline, monitoring, and organization of the judicial branch (except the Supreme Court) will be in the hands of the Council of the Federal Judicial (*Consejo de la Judicatura Federal*), which will operate according to the guidelines established by the constitution and the applicable laws. The *Consejo de la Judicatura* plays a significant role in the chapter to follow.

The Organic Act of the Federal Judicial Power (*Ley Orgánica del Poder Judicial de la Federación*) governs the internal affairs of the federal judicial power. This law regulates the work and the responsibilities of those who work in the judicial branch, and outlines the jurisdiction of the federal courts. There are other secondary laws, such as the Amparo Act (*Ley de Amparo*), the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*), and the Federal Criminal Code (*Código Penal Federal*) that regulate specific legal procedures and activities during legal proceedings.

The federal judiciary in Mexico has a three-tier structure comprised of the Supreme Court, the circuit courts, and the district courts. “District courts serve as the lowest level of original jurisdiction (*primera instancia*) for federal cases. Circuit courts serve as appellate courts” (Schatz, Concha, and Magaloni Kerpel, 2007, p. 204). All these judges are appointed.

The Supreme Court (*La Suprema Corte de Justicia de la Nación*)

Mexico's Supreme Court is composed of eleven justices (called *Ministros* in Mexican law) who function either as a full court (*Pleno*) or in two chambers. The first chamber (*Primera Sala*) handles civil and criminal matters. The second chamber (*Segunda Sala*) handles administrative and labor cases. This is the highest court of the country. According to Article 105 of the federal constitution, the court has exclusive jurisdiction over constitutional controversies between a state and the federal government, the federal government and municipalities, and two states, among other legal duties.

Electoral Tribunal (*Tribunal Electoral del Poder Judicial Federal*)

The Federal Electoral Tribunal is a specialized organ of the federal judiciary and the highest court on electoral disputes. It is composed of a full court (*Sala Superior*) and five regional chambers (*Salas Regionales*). The full court is made up of 7 magistrates (*Magistrados*) and they have jurisdiction to resolve challenges to elections of the president of Mexico, federal elections of congressman (*Diputados*) and senators (*Senadores*), controversies in local and state elections, and so on (Mexican Federal Constitution, article 99, 2011). This tribunal has the final word in all electoral matters, and it has become an essential as well as controversial institution in the democratic transition that is taking place in Mexico.

Federal Appellate Courts (*Tribunales Colegiados de Circuito*)

Circuit Collegiate Tribunals are courts composed by three magistrates and located throughout the country in 32 jurisdictions known as *Circuitos Judiciales Federales*, one for each state (mostly in the capital of the state) and one for the federal district. As of May 2011, there were 222 of these tribunals distributed according to workload, society's needs, and backlog (*Consejo de la Judicatura*, 2011). They exercise jurisdiction over direct *Amparo* suits against definitive judgments, appeals (*Recursos de Revision*) against sentences (related to any legal matter except criminal trials) rendered by district judges, administrative complaints (*Quejas*), and the like. As of April 2011, there were 645 magistrates working in these courts (*Consejo de la Judicatura*, 2011).

Criminal Appellate Courts (*Tribunales Unitarios de Circuito*)

Unitary circuit tribunals are composed by a single magistrate. They are located in each state and the federal district (32 jurisdictions). As of April 2011, there were 88 of these tribunals and an equal number of magistrates. Similar to circuit collegiate courts, unitary tribunals are distributed according to demand and need. They exercise jurisdiction over appeals in matters decided in the first instance by district courts and *Amparo* lawsuits against the acts of other unitary circuit tribunals, among other things dictated by the law (Organic Act of the Judicial Power of the Federation, Article 29, 2011).

Federal District (Trial) Courts (*Juzgados de Distrito*)

District courts are the lower courtrooms that handle most of the proceedings and trial related hearings. Most of these courts have mixed jurisdiction, meaning that they handle a variety of matters, including criminal, civil, commercial, and *Amparo* petitions. For agrarian, labor, and administrative matters there are special courts under the control of the executive branch. In the last decade, the Council of the Judiciary began to have specialized courts—in major cities—in order to improve the administration of justice to make it more efficient.

Throughout the country, there are 370 district courts. Each court is composed of a single judge (*Juez de Distrito*) and the court staff (e.g. clerk of the court, process server, and court typists) to carry out proceedings. Unlike appellate courts, district courts are scattered in the 31 states and the federal district of the country, their location determined by the incidence of crime, size of population, and geography. For instance, small towns south of the Mexico-U.S. border, such as Nogales, Nuevo Laredo, Reynosa, and Matamoros, have several district courts due to high crime rates produced by human and drug smuggling, both of which are federal crimes. As Vargas points out, “All federal proceedings before a federal court are regulated by the Federal Code of Civil Procedure jointly with, in *Amparo* cases, by the federal *Amparo* Act” (2008, p. 38). District courts are extraordinarily busy compared to appellate courts or to any other courts in the

Mexican Federal Judiciary, because they are trial courts and handle the daily proceedings of all federal trials.

The Council of the Judiciary (*Consejo de la Judicatura Federal*)

The Council of the Federal Judiciary is a recent institution in the Mexican Federal Judiciary. It was the result of a major overhaul of the Judicial Branch in 1994-1995, days after Ernesto Zedillo, the last president of the authoritarian regime, took office. The Council is made up of seven members known as council members (*Consejeros*). The entire Supreme Court elects three of them from magistrates of circuit and district courts. The President of the Republic elects one, the Senate elects two others, and one is the Chief Justice of the Supreme Court (Mexican Federal Constitution, article 100, 2011).

The power of the executive and legislative branches to shape the Council by designating three of its members tends to undermine judicial independence according to many of the legal officials whom I interviewed. Even when the federal constitution explicitly commands that the counselors do not represent those who designated them, in practice there are political struggles among parties to elect them. In light of the strategic and delicate function of the Council in organizing the internal affairs of the whole institution—except the Supreme Court—it is surprising that the MFJ has not gained full autonomy from the other two branches of government.

The Council's duties are ample and diverse. According to Article 81 of the Organic Act of the Judicial Power of the Federation, the Council appoints circuit

magistrates and district judges and determines the number of courtroom and judicial circuits; it organizes the judicial civil service; it investigates and sanctions responsibilities of magistrates, judges, and court staff in the entire institution, except the Supreme Court, among other duties. There is no need to list the approximately 40 provisions that the law explicitly establishes as the jurisdiction of the Council. Suffice it to say that its role has become crucial and powerful in the administration of justice.

Other Institutional Components

There are other important institutions within the MFJ that are subordinated to the Council of the Judiciary but enjoy some autonomy. One is the Institute of the Judiciary (*Instituto de la Judicatura*), an organization specialized in training and providing legal education to members of the federal judiciary through classes, courses, and workshops. The other is the Public Defender Federal Agency (*Instituto Federal de Defensoria Pública*), an organization with a reputation for high quality and good service among the judicial community. This agency provides legal consulting for people dealing with the federal judiciary who cannot afford to pay a private attorney.

The aforementioned courts and institutions are the most important parts of the Mexican Federal Judiciary. The Supreme Court stands out as the most powerful and visible organ of the judicial branch in Mexico. Indeed, many people and some journalists appear to believe the Supreme Court is the entire federal judiciary

Hierarchical Structure

One of the most visible features of the federal judiciary is its organizational structure. Similar to other government organizations in Mexico, the judiciary has built strong hierarchies with categorical levels of administration and power. Subordination to a higher authority—such as a judge, an appellate court, or the Supreme Court—is the principle that glues together the different units of this institution. Hierarchies are deeply embedded in the ethos of the judicial branch and they are most noticeable in two particular realms: organization and ranks in district courts.

The federal constitution and other secondary laws that regulate how the judicial branch should be organized have created a downward pyramid in which the Supreme Court rests at the top of a strictly ordered pyramid. These hierarchies stratify salaries, work settings, workload, duties, and create a bureaucratic culture. Therefore, subordination, authority, and social status between junior and senior officials homogenize judicial criteria to decide cases because a complacent attitude grows out of obedience.

Under the authoritarian regime, the hierarchical structure of the federal judiciary flourished because it reflected the centralization of power that the political system encouraged. When democracy began to develop and the 1994-1995 judicial reform restructured the judicial branch, hierarchies and inertia from the past remained. Judges and magistrates enjoy absolute decision-making

authority to organize their courtrooms and their employees' schedules and workloads, including the power to require unpaid overtime and weekend work.

There are no guidelines regarding the boundaries of the judge's discretionary power to rule over employees. The only yardstick is how much work the courtroom has, and the vast majority of lower courts (district courts) have excessive workloads. In consequence, all employees work overtime and weekends. The courtrooms' official hours are 9:00 in the morning to 2:30 in the afternoon. However, what varies greatly is how employees perform their duties. Some judges demand that employees work until midnight, with little or no time for lunch or dinner. Others allow employees to go home in the early evening and bring work with them. Some judges do not care about employees' work schedules after official hours, as long as they finish their work. It is up to the judge or magistrate to organize the work setting, leaving employees powerless in deciding how to do their jobs. Many interviewees complained that this arbitrariness was a major issue in the everyday activities of the district courts because it affected both the employees and the administration of justice

This quasi-authoritarian managerial style is a remnant from of the old system. Political clientelism, populism, and loyalty to cliques were the tools the regime used to dominate society and bureaucratic settings. The person in charge of any public office was the boss and subordinates had to obey without complaints if they wanted to keep their jobs. The federal judiciary was not excluded from this influence. Cronyism still plagues this institution, and so do

subordination and strict hierarchies (Magaloni, 2003; Mayer-Serra and Magaloni Kerpel, 2010; Schatz, Concha, and Magaloni Kerpel, 2007).

Demographics

According to Council of the Judiciary, there are almost 30,000 employees working in the federal judiciary (*Consejo de la Judicatura*, 2011). More than half of these workers are women, but they are greatly underrepresented in high-ranking positions. Only 20% of judges and magistrates are women. There are 733 magistrates of circuit—600 men and 133 women—and 356 federal judges—269 men and 87 women—(*Atlas Jurisdiccional*, 2011). This gender inequality does not appear to be a concern for the judicial branch, despite the existence of an office that is charged with addressing gender issues within the institution (*Consejo de la Judicatura*, 2011). The Council of the Judiciary has normalized this gender gap by ignoring the topic and addressing only women's issues related to judicial matters. In other words, the Council and the entire federal judiciary acknowledge that Mexican women suffer from discrimination in society, but are incapable of admitting that women working in the judicial branch suffer institutional discrimination.

This official attitude towards women has been justified on the basis of institutional rationality. Many interviewees reproduce this attitude arguing that there are far fewer women judges and female magistrates because they prefer low-ranking positions to take better care of their children and marriage. Most of those who adopted this argument highlighted that becoming a judge is extremely hard

because it demands time, discipline, and hard work. These demands take away quality time that could be used to care for children and loved ones. Nevertheless, these interviewees failed to notice that the federal judiciary has incorporated and reproduced socio-cultural values from Mexican society that determine gender roles for each person. Nor has the judiciary set up the adequate working conditions for women. The work setting is still highly masculinized, allowing women only subservient roles, such as secretaries, typists, and janitors.

The institution is also insensitive to sexuality. Interviewees explained that the institution demands a specific heteronormative code of behavior. There was no official policy towards sexual diversity, but the unwritten rules are clear enough. There is a sort of "don't ask, don't tell" policy driven by homophobic fears that derive from larger cultural patterns of the Catholic Mexican society.

These are the major parts and characteristics of the federal judiciary. The goal of this chapter has been to give details and contextualize the setting, environment, and people where the fieldwork took place. The next chapter will analyze and explain the most significant topics discussed during the interviews, as well as the findings from the fieldwork.

Chapter 5

DATA ANALYSIS, FINDINGS, DISCUSSION

Part One

This chapter is divided in two parts. Part one focuses on internal issues of the MFJ, such as hierarchical divisions of labor, abuse of power by judges, excessive workload, and employees' salaries—all topics mentioned by interviewees during the fieldwork. These topics have a direct correlation with other phenomena taking place in the institution, such as corruption, influence peddling, and nepotism. In order for the reader to understand the larger picture of the collected data, it is important to present this first part as an explanatory section. Part two focuses on wrongful practices in general, and corruption is addressed in the final pages.

There is a correlation between the information presented in both parts. For instance, the description of a district court in part one provides an important background to recognize how nepotism and abuse of power operates within the MFJ, described in part two. In addition, explaining aspects of the daily jobs that employees within a federal courtroom perform—usually unknown to outsiders—contextualizes the setting to better understand the dynamics of wrongdoing. That being said, part one begins with the initial questions asked during the interview.

Breaking the Ice

One goal of this research was to have a more accurate idea about the work done by court employees and judges—in order to understand how corruption

operates. The first four questions of the interview questionnaire were geared to address this topic as well as to break the ice.² Inquiring about a public servant's job is always an invitation to talk and create rapport because it opens the door to ventilate issues, perspectives, and topics that are difficult for them to express in their daily work. No major topic in the MFJ—such as justice issues, influence peddling, and indeed corruption—can be described and understood without appreciating the nature of the work that people in the federal judiciary perform every day. This appreciation implies acknowledging what employees think about their work and how they see themselves doing that work; this is the aim of these four questions.

Citizens who are unfamiliar with the federal judicial system are inclined to speak in vague terms about its performance. They usually base their opinion on media reports of injustices coming from single cases that gather widespread media attention, such as violations of due process by state judiciaries, not the MFJ.

Every phenomenon of wrongdoing in federal courts is embedded in larger webs of cultural meanings that require an explanation of the social contexts that hold those meanings. This understanding is better served by providing a thick description (Geertz, 1973) of the setting under study. A thick description allows a closer look at the social phenomena the researcher wants to interrogate. To start

² These four questions were: 1. How difficult and demanding is the work done at the MFJ? 2. What is the most difficult job in the MFJ? 3. What works fine and what needs to be improved in the MFJ? 4. How do people working in the MFJ see themselves?

the data analysis and present the first part of the research findings, I will carry out a description of a composite district court according to accounts from interviewees. This thick description will provide the context and foundation of the initial discussion and analysis of this dissertation and will include the information gathered during the fieldwork from the first questions in the questionnaire.

What is a District Court Like?

A district court (DC) is an exciting place to be if one is interested in the Mexican legal system and the administration of justice. Unlike state judicial systems and other branches of the criminal justice system (e.g. law enforcement agencies and the prosecutor's office), a district court enjoys prestige and possesses more resources to provide better service to the community (Ferreya-Orozco, 2012). This prestige arises mainly from the fact that district courts are in charge of the *Amparo* suit (*Amparo indirecto*). As explained in chapter one, the *Amparo* suit is a unique Mexican provision for protection against arbitrary acts by authorities. This type of suit is the most frequent proceeding in district courts and it comprises up to 90% of the courts' work, according to fieldwork data. As interviewee Andrés put it, "*El amparo es el rey de los tribunales porque es lo más importante y es lo que más se ve*" (The amparo is the king of the courts because it is the most important and prevalent matter in our daily work).

Besides prestige, district courts also enjoy more resources than any other lower level courts in the state judiciaries. These resources are visible in different ways, such as better office equipment, more court staff, efficient organization and

professionalization, and above all, good salaries. Salaries in particular play a fundamental role in the performance of the MFJ because, as its own employees acknowledged, wages are high compared to the wages of court employees in the state judiciaries. Salaries were a frequent topic of discussion by most interviewees because they saw them as a phenomena linked to issues such as the absence of petty corruption in the work setting, institutional loyalty, and willingness to work exhausting schedules.

According to Article 42 of the Organic Law of the MFJ, district courts are made up of a judge and the number of secretaries of the court and employees allowed by the budget. This suggests that there is no specific number of people that should work in a DC. On average, however, there are around 40 people working in each district court, depending on its location, the workload, and the kind of cases handled by the court. The organizational structure of all district courts is hierarchical, as it is in the rest of the MFJ. On top, there is the judge. Below, there are five to six secretaries of court (*secretarios de juzgado*), each of whom has one to two typists (*oficiales administrativos*). There are also three to four process servers (*actuarios*), and then several other low ranking positions, such as janitors and administrators.

Courts that are not specialized in one single matter, such as criminal or civil law, handle all kinds of federal trials. Specialized district courts are a recent policy in the MFJ, which has made the administration of justice more efficient and effective; however, only jurisdictions in major cities, such as Mexico City and

Monterrey, have them. District courts located in other jurisdictions, such as border towns have legal authority over all matters, and they are called mixed district courts (*juzgados de Distrito mixtos*). The internal organization of a district court varies greatly depending on the judge. Nearly 90% of respondents (40) argued that the judge has absolute discretionary power to organize the district court according to his or her personal experience, gender, and background. Interviewee Bruno, a judge, said something that summarizes the general view of interviewees: “*Cada juzgador tiene su propia forma de trabajar y en ese sentido posee absoluta discrecionalidad para organizar el trabajo en el juzgado. Cada juzgador tiene una cultura propia que se refleja en la forma de llevar a cabo el trabajo*” (Each judge has his own way to do the job, and he enjoys absolute discretion to organize the court. Each judge has a personal background that is reflected in how the work is done).

The MFJ and its Organic Law do not require a particular system to operate and administer district courts. According to several high-ranking interviewees, the main concern from the Council of the MFJ (*Consejo de la Judicatura Federal*) towards district courts is their productivity and efficiency in the administration of justice. According to interviewee Andrés, the number of sentences released monthly by each district court measures productivity. Efficiency is evaluated by how many sentences are upheld by appellate courts: the more upheld sentences a district court has, the more productive it is. This approach has left both judges and

magistrates with absolute power to decide and control the courts over which they preside as long as they are efficient and productive.

Tyrannical Judges

There was a recurrent idea repeated by many interviewees throughout the fieldwork that described those judges who tended to abuse their power, as “*jueces tiranos*” (tyrannical judges). This phrase meant that many judges handled the district courts as if they were oppressive and cruel rulers, at least from the perspective of these interviewees, some of whom were judges.

Interviewees emphasized that this extensive power wielded by some judges had negative consequences, such as abuse of power on labor conditions, nepotism, sexual harassment, and potential corruption. Out of these consequences, the most frequently mentioned by interviewees was the abuse of power by judges, such as demanding extensive overtime work or firing an employee to give the job to someone else. Interviewee Ernesto said this: “*Si hay jueces tiranos, incluso había uno que era de Michoacán que le llamaban el ‘Hitlersillo’ por ser implacable*” (There are judges who are tyrannical. There was one from Michoacán state that employees nicknamed “Little Hitler” because he was implacable).

There were several reasons behind this perception. For instance, the so-called tyrannical judges usually made their employees to work and stay in the court all day long until late night, sometimes without having a break for lunch or dinner. According to interviewees, these judges created a stressful environment by

demanding an endless amount of work that required most employees to spend 12 to 15 hours per day in the court, sometimes even more.

Conversely, there were judges who also demanded long work schedules but who were not labeled tyrannical. The difference between these two types of judges was simple: non-tyrannical judges were sensitive about employees' personal needs and had a more flexible attitude towards everyday work while tyrannical judges did not. Tyrannical judges were stricter and focused mostly on employees' productivity. Some interviewees even said that some judges suffer from psychiatric disorders because of their obsession with work. Andrés stated this: "*Hay titulares que están locos, que tienen problemas de personalidad y que son adictos al trabajo*" (There are judges who are mad, who have a personality disorder and are addicted to work).

More than 10% of interviewees (5) did not define the power judges had as abusive or prone to tyranny. Instead, they argued that as heads of district courts judges are responsible for the entire court and noted that if something goes wrong judges would be solely accountable for the outcome. Judges demanded long work schedules from their employees because the amount of work that most district courts handled is overwhelmingly high every year. That was why so-called tyrannical judges behaved like that, according to these interviewees. Not all district courts have the same amount of work, though. Usually those that handle criminal cases are the busiest. Another subject that interviewees addressed at the

beginning of the interview was the topic of workload, which, due to its importance, will be discussed next.

Too Much Work! (Carga Excesiva de Trabajo)

One of the main features that distinguishes and shapes district courts is the excessive amounts of work. This is by no means an exclusive characteristic of the Mexican Federal Judiciary. In general, the entire Mexican administration of justice suffers from disproportionate demands of work. Unlike other justice-related institutions in Mexico, the MFJ and the district courts in particular, comply with the deadlines fixed by the law to carry out everyday proceedings and trials, despite their workload. The administrative branch of the MFJ, the Council, has created several mechanisms to expedite trial proceedings. Among those mechanisms, there was a program called *Sistema Integral de Seguimiento de Expedientes* or SISE (Integral System to Follow up Processes) to electronically monitor and follow up every single step of a trial. There are also statistical summaries and reports that every district court has to submit monthly to the Council to show that there is no backlog in the court. In addition, there is a close watch by the Council on judges and employees to make sure the district courts are run efficiently, productively, and according to the law.

MJF employees, both junior and senior officials, were well aware of these working conditions and they have come to accept them as part of the work setting and the nature of the job they perform. Nevertheless, this does not mean that they

uncritically embrace them because employees know that there is a high price to pay for these demanding circumstances.

Nearly 96% of interviewees (43) pointed out that there is too much work all the time in the MFJ, mostly in the district courts. Interviewee Felipe said, “*Las jornadas de trabajo son muy largas*” (The work schedules are very long).

Another interviewee, Lourdes, put it this way: “*Es demasiado el trabajo que hay que hacer en el colegiado, hay que analizar asuntos voluminosos y hacer trabajo de fondo, estudiar bien para poder hacer un buen proyecto*” (There is too much work in the appellate courts. One has to do deep analyses of thick cases, which implies a lot of reading and intellectual effort to come up with a professional sentence).

In district courts that have jurisdiction on criminal cases, the burden of work is heavier because the criminal code has strict deadlines (*términos legales*) for carrying out proceedings. For instance, once the prosecutor sends an indictment to the federal judge, the district court has 24 hours to respond with a warrant of arrest (*orden de apprehension*) or a denial of it. If the indictment involves organized crime (*delincuencia organizada*), then the deadline is 12 hours. Whether the indictment involves a file of 100 or 10,000 pages, these deadlines are firm, and court employees have to do a lot of work in order to meet them.

Proceeding deadlines pose great challenges for district courts when they have to issue an arrest warrant on organized crime cases because the indictment

usually involves multiple defendants and the file comes with thousands of pages. Interviewees said that in those types of cases, almost everyone in the court has to stay overnight to work on the file and have the warrant ready for the due date. Interviewee Natalia said that, in 2006, her court handled the indictment of a former Mexican president who was indicted on charges of genocide for the killings of unarmed students in 1968. The indictment had 80 files of documents with hundreds of pages each, and the warrant of arrest was issued in a timely manner. Natalia stated, “*Estos trámites de muchos tomos y voluminosos no son tan raros y nos llegan con cierta frecuencia*” (Indictments containing thick files of documents are not rare and we get them more often than not).

There are two other court duties that exacerbate the workload in district courts: 1. Court shifts (*Turnos*) and 2. On duty responsibilities (*Guardias*). The former refers to the period that each district court accepts and processes indictments from the prosecutor’s office. This period varies from jurisdiction to jurisdiction depending on the number of district courts each jurisdiction has. There is a justification for this according to interviewee Felipe: “*El mecanismo de turno es mantener un equilibrio para que todos los juzgados tenga el mismo número de expedientes en promedio*” (The court shift mechanism has been designed to provide all district courts with the same amount of work and keep equilibrium between courts).

On-duty responsibilities refer to employees’ availability at all times if there is a legal emergency that requires the intervention of the court. For instance,

an outstanding arrest warrant from this district court has been served late at night, and the defendant wants to be bailed out as soon as possible; court employees must be available to process the petition. Both on-duty responsibilities and court shifts require that most employees stay longer periods of time in the facilities of the district court. This not only imposes a heavier burden of work on them, but it also disrupts any personal schedule.

Work Schedule (Horarios de Trabajo)

A complaint that many interviewees had about their work duties was a hectic and unpredictable work schedule (*el horario*). Too much work and too many hours of office work are related, but they are not the same. Sometimes excessive work can be handled without working overtime. On the other hand, if the work setting requires longer periods of time in the office, whether because there is excessive work or because work can “pop up” unpredictably, then the work schedule becomes a burden.

El horario, as most employees referred to their work schedule, included working 12 to 15 hours every day on average, but this could vary significantly depending on several variables: the employee’s position, jurisdiction of the court, who the judge was, the court’s managerial style, and whether or not the court handled criminal cases. The work schedule includes working on weekends, (Saturday for sure and sometimes even Sundays), depending also on how much urgent work needs to be done.

Most public institutions in Mexico have fixed and predictable work schedules, usually weekdays from 9:00 in the morning to 3:00 in the afternoon, when they are open to the public. Office hours in district courts are from 9:00 in the morning to 2:30 in the afternoon, from Monday to Friday, for regular business. However, most employees stay on the court beyond this time. Because the judge decides what schedule employees should follow after office hours, there is a great degree of variation on this. Most so-called tyrannical judges would not allow people to go home and eat dinner (Mexican time for dinner is between 2:00 in the afternoon and 6:00 in the evening). Other judges would allow most employees to go home and return to the court around 5:00 or 6:00 in the evening and work four to six more hours.

Despite the complicated work schedules and the significant amount of work that district courts demand, most interviewees presented a positive outlook on their work setting. There were two major reasons behind this optimistic attitude: good salaries and having a vocation for doing the job.

High Salaries and Vocation

According to more than 90% of interviewees (41), wages are among the best aspects of this institution. Except for the lowest level of the hierarchy, typists, all interviewees agreed that their salaries were remunerative, although not everyone conceded that those salaries offset the entire job done in the courts and the working conditions. For instance, interviewee Jazmín said, *“El salario sí compensa el trabajo y las responsabilidades de laborar en el tribunal porque es*

un buen sueldo comparado con otras instituciones o con el poder judicial del fuero común” (The salary offsets the work done at the court and its responsibilities because it is profitable compared to other government agencies or the state judicial systems). Interviewee Héctor put it this way: “*Los salarios son buenos y existen buenas prestaciones, sin embargo no compensan todo el trabajo que se hace*” (Salaries and social benefits are good enough, but they do not offset the work done in the court).

It is worth mentioning that, except for typists, nobody else receives payment for overtime work. In fact, the concept of overtime work is alien to MFJ employees because they are not hired to work by the hour but to accomplish specific tasks. These tasks include judgments, conducting court proceedings, process serving, and everything else needed to run the court, regardless of the amount of work and how long it takes to accomplish. Court workers are paid for this entire bundle, so to speak, and working overtime is usually not an issue. Anyhow, interviewee Natalia suggested that paying overtime would improve the administration of justice.

Interviewees used a particular phrase, *salarios buenos* (good salaries), to emphasize that the payment for their work was monetarily rewarding. They acknowledged that salaries were a powerful incentive that attracted many lawyers to work at the MFJ, but that wages were not enough incentive to make a career there. Given the disruptive job schedule and the endless amount of work, something else was needed to truly accept these circumstances and work at the

MFJ. Several interviewees defined this attraction as having a vocation while others suggested having passion. Others used the words addiction to the proceedings (*adicción a los asuntos*), and some more highlighted the intellectual challenges of solving complicated legal matters as a thrill of working there.

In his own words, interviewee Andrés described his passion for work with a metaphor that reflected the general feeling on this:

Cuando se tiene vocación el trabajo es adictivo porque quieres más, como si fueras alguien que amas los dulces y de pronto te meten a trabajar a una fabrica de dulces, entonces lo vas a amar sin que te interese el horario o la carga de trabajo. (When someone has a calling, work becomes addictive because you want more. Similar to someone who loves candies and suddenly finds a job at a candy factory; then you are going to love it regardless of heavy workloads and chaotic work schedules.)

Not all people working at the MFJ were inclined to enjoy their jobs, according to interviewees. They commented that most employees in the court were proud and happy to work there, but a few coworkers lacked the motivation to perform their duties responsibly. According to these interviewees, unmotivated employees struggled to deal with the stress and busy schedules of the court because they did not like the work setting. Employees without intellectual motivation worked at the MFJ on the grounds of a profitable salary only and hated the demands of the everyday proceedings. A few interviewees defined these people as “*chambistas*” (jobbers), a concept derived from the Mexican word “*chamba*,” which means that they did not value the privilege of being part of the MFJ and the ethical and social responsibilities that came with it.

Additionally, several interviewees brought up a powerful argument to justify the high salaries MFJ employees received. They argued that a good salary discouraged corruption in the judicial system because court employees do not have the need to make ends meet through wrongdoing as is usually the case in other government institutions. The rationale behind this assumption was that employees who had jobs with excellent social benefits and privileged salaries would take better care of their work responsibilities to avoid losing these advantages.

When asked about whether the salaries of high-ranking officials of the MFJ were justified, there was a mixed response from most interviewees. Some interviewees thought that those salaries were excessively high, while others argued that senior officials deserved them because of their job responsibilities. For a better understanding of this information, it is crucial to provide some context that may have influenced this diversity of the responses.

Justices, Magistrates, and Council Member Salaries

There has been a heated debate in the past years in Mexico about the fairness of the salaries earned by high-ranking members of the MFJ. During the mid-2000s, it became public news that many Mexican public officials, such as mayors and Supreme Court Justices, had a salary higher than the President of the country did. This news caused an outcry and strong criticism from society and political pundits to the point that in 2009 the Constitution was amended to set up limits on salaries for government employees (Jiménez, 2009).

The Supreme Court has also come under strong criticism because the cost of running it is extremely expensive and higher than for Supreme Courts in other countries (Mayer-Serra and Magaloni Kerpel, 2010). Two Mexican scholars who focus on the Mexican administration of justice, Magaloni Kerpel and Mayer-Sierra, did a comparative analysis of Supreme Courts from different countries. Based on an analysis of information from 2009, they found out that Mexican Supreme Court Justices are among the best paid in the world compared to similar positions. In Mexico, a Supreme Court Justice (*Ministro de la Corte*) had an average annual salary of \$320,765 dollars in 2009 (4,169,957 pesos at an exchange rate of 13 pesos per dollar). In Canada, a Justice made an average of \$296,940. In the United States, the salary was \$222,301. In Germany, it was \$197,937, and in Colombia \$136,763 (Mayer-Serra and Magaloni Kerpel, 2010).

Based on this institutional context, it should not be a surprise that there was a great dissimilarity of opinions on whether or not the current salaries of high-ranking officials at the MFJ were fair and justified. Among those who disagree with the salaries was interviewee Pedro, who said, “*El sueldo de los ministros no creo que este justificado porque ganan un cantidad estratosférica y comparado con lo que ganamos el resto del personal es injusto por decir lo menos*” (The Justices’ salary are not justified because they make a stratospheric amount of money and, compared to what the rest of court employees make, it is unfair to say the least).

Interviewee Diego argued in favor of high salaries for Justices, Council members, and Magistrates:

Si están justificados porque así se evita la corrupción, además de que concede autonomía a los titulares para decidir los asuntos de manera imparcial. Comparado con los sueldos de los secretarios de Estado y los diputados, no es tan alto ([Salaries] are justified because they help to avoid corruption and give judges judicial independence to decide trials impartially. Besides, compared to the wages received by secretaries of the state and congressmen, salaries are not very high.)

Another interviewee, Hugo, said,

A mi me parece que si están justificados por el trabajo que tienen, incluso parece poco. Comparado con lo sueldos de los ejecutivos en la iniciativa privada, es poco dinero. Y comparado con los senadores o secretarios de Estado que ganan más, están justificados. (To my knowledge, I consider their salaries justified due to the amount of work they have. I even think that it is not enough. Compared to the wages that executives make in companies, it is little money, and compared to the salaries of senators and secretaries of state who make much more money, the salaries are also justified.)

Most, but not all, low-ranking officials tended to disapprove of the high salaries of those at the top of the MFJ because they view them as unfair and disproportionate. According to the Supreme Court (*Diario Oficial de la Federación*), in 2011, a secretary of the court—a middle-ranking official—made approximately \$47,256 per year (\$614,340 pesos) while a typist at the bottom of the hierarchy made approximately \$14,671 per year (\$190,728 pesos). The average salary for a low-ranking official would be between \$16,000 and \$18,000 per year, generally speaking. To have a better reference for these wages, as of January of 2012 in Mexico the daily minimum salary is \$62.33 pesos for an 8

hours shift, which accounts for \$0.60 cents per hour of work. This means that even the lowest salaries in the MFJ are considerably higher than the minimum wages.

For low-ranking interviewees, the salary gap between the top and the bottom of the MFJ was too wide for a government institution that officially boasts of being a cornerstone of the administration of justice in Mexico. In addition, this salary gap did not represent the real distribution of work in the federal judiciary because low-ranking employees do most of the physical and intellectual work while the high-ranking members mostly oversee that work. Yet, the former make far less money than the latter. In a government office in which the vast majority of employees are lawyers, there was an acute sensitivity towards issues of fairness and righteousness, and many interviewees perceived as greed the salaries and social benefits at the top.

The topic of salaries—either one's own or somebody else's—was deeply engrained in the ethos of the MFJ because it was associated with different phenomena in the everyday affairs of the institution. For instance, good salaries were seen as the main motive behind the lack of petty corruption, such as *mordidas* and tips. Employees who wanted to change jobs due to the high levels of stress in district courts were normally discouraged from proceeding because no other government institution would match their salaries. Most employees at the MFJ work hard because they acknowledge that their salaries are among the best in the field, and given the strong competition for positions, they accomplish their

work duties responsibly to keep their jobs. In addition, good salaries attract many young lawyers wanting to work at the federal court, which helps the institution to recruit the best applicants. This last part is not always the case, however, because there is abundant nepotism and favoritism.

Part Two

Traffic of Influence and the Use of Connections (Amiguismo y Contactos)

The phenomena of traffic of influence (which can be translated as a combination of influence peddling and nepotism), connections, and favoritism among public servants have been deeply embedded in Mexican society for many decades (Smith, 1979). As explained in chapter four, the authoritarian regime of the past century based its political recruitment on a system of rewards, loyalty, and obedience to the boss. This system permeated the entire administration of the government and became part of the ethos of the Mexican bureaucracy. The *ancien régime* lost its power in 2000, and now a democratic transition is under way.

However, the inertia of the past still sustains many of the old undemocratic practices that provided political stability during the past century. Among those practices are the traffic of influence and the use of connections. Even for those government institutions that have become more independent and democratic, such as the federal electoral institute and the federal judiciary, it has been a challenge to eradicate these phenomena.

There were three questions³ from the questionnaire related to the use of connections and/or traffic of influence in the MFJ. These questions were formulated as euphemistically as possible to avoid any offense by interviewees. This context of using connections and traffic of influences was constrained to internal affairs of the MFJ and mostly discussed in relation to administrative matters, such as climbing up the ranks of the institution. In other words, these phenomena did not refer to connections or influence in relation to trials and cases.

Making Sense of Connections and Traffic of Influence

Eighty percent of interviewees (36) responded emphatically to these questions, saying that favoritism and connections indeed exist, while 20% of respondents (9) said they do not exist (see Table 1.2). Among those who denied the existence of these phenomena was interviewee Diego, who said, *“Anteriormente quizá si eran valiosas las palancas y los amigos, pero se ha transparentado la institución y ya no es necesario”* (Maybe in the past the use of connections and friends was necessary, but the institution now has become more transparent). Interviewee Wilfrido was among those who categorically admitted the existence of these phenomena as part of the everyday affairs of the MFJ. He said, *“Si ayudaría [tener amigos o contactos] porque esa es la actitud, es sólo un reflejo de la sociedad mexicana, como en todo. Siempre que hay exámenes pasan los que tienen palancas, claro también los otros, pero los recomendados*

³ Question 9: Does having friends or connections in the Council of the Judiciary help to advance more easily in the hierarchical ladder of the MFJ? Question 10: Is the designation of judges and magistrates and sending them to specific jurisdictions absolutely free from external influence or can the use of connections sometimes influence these decisions? Question 11: Have the MFJ, and the Supreme Court in particular, left behind the shadow of influence from the executive power given the history of authoritarianism in the Mexican political system?

siempre” (It would be helpful [to have friends and connections at the top] because that is the only game in town. It is just a reflection of the Mexican society, like everything else. When there is a selection process for appointments, only those who have connections make it. Indeed, there are other applicants who make it too, but those with connections always do).

Among those who responded yes, most of them did so with a cautious caveat. They said that the use of connections and traffic of influence was not a systemic or consistent practice. It varied extensively depending on the person who did it and his or her hierarchy in the institution, interests at stake, and the implications of engaging in these practices. Sometimes some people would use these practices under specific circumstances, and other times the same people would not use them even if they had the power to do so. There was not a specific pattern of how and when the connections would be used. For instance, some interviewees knew cases in which junior employees have made it to the top of the hierarchy based on personal credentials. However, they also knew that a few individuals did not have enough credentials, usually the relatives of high-ranking members, and still they have made it to the top. However, these cases were more the exception than the rule. Interviewee Andrés described this problem in a clever manner: *“Las relaciones son importantes para avanzar pero no son determinantes porque la carrera judicial sí funciona. Tan en así que funciona que no todos los hijos de magistrados llegan a jueces porque se requiere más que una recomendación, también cuentan los conocimientos”* (Connections are important

to get ahead, but they are not indispensable because meritocracy really works. Evidence that it works is provided by the fact that not all the children of senior officials become judges, the reason being is that besides connections you also need to be smart to fill a senior position).

Caveats on the Use of Connections

Andrés highlighted something important, which is that favoring someone is more a combination of different circumstances than merely the use of connections and traffic of influence per se. He explained that the head of the MFJ has a double standard to appoint senior officials. On the one hand, it has set up a strict selection system to recruit the best people based on meritocratic requirements, such as written and oral exams, experience, education, and seniority. This process allows that only the best of the best lawyers advance to be heads of federal courts. On the other hand, it has created exceptions to that system through which people with not enough qualifications have also gotten ahead through a subtle mechanism related to connections.

A common example of this aforementioned mechanism—described by several interviewees—has been when the Council of the Judiciary makes “special” vacancy announcements to find new judges and magistrates (*convocatorias para ser juez o magistrado*). These vacancies are designed specifically for employees working in any of the high-ranking offices, such as the Supreme Court, the Council of the Judiciary, and the Federal Electoral Tribunal. These vacancies excluded anyone else in the MFJ from applying for these vacant

positions, and the requirements are usually less demanding than the general vacancy announcements. This policy has conveniently left the door open to allow relatives, friends, and members of one's clique to fill senior positions. Several interviewees from senior and junior positions confirmed this procedure of appointing judges and magistrates using two different criteria. These interviewees used a particular concept-verb to describe this phenomenon: *campechanear*. *Campechanear* in Mexican Spanish means to mix up different things, mostly in cooking affairs. It comes from the word *campechana*, which means a seafood cocktail. In the context of the MFJ, interviewees defined *campechanear* as an attitude of the Council to select judges and magistrates from two different methods: 1. credentials and 2. connections, traffic of influence, and/or nepotism.

Even though the use of connections and traffic of influence is prohibited by law, officials carry out such practices discreetly and without leaving traces. As professionals of the law, they know how to circumvent restrictions by finding loopholes. Since justices and council members are all at the top, they know that their actions cannot be scrutinized by a higher authority, even if it were not for the secrecy that permeates some parts of the MFJ.

Besides the power these senior officials exercise in appointing judges, they also have broad decision-making power within their own courts. It was explained earlier that tyrannical judges provide examples of this power. This power becomes almost unlimited when selecting their court staff because only the judge or the magistrate in charge of the court decides who works there. Given that

one individual decides these appointments, that individual can be influenced through connections and traffic of influence to favor some people. This most commonly takes the form of nepotism, a subject that will be addressed below. However, before that, it is important to incorporate three crucial ideas to have a more balanced understanding of these phenomena.

The first idea has to do with the fact that the use of connections and traffic of influence within the federal judicial system has gradually declined in the past decade compared to how widespread it was during the authoritarian regime. Several interviewees coincided in their responses saying that the MFJ changed after the 1994-1995 reform to become a more professionalized and respectable institution. Among those changes was the founding of a real meritocratic system where employees with no connections can make it to the top. These responses coincide with analyses from scholars who have studied the federal judiciary and the 1994-1995 judicial reform (Domingo, 2000; Fix-Fierro, 1998; Schatz, Concha, and Magaloni Kerpel, 2007; Staton, 2007)

The second idea is that the use of connections and traffic of influence has been limited in general to administrative affairs, such as appointments of typists or private secretaries. Although there is no evidence that these phenomena are a serious problem affecting trials or the administration of justice as a whole, there are some exceptions to this generalization. There were at least two critical cases where connections and influence peddling were used to affect the outcome of trials. The first case is the *Michoacanazo*, which will be discussed in the next

chapter, and the second is discussed below under the heading *Combining Judgeship with Lobbying and Litigation*. These two cases fall within the amount of corruption that is thought to exist in the MFJ by most interviewees, between 1% to 10% percent.

Finally, the third idea refers to the fact that not all senior officials use connections or traffic of influence to favor employees, friends, or relatives. At least 50% of high-ranking officials (5) of this sample argued during the interview that these phenomena were ethically wrong and damaging to the institution. Therefore, they refused to engage in these practices and have tried to eliminate them. Notwithstanding, these phenomena are still part of the federal judiciary as most interviewees acknowledged them. Interestingly, there is a similar problem that is particular rampant in the MFJ: nepotism. The vast majority of interviewees said that it has been difficult to cope with nepotism because almost everyone benefits from it as will be discussed next.

The Normalization of Nepotism (Nepotismo al Natural)

In the MFJ, connections and traffic of influence are used to favor friends and members of one's clique to obtain positions and climb the echelons of the institution. Nepotism, on the other hand, is used firstly to favor one's relatives in obtaining jobs, and then to get ahead. The difference between nepotism and traffic of influence is that the latter refers to favoritism and/or preferential treatment in government affairs to benefit friends or one's clique, while the former is favoritism shown by someone in power to relatives, usually by appointing them to

jobs. These jobs do not have to be good positions as long as they are steady employment.

Nearly 80% of the respondents (35) admitted that nepotism exists as part of the everyday life of the MFJ. It has become a naturalized practice because everyone—among senior officials—does it and benefits from it. Even junior employees if they can, would use their connections to find a job for a relative because they know that salaries in the MFJ are better than in other institutions. To get a job in this institution a person does not have to be a lawyer because there are dozens of administrative positions that do not require a law degree.

In Mexico, and certainly inside the federal judiciary, nepotism does not have the negative connotation that it might have elsewhere. This has to do with the sociocultural understanding of the Mexican family. Riding (1985) argues that the family has been a powerful and conservative institution that has given political stability to Mexico. He asserts: “Those with jobs look to place unemployed relatives: in homes with extensive domestic service, the maid, chauffeur and gardener may belong to the same family... Within the government, nepotism at the highest levels may be frowned upon, yet entire families will be brought into the bureaucracy by some relative with influence” (Riding, 1985, p. 239). Based on this thinking, helping a relative to obtain a job is not just socially acceptable but doing otherwise would be reprehensible to everyone’s eyes.

Family is considered more important and respectable than one’s job or any government office because it offers a structure of support that no one else can

provide. Family is also a reliable and a trusted domain, one probably more important than respecting the law or any personal interest. Although the concept of family has changed and become less traditional in the new millennium, some of those old features still prevail in Mexican society. Authors such as Lomnitz (2000), Morris (1991), and Smith (1979), support the argument that family ties and socialization play a crucial role in reproducing phenomena such as nepotism and corruption.

Based on this contextualization of the Mexican family, it is not difficult to understand why nepotism is perceived as acceptable in the MFJ. As with other practices in Mexican society involving wrongdoing, people use euphemisms to refer to nepotism (Ferreya-Orozco, 2010). Senior and junior officials would never refer to nepotism using this word but in other terms such as *favores* (favours), *dar chamba* (give a job), and *favores de chamba* (employment favours). By using euphemisms, MFJ employees take away the disapproving association of the word nepotism, and it is not seen as harmful and objectionable any longer.

Nepotism was not a topic initially included in the interview, but I decided to include it when it became clear from interviewees that it was a common practice among senior officials. Table 1.2 shows that in interviews conducted in Nogales and Tijuana, most respondents did not talk about nepotism because it was not listed in the questionnaire. Once it was included in subsequent interviews, respondents acknowledged its existence.

Most of the 80% of interviewees who talked about nepotism used the phrase *favores de chamba* to describe this phenomenon, but others used different words, such as mafias, *malas prácticas* (bad habits), and *recomendados* (recommended people). Interviewee Elizabeth said, “*Muchos jueces de distrito que acaban de ser nombrados son hijos o sobrinos de magistrados o ministros. Aparentemente los exámenes de selección son la regla pero todo es una mafia desde arriba*” (Many district court judges who have been recently appointed are children or nephews of senior officials. To outward appearances, the appointment process is fair and impartial, but it is all a façade because the whole process is mafia-like, from top to down).

Santiago, another interviewee, highlighted that nepotism is the worst face of the federal judiciary: “*Lo peor del PJJ son los compadrazgos, los recomendados, esto es el único punto donde no estoy de acuerdo. Para quienes tienen un papa o familiar de alto rango encontrar trabajo es seguro.*” (The worst side of the MFJ is the *compadrazgo* [relationship between compadres—godfathers], the use of connections; here it is the only issue I don’t agree with. For those who have a dad or relative among senior officials it is easy to find a job).

There was a compelling argument from a high-ranking official, Zacarias, explaining why the children of senior officials work in the MFJ. Zacarias held one of the most powerful positions at the MFJ in the recent past. When the interview took place, he was the head of the institute in charge of jurisprudence and judgeship of the federal judiciary. He said this on the topic of nepotism:

En lo personal creo que hay que contextualizar por qué los hijos de magistrados, ministros, o jueces están en el PJJ. Pienso que es el mismo razonamiento de porque los hijos de industriales son industriales como sus padres, o de porque los hijos de comerciantes terminan siendo también comerciantes. Entonces, porque no debería ser así también en el PJJ. Desde que era niña mi hija me acompañaba al juzgado de distrito cuando era juez y le encantaba 'jugar al expediente'. No se me hizo raro que después quisiera entrar a trabajar al PJJ y hasta la fecha sigue trabajando aquí. El ser hijo de un magistrado o juez no debe ser un impedimento para ser miembro del PJJ. Nadie debe llegar por favoritismo pero tampoco excluir a nadie por tener un pariente en el PJJ. Este asunto no debe verse como absoluto sino caso por caso y así analizarlo. (Personally, I think that it is important to contextualize why the children of magistrates, justices, and judges work in the MFJ. I believe it is the same reasoning as why the children of industrialists want to be industrialists like their parents, and why the children of businessmen end up being businessmen too. Then, it should be no different in the MFJ. I have a daughter and, since she was a little girl, she would come with me to the district court when I was a judge, and she loved to play at "the judicial process." It was not a surprise for me later on when she wanted to work in the MFJ and she still does. To be the child of a senior official should not be a liability to work at the federal judiciary. Nobody should get a job here based on favoritism, nor should anyone be excluded for having a family member working within the institution. This phenomenon should not be seen as an absolute truth, but it must be analyzed on a case-by-case basis.)

Zacarias's argument is valid and logical because having a relative in the MFJ should not be an impediment to getting a job there. Nevertheless, interviewees who complained about nepotism did not challenge the right of senior officials' relatives to work in the institution. Rather, interviewees emphasized the advantages and favoritism that these relatives have compared to those who do not have high-ranking members as relatives. This unfairness creates a situation in which the relatives of senior officials will have the guarantee of having a job and

getting ahead at any time (regardless of their credentials), while others will not even if they are overqualified.

Nearly 20% of interviewees (10) said that the Council of the Judiciary is well aware of the epidemic proportions of nepotism and it has tried to stop, or at least reduce it. The usual approach has been to change a bylaw to penalize its practice, but none of those measures has succeeded for two major reasons: One is that most of the attempts to eliminate nepotism have not truly intended to fix the problem given that the Council and its members benefits from nepotism. Secondly, modifying the law to impose harder sanctions against those who engage in nepotism is condemned to fail because senior officials are lawyers who know the law better than anyone else and thus they can always find loopholes to circumvent it.

Nepotism has been easy to reproduce in the federal judiciary because most senior officials agree with it, off the record of course. According to interviewees, there is a traditional scheme by which nepotism takes place easily in the institution. This scheme is supported by a set of non-written rules than everyone follows to assure reciprocity. One interviewee depicted the scheme in the following way: Judge A asks judge B for an employment favor (*favor de chamba*) to have his or her relative hired in Judge B's district court. Judge B accepts and now he or she has the "right" to ask Judge A for a reciprocal *favor de chamba*, which he or she follows through on. This scheme does not violate any law and leaves no evidence that it took place. It is worth remembering that senior officials

have great decision-making power in their courts and they can appoint several court employees, such as a private secretary, a chauffeur, typists, and secretaries of the court. Based on this discretionary power, judges can almost always fulfill requests for jobs by peers or other senior officials. These requests are not made randomly but within the proximity of one's clique.

Meritocracy in the MFJ is more than just a system of rewards based on personal credentials. It also involves developing social networks to find opportunities. It is within this network of friends, acquaintances, former bosses, peers, and coworkers that *favores de chamba* are requested and given. Those who benefit from favoritism, either through connections, traffic of influence, or nepotism, are nicknamed *recomendados*, a derivative term from the verb *recomendar*, which means to recommend.

At least 10% of the interviewees (5) mentioned that having *recomendados* in one's district court is a doubled-edged sword because they can be responsible workers and fulfill the demands of the job or exactly the opposite. In either case, the head of the court has to tolerate the person because there is an unwritten rule among senior officials that, regardless of the performance of *recomendados*, employment is always guaranteed. This may sound silly if the *recomendado* turns out to be a failure, but it is a procedure to assure permanent employment status. According to interviewees, some but not all *recomendados* enjoy quite a few benefits than other employees do not, such as shorter work schedules, more time off, and less demanding work. In any case, the assessment and working conditions

of the *recomendado* would depend on who the *recomendado* is, who recommended him or her, the position the *recomendado* holds, and whether or not he or she is pursuing a career within the MFJ.

From the analysis of the interviewees' narrative, it can be inferred that nepotism is not a black-and-white phenomenon and not necessarily always a negative one. For instance, job rotation is a common practice among brand new judges and magistrates because they are frequently assigned to different jurisdictions earlier in their careers before they settle into one. *Favores de chamba* is a pragmatic practice to provide employment for spouses if needed. Family members of judges and magistrates sometimes reach high-ranking positions not because of nepotism, but because they are smart and have to prove it by excelling in their jobs. Among the negative implications of nepotism and *recomendados* are an unfair system of appointments, abuse of power by senior officials, and an inconsistent meritocratic process.

Nepotism is not an isolated phenomenon, but one intertwined with other institutional practices, such as strong hierarchies, heavy centralism, and a male-centered culture, that have characterized the federal judiciary. Indeed, nepotism is a self-defeating practice in the administration of justice because it creates a second-class category for those employees who do not have relatives in powerful positions. It also contradicts the principles of fairness and equality that must be at the core of the federal judicial system. Nonetheless, it is fundamental to take into

account the social context in which the phenomenon takes place in order to understand it more accurately and address it accordingly.

Combining Judgeship with Lobbying and Litigation

One unexpected finding from the fieldwork was the fact that some justices and magistrates provide (off the record) legal counseling services to powerful clients, such as corporations, rich businesspersons, and politicians, who have legal problems in federal courts. This demand for legal counseling varies from client to client, but it can go from a simple consultation for a case that is about to go to trial to asking for lobbying or advice for a particular case that will be decided by the Supreme Court soon.

The mechanism by which this legal counseling takes place is through third parties, according to interviewees. As mentioned earlier, the family is the most trusted institution in Mexico, and senior officials who engage in these practices rely mostly on relatives to make the connection between them and clients. Many adult children of justices and magistrates who do not work in the MFJ own law firms. As heads of their firms, more often than not, they use the social and cultural capital gathered by their parents to litigate difficult cases. It is obvious that the names of their parents never appear in any documents related to cases, nor do they deal directly with the clients asking the counseling.

Quirina, an interviewee who had direct knowledge of this phenomenon and connections among high-ranking officials in the Supreme Court, explained that influential clients who ask for legal counseling usually hire the law firm of

one specific senior official's son or daughter. Actually, however, the client is not hiring the law firm per se, but paying for the connections and inside knowledge that comes with this association. This interviewee even mentioned the name of a Supreme Court justice, Balderrama, who is well known in the community of lawyers for engaging in this practice. Quirina's account was this:

El ministro Balderrama tiene fama de utilizar sus influencias con los magistrados o en asuntos con jueces. La forma como se hace es que quienes estén interesados en sus servicios van con su hijo que tiene un despacho jurídico y quienes lo contratan no están contratando al hijo sino al papá y eso lo saben quienes van. Esta información es bien sabida por gente que trabaja en la corte y se puede decir que está casi confirmado que así sucede. ([Supreme Court] Justice Balderrama has a reputation for using his power to put pressure on lower court officials, such as magistrates and judges, to influence some cases. Those who are interested in his legal counseling go to his son, who has a law firm, and hire him. They know they are not hiring the son but the father. This is how it is done, and those who look for that type of legal counseling know it. This information is well known by those who work in the Supreme Court, and it is almost certain that it is a fact, not gossip.)

This information was confirmed by nearly 10% of interviewees (4) throughout the fieldwork. Two interviewees said that they were aware of this influence peddling from this particular Justice Balderrama. They corroborated his reputation with accounts similar to that of interviewee Quirina. Additionally, during the summer of 2011, it became public news that an attorney at law, who was litigating a civil case involving millions of dollars against a well-known bishop in Central Mexico, publically denounced Justice Balderrama for interfering in the case (Vera, 2011).

Other interviewees generalized their response regarding Justice Balderrama's case, not confirming the information but saying that it has been

known that some justices lobby and litigate cases through third parties. A few interviewees argued that they did not have direct knowledge of Justice Balderrama's actions, but they would not dismiss the information. In other words, the lack of information was not evidence of the lack of influence peddling. Interviewee Xavier, who had 20 years of experience in the MFJ and was working at the Council of the Judiciary at the time of the interview, said this regarding the issue:

En relación al asunto del ministro Balderrama, no te puedo decir que si, pero tampoco que no. Se sabe que un ministro [sin mencionar el nombre se refiere al ministro Balderrama usando lenguaje corporal] litiga mediante el despacho de su hijo, se sabe que es cierto. Además no es algo nuevo sino que desde siempre los ministros, magistrados y jueces han venido haciendo esto porque es muy difícil detectarlo” (In relation to Justice Balderrama's case, I cannot say whether is true or false. It is known that a Justice [without mentioning a name the interviewee implies with body language that he is talking about Justice Balderrama] litigates via his son's law firm. This is true. Besides, this is not news, more often than not, Justices, Magistrates, and Judges have been engaging in misconduct because they can get away with it).

Not all shared the same view of the case of Justice Balderrama, either because they ignored any information about his actions or they believed it was simply untrue gossip. Those who believed it was just gossip added that if someone had evidence of this kind of wrongdoing, this person should come forward and present it to the public. This argument, however, is rhetorical because it is extremely difficult to gather evidence of wrongdoing, either because it is done clandestinely or because those who do it are clever enough not to leave traces.

Confronting all the collected information and his public record, what it is suspected about Justice Balderrama is probably true. Before being a justice, he

was a politician and congressman (*diputado federal*) from the state of Chiapas, representing the party that ruled Mexico for 71 years (*Suprema Corte de Justicia de la Nación*, 2012). He holds the record in the Supreme Court of siding all the time with powerful Mexican corporations in court decisions. All the available information suggests that for Justice Balderrama business and pragmatism are more important than justice and the rule of law.

Engaging in legal counseling was not restricted to some senior officials. Interviewees mentioned that sometimes secretaries of the court (*secretarios proyectistas*) also litigate cases or provide legal counseling to third parties as a source of revenue. Similar to senior officials, these junior officials are extremely careful of not leaving evidence of their behavior. The mechanism, frequency, and modus operandi of it varies from jurisdiction to jurisdiction, and it would depend on several factors, such as the type of court the employees works in, who the head of the court is, who the employee is, who benefits, and the interests at stake. Some interviewees said that it was more prevalent in criminal cases than in other cases.

It is fair to conclude that lobbying, litigating, and influence peddling by employees are not a frequent problem in the federal judiciary. Interviewees who acknowledged their existence said that they were isolated phenomena. Similar to the problem of corruption, nearly 100% of respondents said that the aforementioned practices were a rare practice, and not a single interviewee argued that it was systematic (see Table 1.2 below).

Most employees would not dare to engage in these practices for several reasons: it is unethical, it is illegal, it is too risky, and employees do not have time for it. How widespread are these phenomena? It remains to be seen because it is complicated to prove when the practices have been committed. The official policy towards these phenomena is that they do not exist in the institution. If a case arises, it is always defined as a single event of personal dishonesty, a “bad apple” issue, and it is never discussed as an institutional or systematic problem. The same policy is adopted towards the most common problem, corruption, which is discussed below.

Corruption in the Federal Courts

Researching corruption in the MFJ was one of the main targets of this research. The topic of corruption came in the second part of the interview in question 13.⁴ Based on responses, a little more than 80% of the interviewees (37) said that there was corruption in the institution but only as a rare occurrence rather than a systematic practice. Further, while it can occur in all places in the MFJ, its occurrence appears to be random, not related to any structural problems or incentives facing employees of a particular sector/status within this institution. (See Table 1.2). According to interviewees, the range of this exceptional corruption could go from a minimum of 1% to a maximum of 10%.

Comparing and contrasting the data from the six different cities where fieldwork took place, there is no significant variation in perceptions of corruption

⁴ Question 13: Do you think there is some type of dishonest behavior or corruption in the MFJ? If so, what kind?

among MFJ employees. The distribution of what corruption means and whether it exists in the institution was generally equal among these six jurisdictions. The major difference would be that in Tijuana 40% of the respondents (4) argued that corruption does not exist, which is a higher number than for other cities. These data could be explained by the fact that among those interviewees were two judges who tend to present a more optimistic view of the MFJ. The lack of variation in perceiving corruption is consistent with the monolithic organization of the institution and job rotation. These two factors are part of the culture and they tend to homogenize some behaviors and practices, such as the perception of corruption.

There were at least three consistent reasons given by interviewees that supported the existence of corruption, even in low numbers. The first justification was that corruption is a common practice in Mexico and it would be impossible or naïve to think that the MFJ is free from that problem. Therefore, corruption surely existed but to a lesser degree compared to other government offices. A second explanation was that dishonest public servants are always part of any bureaucratic setting in Mexico, and there may be some “*obejas negras*” (black sheep), as one interviewee put it, in the MFJ who at some point in their careers will get involved in corrupt practices. The third argument was that the judicial process, criminal law in particular, could be vulnerable to corrupt acts because some people would use any means to obtain a favorable verdict and avoid prison.

Regardless of the reason for corruption, the interviewees made it clear that this phenomenon was not seen as a serious problem within the federal judiciary. Unlike state judiciaries in which petty corruption is more prevalent and visible, the MFJ does not suffer from structural problems of grease payments or *mordidas*, the classic example of minor corruption used to expedite or circumvent red tape. Despite the bad reputation of the judicial system in Mexico as a whole, the MFJ has faced few or no scandals of senior officials involved in corruption. This does not mean they do not exist—as the case of Justice Balderrama mentioned earlier shows—but compared to the rest of the government branches, the MFJ seemed above all the bad reputation the judicial system has, according to interviewees (see Table 1.2).

Interviewee Andrés, who was a judge during the interview and months later became a magistrate, explained: “*En el 95% de los casos en el PJJ no existe corrupción. Como en todas partes siempre hay ovejas negras, pero en su mayoría la gente es honesta*” (95% of the cases in the MFJ are free from corruption. Like everywhere, there are always black sheep, but the majority of people in the MFJ are honest). Ernesto, another interviewee said: “*La corrupción que pudiera haber es mínima y en comparación con otras instituciones es la excepción; con cualquier otra no es nada*” (Any corruption that could exist would be little compared to other institutions; it is a rare occurrence and nothing if compared against any other institution). One more interviewee, Gustavo, asserted, “*Casi no hay corrupción pero si hay coladitos. Si acaso existe es de manera muy*

excepcional porque hay buenos salarios y eso evita la corrupción, ya que no hay necesidad de robar” (Corruption is almost not existent, but there are a few cases. If corruption exists at all, it would be just as an exceptional issue because there are good salaries and this prevents corruption: There is no need to be dishonest).

Interestingly, the criterion to measure corruption in the MFJ was the existence of corruption in the larger context of Mexican society. Given that corruption is so widespread, a little corruption meant nothing or was insignificant considering the entire social landscape. This did not mean that employees belittled corruption; rather they tried to give a fair portrayal of the problem, acknowledging its existence while highlighting that it was not as serious as many people would think.

Examining in detail the collected data, Table 1.2 shows that more than 20% of the respondents (11) implied that corruption takes place only among high-ranking officials, such as judges and magistrates. A little less than 15% of the respondents (7) suggested that corruption occurs only among low-ranking employees such as typists and court staff. Nearly 12% of interviewees (6) said that corruption happens just among middle-ranking officials, such as secretaries of the court. Less than 40% of the respondents (16) considered that corruption takes place at all hierarchical levels of the institution, low, middle, and high ranks. These data show that corruption is not a uniform phenomenon within the MFJ and it can or cannot occur anywhere, which supports the fact that it is not a common practice because there are not habitual patterns of this practice.

Table 1.2 Coded Data on Corruption, Nepotism, and Favoritism/Wrongdoing

Coded Data							
	Interviewee	Is there Corruption?	Category	Frequency	Where?	Nepotism?	Favoritism cronyism?
1	Antonio	Yes, 2%	Bribery	2%	Middle ranks	Don't know	No
2	Bruno	Yes	Petty: tips, mordidas	Exceptional	Low ranks	Yes	Yes
3	Carlos	Yes	Petty: tips, mordidas	Exceptional	Low ranks	Don't know	No
4	Daniel	Yes	Bribery	Exceptional	Middle/Low ranks	Yes	Yes
5	Elizabeth	Yes	Bribery	Exceptional	Middle/Low ranks	Yes	Yes
6	Felipe	No				Don't know	Yes in the past
7	Gerardo	Yes	Petty: tips, mordidas	Rare	Middle ranks	Don't know	Yes
8	Hector	Yes	Bribery	Exceptional	High ranks	Yes	Yes
9	Isabel	Yes	Bribery	Rare	Middle ranks	Don't know	No
10	Jazmín	No				Don't know	No
11	Kevin	Yes	Influence peddling	Exceptional	High ranks	Yes	Yes
12	Luis	No				No	No
13	Mónica	No				Yes	Yes
14	Magdalena	Yes	Tips	Rare	Low ranks	No	No
15	Natalia	Yes	Bribery	Exceptional	High/Middle ranks	Yes	Yes
16	Orlando	Yes	Bribery	Exceptional	High/Middle ranks	Yes	No
17	Pedro	Yes	Bribery	Exceptional	High/Middle ranks	Yes	Yes
18	Quirina	Yes	Influence peddling	Rare	High ranks	Yes	Yes
19	Ramón	Yes,	Bribery	10%	High/Middle ranks	Yes	Yes
20	Santiago	Yes	Bribery	Exceptional	High/Middle ranks	Yes	Yes
21	Teresa	Yes	Bribery, tips	Exceptional	High/Low ranks	Yes	Yes
22	Victor	Yes	Bribery	Rare	Low ranks	Yes	Yes
23	Wilfrido	Yes	Bribery, tips	Exceptional	Middle/Low ranks	Yes	Yes
24	Xavier	Yes	Bribery	Exceptional	High ranks	Yes	Yes
25	Yanny	No				Yes	Yes
26	Zacarias	No				No	No
27	Andrés	Yes	Bribery	5%	High/Middle ranks	Yes	Yes
28	Baltasar	Yes	Bribery	Rare	High/Middle ranks	Don't know	Yes
29	Carmen	Yes	Bribery	Exceptional	Middle ranks	Yes	Yes
30	Diego	No				Yes	No
31	Ernesto	Yes	Bribery	Rare	High/Middle ranks	Yes	Yes

32	Fernando	Yes	Bribery	Exceptional	Middle ranks	Yes	Yes
33	Gustavo	Yes	Bribery	Exceptional	High ranks	Yes	Yes
34	Hugo	Yes	Bribery	Exceptional	High/Middle ranks	Yes	Yes
35	Ignacio	Yes	Bribery	1%	High ranks	Yes	Yes
36	Josefina	Yes	Influence peddling	Rare	High ranks	Yes	Yes
37	Karla	No				Yes	Yes
38	Lourdes	Yes	Bribery, tips	Exceptional	High/Middle ranks	Yes	Yes
39	Miguel	Yes	Bribery	Exceptional	High ranks	Yes	Yes
40	Nancy	Yes	Bribery	Rare	Middle ranks	Yes	Yes
41	Oscar	Yes	Influence peddling	Rare	High ranks	Yes	Yes
42	Patricia	Yes	Influence peddling	Rare	High/Middle ranks	Yes	Yes
43	Quintiliano	Yes	Bribery	5%	High/Middle ranks	Yes	Yes
44	Raquel	Yes	Bribery, Threats	Exceptional	High ranks	Yes	Yes
45	Sara	Yes	Bribery	Exceptional	High ranks	Yes	Yes

Defining Corruption in the MFJ

More than 50% of the interviewees (24) defined corruption as acts of bribery only, meaning the acceptance of money or other incentives to influence the judicial process or using one's public position to gain economic benefits. Nearly 10% of the respondents (5) defined corruption as influence peddling by which third parties would influence a trial by using their connections with judges or magistrates. A little less than 10% of the sample (4 interviewees) suggested that corruption meant taking any money from the public, such as tips or *mordidas*, regardless of the ultimate intention behind given the money. Less than 15% of the respondents (7) defined corruption as a practice that fitted several categories, such as bribery, tips, and *mordidas* to influence the judicial process.

Those who defined corruption as mere acts of bribery suggested that receiving some money was not in itself corruption, as long as it did not affect the

judicial process. For instance, interviewee Bruno, who was a judge, made a distinction between corruption and tips: “*Existe una diferencia entre corrupción y propinas. La diferencia es cuándo se recibe el dinero, si se recibe antes de hacer el trabajo entonces es corrupción, pero si se recibe después de hacer el trabajo entonces es más una propina*” (There is a difference between corruption and tips. It is corruption when money is accepted before doing the job, but it is a tip if money is given after the job is done). The corollary of this assertion was that a corrupt act has to influence the process of justice to be defined as such. This perspective is similar to other findings on judicial corruption at the state judiciaries in Central Mexico (Ferreya-Orozco, 2010).

I do not accept this view unchallenged because it is a blurred definition that creates uncertainty, and it can be easily modified to disguise wrongdoing as a harmless practice. For instance, court employees can delay work or trial proceedings intentionally to put pressure on litigants to offer money as tips to get things done, when in reality it would be a hidden bribe concealed as gratuity. The important point here is to understand the institutional rationality behind this practice, which means how some court employees justify certain practices that have become socially acceptable within the judicial system.

To exemplify what corruption was in the MFJ, some interviewees cited the case of a secretary of a district court named Esiquio Martínez Hernández (EMH) who was arrested in late May of 2011 for malfeasance in office and potential embezzlement (*enriquecimiento ilícito*). He had 450 million pesos (around \$36

million dollars) in bank accounts and could not explain where the money came from. The indictment was initiated by the Council of the Judiciary after an internal investigation, and it became national news when he was detained and put under trial (El Universal, 2011b). Because the case was recent, it was used indistinctively by some interviewees to argue that there was corruption in the federal judiciary and that the head of the MFJ was being transparent and fighting corruption by prosecuting this junior official.

Not every interviewee agreed with the definition of corruption as a bribery issue; a handful of interviewees included nepotism, abuse of power, tips, use of connections, and traffic of influence in the same category. More than 50% of the sample (24 respondents), however, saw corruption just as acts of bribery. This meant that other practices such as influence peddling, favoritism, traffic of influence, and even influencing the judicial process for political reasons were not corruption or had blurred definitions. These phenomena were not seen as corrupt acts because they did not entail receiving money and they were not done systematically, but only exceptionally. Since traffic of influence, favoritism, and nepotism were confined to administrative matters, such as appointments, they were not corrupt acts in the criminal sense of the word, but merely unethical and unfair.

The Perception of Corruption

People working in the MFJ perceived corruption as a legal problem in general terms. In a context in which agents are law experts, corruption was

understood as referring to dishonest personal acts that break the law. This means that corruption was primarily defined as a crime rather than an unethical, immoral, or cultural problem. The implications of this were that corruption could be solved by applying the rule of law and supervising officials' strict adherence to the rules. This perception of corruption is supported by the fact that, overall, more than two-thirds of interviewees (37) defined this problem as bribery—sometimes other phenomena were included in this definition, but bribery was the most noticeable. According to this narrative, bribery would be a personal act that places all the responsibility for this misconduct onto individuals rather than onto the institution or the system.

From my perspective, this understanding of corruption repeats the “bad apple” paradigm that has been used mostly by scholars from developed countries to tackle this phenomenon (William and Beare, 1999). Namely, they blame specific individuals for the existence of corruption while ignoring other factors, such as context, setting, and culture, which also play an essential role in the production and reproduction of these phenomena. By ignoring these factors, the head of the MFJ—and its employees—limit the scope to address corruption because it overlooks the complexity that surrounds this phenomenon. If there is no understanding of the nature of corruption in the federal judiciary, then it cannot be changed because any policy or reform to tackle it will be misguided. Finally yet importantly, this perception of corruption as mostly bribery reflects the monolithic culture of the federal judiciary because it tends to see and define

institutional problems as legal matters, rather than including a more comprehensive approach.

Not everyone perceived corruption as a legal issue only. Nearly 25% of the sample (11 interviewees) suggested that corruption in the federal courts was intertwined with the cultural context of Mexican society, meaning that the institution was only a reflection of a larger and deeper problem in the country. These respondents suggested that corruption was more complicated than it appeared because different factors could be combined to create the scenarios in which corruption could occur. For instance, the kinds of trial, the parties involved, the matters at stake, the location of the court, and who the judge was, were all circumstances that would decide whether an official had engaged in wrongdoing.

Measuring Corruption through Judicial Independence

The perception of corruption as an exceptional phenomenon was consistent with another phenomenon that thrives with low levels of corruption: judicial independence. Judicial independence is a variable that closely intertwines with corruption because widespread corruption correlates with poor or little judicial independence and vice versa. This argument is supported by what most respondents said about this theme. Nearly 95% of interviewees (42) suggested that judges and magistrates enjoy high degrees of independence to do their job. As imperfect as the meritocratic process could be in the MFJ, it has been improved in the past decade, and now civil service is much fairer than before because it is based on professional merits, with some exceptions as has been argued. As

explained earlier, the head of the MFJ uses a mixed policy in the appointment process, but at least half—maybe more—of those who become judges and magistrates are selected by their personal credentials. This has empowered employees and provided legitimacy to their tenure to face off any potential influence from outside and above: they do not owe any favors to anyone for being where they are.

It would be interesting to know if senior officials who are appointed through favoritism or nepotism enjoy the judicial independence that prevails among those who are appointed on their credentials. When explaining judicial independence among judges, interviewees did not differentiate among senior officials who are *recomendados* and those who are not. I would assume that interviewees included all judges equally; otherwise they would have mentioned the differences (if any) between the two.

More than 50% of interviewees (25) argued that in the Supreme Court there is not enough judicial independence because political interests interfere. They argued that Supreme Court decisions that have the potential to affect the Presidency or powerful nongovernmental groups are always under the threat of influence. The President has some decision-making power in the appointment of justices, and based on this fact, some interviewees questioned whether the Supreme Court could have any judicial independence at all. Interviewee Natalia said the following about judicial independence: *“En el 99% de los asuntos existe imparcialidad, pero siempre hay algún caso en los juzgados donde hay algo. En*

los asuntos de la corte no me atrevería a hablar porque se manejan otros intereses” (In 99% of the cases there is impartiality, but there is always the exception with a case in district courts where it could be otherwise. Regarding the cases handled by the Supreme Court, I would not dare to say the same because there are other [powerful] interests there).

Comparing the responses on the topic of judicial independence between 10 senior officials (judges and magistrates) and the rest of the employees (30), the former tended to present a more positive image of the judgeship while the latter were more neutral, making both negative and positive comments. Regarding the Supreme Court, more senior officials had a tendency to depict it as independent and only occasionally suffering from political influence, while most junior employees argued the opposite. One interpretation of this diversity of perspectives focuses on the social context and working conditions of both groups. Senior officials have a longer service and have already made a career in the MFJ; they enjoy social status, profitable salaries, power, and rule over their courts. Low-ranking employees, on the other hand, have on average a shorter service in the institution, have lower status, make less money than their bosses, have less power, and their careers are still in the making. The former have more interests at stake, which lead them to be less critical and highlight the best of the MFJ. The latter do not have that institutional commitment yet and feel freer to express their opinions while challenging the status quo without fear.

Corruption in Drug-Related Trials

Corruption related to drug trafficking and drug-related cases was almost not existent in the federal judiciary according to more than 80% of the interviewees (37). They suggested that it was extremely difficult for a judge or anyone working in the MFJ to be lured by the money and influence of drug traffickers, for several reasons. First, court cases are handled by different employees throughout the trial until the sentence is released by the judge. These employees are familiar with the parties in the case, the content, and the evidence. To acquit a defendant requires support from the case and if a judge dares to free a criminal because of corruption, many employees would immediately know what is going on and the judge will be eventually caught. The evidence of the case has to be consistent with the verdict, said interviewee Luis, a judge: *“Si algún titular fallara un asunto en contra de las constancias del expediente, podría ser motivo de sanción penal y administrativa”* (If a judge decides a trial without the support of evidence in the file, he or she would be severely sanctioned). This statement is supported by scholars (Begné Guerra, 2007; Carbonell, 2008) and my own experience as a returning member of the judicial system. Furthermore, at least two-thirds of the respondents (30) implied that acquitting a defendant without the support of evidence would be a remarkable mistake that could be easily proved.

Second, one of the goals of having good salaries and high quality social benefits has been to encourage MFJ employees to be loyal towards the institution and have a passion for their jobs. Nearly 20% of senior officials (10)

acknowledged the advantages of their work, and they were unwilling to risk their positions by engaging in corrupt acts that could eventually destroy their careers. Junior officials had similar feelings, although they could be more vulnerable to be corrupted, but there was no evidence of this potential phenomenon.

Third, interviewees said court employees know that dealing with drug traffickers is too risky because once someone makes a deal with them it would be almost impossible to cut the relationship and say no to future requests. Mexican cartels are known for their "*plata o plomo*" (silver or lead) approach to dealing with their businesses. MFJ employees know this better than anyone else does because they see it in their everyday work handling drug-related trials, which include grotesque killings, kidnappings, executions, shootouts, and so on. Therefore, senior and junior officials pay special attention not to get involved with drug traffickers.

Fourth, at least 10% of interviewees (5) also argued that today's drug traffickers are smart and well informed about the legal system and how difficult it is to persuade a federal judge to accept a bribe. Instead, what these traffickers do is to make a deal with prosecutors, if possible, because it is easier and less compromising. This perspective was likely to be embraced by at least 80% of the sample (36 employees) because it is consistent with the institutional mindset that permeates among junior and senior officials about not risking the job or one's life.

Conversely, the prosecutor's offices in both jurisdictions, state and federal, are not professional enough and have suffered from chronic inefficiencies and

lack of resources in the past decades (Ferreyra-Orozco, 2012). Nearly 70% of the respondents (32) asserted that these deficiencies from the prosecutor's office affected the work of the MFJ because it could lead to freeing criminals based on technicalities. More than 50% of interviewees (24) suggested that corruption from the federal prosecutor's office was possible to identify when indictments are sent to the MFJ because it is common that evidence is missing from the file. For instance, sometimes facts from the indictment are intentionally confusing or criminal investigations have been poorly done. These practices reflect obstruction of justice to benefit the defendant. Thus, if drug cartel members have an interest in influencing a case, they will go to the prosecutor first before the case is sent to the federal courts.

Finally, it was said earlier that employees in the MFJ work many hours in the courts and spend more time with their co-workers than with their own family members. They know each other well and some develop close ties among themselves. They talk about the cases and proceedings they handle and share information to get feedback. According to some interviewees, court employees even nickname cases, such as using one of the defendants' names or a particular characteristic of the case, as a way to identify them easily. This closeness between employees also served to keep an eye on each other about their work performance and their boss's. When a coworker makes a mistake or engages in any sort of wrongdoing, the first to know are the people around the office, and this becomes a

deterrent factor: Court employees policed each other as part of their everyday duties.

Closeness among employees could also lead to collusion between them, but this would be more difficult to carry out because it would imply secret cooperation and the agreement of multiple coworkers, which seems unlikely. Working in the federal courts is like having a family for several reasons, according to some interviewees. Coworkers spend long periods of time working together. They develop strong personal ties—usually supporting each other, although the opposite may also be true—and, most importantly, they get to know each other well. This means that if someone makes a mistake or engages in misconduct, sooner rather than later, it becomes known by the rest of the courtroom. From my own experience as a former trainee in the judicial system, collusion between employees can occur, but those who collude know that their secret cannot last long (and this serves as deterrence factor to limit collusion).

Coping with the Threat of Cartels

More than 60% of interviewees (28) acknowledged that drug cartels and organized crime are threats to employees of the federal judiciary. Although there has not been systematic violence against these employees, there have been attacks against judges and magistrates in the past years. The most recent attack, which some interviewees cited as example of violence, was the case of the federal judge Carlos Alberto Elorza Amores, who in August 2010 was attacked by a group of gunmen wanting to kill him. His bodyguards confronted the hit men, and one

bodyguard was gunned down while another was injured. The judge saved his life with only minor injuries (Castillo and León, 2010).

The Council of the Judiciary is aware of the risks that judges of criminal district courts and magistrates in appellate courts are exposed to and has taken some steps to protect them, according to several interviewees. For instance, the judges of district courts located in jurisdictions where there is a strong presence of cartels and drug trafficking, such as border cities with the U.S., drive armored vehicles provided by the Council. The premises of federal courts have guards at the entrances and they require identification to access to the courts, something that did not exist in the past. These premises also have scanners to check bags and suitcases to detect guns and explosives. In addition, court employees have been encouraged not to show off their badges at any time, a practice that was common in the past to enjoy certain immunity with police officers or to circumvent the red tape while dealing with bureaucrats.

Despite these steps, there have been threats against judges and magistrates, and the Council of the Judiciary has set up a particular protocol to cope with them. When a senior official is threatened by organized crime, he or she can make a direct call to the Council and explain the details of what has happened. Then, based on the circumstances of the case, the evidence, and the potential of the threat, the Council takes a decision. If the threat is real and harm is imminent, the official is usually transferred to another jurisdiction or bodyguards are assigned to this official. However, not all threats merit a change of jurisdiction.

As a rule, the Council follows a policy of constant job rotation for judges who are located in jurisdictions that handle high-profile cases in drug-related trials in order to avoid corruption while giving a break to these judges. Sometimes, the judges themselves ask to be transferred to another jurisdiction once they have stayed the minimum period of time allowed by the Council, which is two years.

All these arguments and actions to fight the influence of drug cartels in the administration of justice have not prevented a few court officials from engaging in corruption with them, nor has this been an obstacle for drug traffickers who manage to influence particular trials through threats and murder. The *Michoacanazo* case has been a high-profile case that involved different degrees of corruption, political interference, and the influence of a particular drug cartel on the trial, as will be analyzed and discussed in the next chapter.

Significance of the Findings

Part one of this chapter describes, on the one hand, an institution that reproduces the traditional patterns of bureaucracy that have characterized Mexican society—hierarchies, complex regulations, and a strong administrative system. On the other hand, it presents a culture of intense work in which excruciating work schedules, effort-intensive jobs, and stressful environments are characteristic of everyday life in the MFJ. Despite these difficult work conditions, most employees and judges accept them as natural features of federal courts.

Nearly two-thirds of the interviewees (33) suggested that the unifying factor that holds this setting together is high salaries and passion for working in these courts.

This information sheds light on the ordinary activities of the federal judiciary that are little known by most people outside the institution. Knowing these activities can provide a different perception of the MFJ and the complexity of the administration of federal justice. These data show that the negative image that the judicial branch has had in the past overshadows its positive features, such as having hard working employees and high levels of professionalization. What is more important is that this knowledge provides a better understanding of the setting and context of the MFJ, which serves as background to grasp more complex phenomena such as nepotism, abuse of power, misconducts, and corruption.

Part two explained in detail some of the mechanisms of wrongdoing and corruption that take place within the MFJ. Practices such as nepotism have become normalized in some sectors of this institution—usually among high-ranking officials—and thus they have lost negative connotations. Nepotism in particular is widespread, and nearly 80% of the interviewees (35) acknowledged its existence. Because it is not seen as an immoral or unethical phenomenon, there is little or no interest from the head of the MFJ to tackle it. Along with nepotism, some magistrates and justices engage in wrongful activities such as litigation and lobbying in favor of powerful private interests. These practices are accomplished through third parties such as relatives or friends so that officials' names never

appear, which makes it difficult to prove any misconduct. The case of Justice Balderrama, mentioned as an example of this type of wrongdoing, is paradigmatic because it shows a lack of accountability at the top of the MFJ. The fact that no one supervises the Supreme Court as a whole, and justices in particular, creates a loophole that can lead to abuse of power and corruption.

Whether it is use of connections, lobbyism, or influence peddling from high-ranking officials, these practices still exist because of the culture of strict obedience, loyalty, and powerful hierarchies derived from the inertia of the *ancien régime*. According to those respondents who acknowledged misconduct, these practices are not common compared to their prevalence in the past, and they have been considerably abated. Except for nepotism, misconduct such as influence peddling and lobbyism occur only exceptionally, and they are not a huge problem within the MFJ, according to interviewees. Interestingly, there is a doublespeak discourse from some senior officials; on the one hand, they officially condemn these practices as negative phenomena that affect the MFJ, but on the other hand, they reproduce them because they benefit from them.

Finally, corruption is a phenomenon that remains part of the MFJ in relation to the broader context of Mexican society and the legacy from the authoritarian regime. More than 80% of respondents (37) admitted that corruption takes place at the federal judiciary, but all of them emphasized that it was an exceptional phenomenon. Even those who mentioned a percentage of corruption, such 1%, 5%, or 10%, added that it was a rare practice within the larger context of

the institution. It is important to understand this emphasis on corruption as exceptionality because it hints at the institutional mindset of the problem: Yes—employees would admit—there is still corruption in the federal judiciary, but it is not as widespread as it used to be, and compared to the rest of the federal bureaucracy, the MFJ is doing better on this issue.

The arguments stated by interviewees to explain why corruption is an exceptional problem were coherent and convincing. The existence of high salaries has reduced the desire to engage in corrupt practices, respondents argued. More professionalization, a better career civil service (compared to the recent past), social status, and superior social and health benefits were all factors that discouraged employees from risking their job for any misconduct. Another deterrent factor was that several people throughout the trial handle court proceedings and the sentencing process; therefore, if a corrupt act influencing the judicial process occurred, someone at some point would detect it. This makes the mechanism of corruption more difficult to hide and control because employees police each other, respondents asserted.

It is a fact that there is corruption in the MFJ—exceptionally, but it occurs. Corruption related to drug trafficking and cartels is even rarer than any other kind of corruption in the MFJ because the implications of getting involved with cartel members are too dangerous to consider as possibilities, interviewees suggested. None of the respondents mentioned a single case of corruption related to drug trafficking trials. Instead, they said that the opposite was true because hardly any

judges or magistrates would do business with cartel members given how organized crime conducts their affairs. This does not mean that this type of corruption does not take place; it does, but in more subtle and complex mechanisms as the *Michoacanazo* case shows in the following chapter.

Chapter 6

THE MICHOACANAZO CASE STUDY

Part One

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 for having ties with the local drug cartel known as "*La Familia Michoacana*." More than 30 public servants were arrested and then sent to prison during a roundup conducted by the federal police in May 2009. Within a two-year period, all of them were eventually freed. This case had strong legal and political implications nationwide because it pitted the state of Michoacán against the federal government as well as pitting President Felipe Calderón's administration against the Mexican Federal Judiciary. Besides the legal facts that supported 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.

Because the political and legal grounds of the trial were blurred, the *Michoacanazo* is a paradigmatic case that provides a glance at the interstices of the Mexican federal judiciary when powerful interests collide, and corruption intertwines, with politics, a drug cartel, and the complexities of handling drug related trials. This is not a typical case in the federal judicial system because only rarely does Mexican society see an official confrontation between state powers to

the magnitude displayed here. However, the case provides an opportunity to do a holistic analysis of context and circumstances on how corruption can operate within the MFJ when certain criteria are met.

On the one hand, the case is descriptive of the social and political conditions that surround the federal administration of justice in Mexico. On the other hand, the case is explanatory of how judicial corruption is extremely difficult to track and why a combination of powerful interests (e.g. political, legal, criminal) still echo the weaknesses that the federal judicial system suffered during the authoritarian regime of the twentieth century. Besides explaining the complexities of researching corruption in the Mexican federal judiciary, the aim of this case study is to gain a sharper understanding of the social and political contexts influencing the case and why and how it took place.

It would not be possible to understand the *Michoacanazo* case study without first providing a brief background on the proliferation of drug cartels and the surge of extreme violence in Mexico. Drug trafficking is a fundamental piece of the *Michoacanazo* case because it is so intertwined with the performance of the federal judiciary and is considered one of the most difficult social issues that Mexico has faced in modern history. The first part of this chapter approaches how and why drug trafficking became the monumental issue it is today. Then, there is an explanation of the connections between politicians and drug traffickers. Next, there is an account of the origins and modus operandi of the “*La Familia Michoacana*” cartel, which will help to better explain the connections between

politics and organized crime that are in this case study. Lastly, part two of the chapter deconstructs the *Michoacanazo* trial and provides an analysis of the evidence, rulings, and ramifications of the whole case.

Drug Trafficking in Mexico before 2006: Contextualizing the *Michoacanazo*

Despite many decades of political pressure from the U.S., during the twentieth century, Mexican government did not address drug trafficking as a serious public problem. Tolerance, corruption, and sometimes cynical protection allowed Mexican drug organizations to flourish under the shelter of the authoritarian regime because it was a convenience for both criminal organizations and the political establishment. The profitability of drug trafficking gave traffickers enough resources to corrupt politicians and law enforcement agents.

The Mexican government never defined drug trafficking within the “war on drugs” approach that the U.S. uses to confront this problem because this illicit activity was not officially acknowledged as a serious threat to Mexico’s national security. However, when President Felipe Calderón took power in 2006, he initiated an official confrontation against drug trafficking organizations. This was not strategic or legal, but rather a political decision. The Presidential election of 2006 was extremely contested and filled with disputes and controversies. Officially, Calderón won the election with less than 0.6% of the votes (*Instituto Federal Electoral*, 2006) and took office. For a large majority of Mexicans, he was a spurious President. To reverse his fragile political position when he assumed office on December 1, 2006, he declared war against the drug cartels.

A major shift in this new approach was the militarization of the “war on drugs.” Given the prevalence of corruption among the police and the general distrust of law enforcement agencies, the army was recruited in order to fight drug trafficking on a larger scale. The military have been involved in the eradication of drug plantations and counter-drug operations for the past decades. This occurred because “the military [was] considered to be the only institution with the manpower, capacity and equipment to counter the threat of drug trafficking and [was] viewed as less corrupt than the Mexican police” (Meyer, 2007, pp. 3-4). This new order from President Calderón gave soldiers the legal authority to patrol streets and highways, set up checkpoints, maintain law and order in major cities, and conduct law enforcement operations. The policy of the “war on drugs” raised President Calderón’s approval ratings significantly. However, it also led to a spiral of unprecedented violence and assassinations throughout the country, including a record numbers of murders related to drug cartels. Each year, for the past six, a new higher record of killings has been set, and this trend seems to be continuing unabated.

The New Mexican Cartels: Coming of Age

When the media and law enforcement agencies describe cartels, they usually highlight the most significant organizations and associate their names with specific cities they control and in which they are thought to have their headquarters (Astorga, 2005). Based on this narrative, people and officials tend to

think that their leaders and members are originally from those places. Although this can be true, it is not always the case.

The most powerful and successful traffickers have been those coming from Sinaloa state. This is still valid today. The Sinaloa cartel is among the most powerful drug trafficking organizations (DTOs) at present. The size of its operations in many states and the long-term leadership of kingpin Joaquin “El Chapo” Guzmán have contributed to the reinforcement of the hegemony and the resilience of this criminal organization. It has been in business for many decades. After its main drug lord, Miguel Ángel Félix Gallardo, was arrested in 1989, he managed to divide the organization among his deputies; this action created regional cartels, such as Tijuana and Juárez, that later fought amongst themselves to control the *plazas*—Mexican cities under control of a particular DTOs (Astorga, 2005).

The Gulf cartel, another power cartel a few years ago though now fading away, did not have as strong of a tradition as the Sinaloa cartel, but it had a robust presence in the states along the Gulf of Mexico—hence its denomination. “The Gulf cartel grew dramatically during the chaos of the early 1990s, expanding its territory into direct sales, while engaging in a host of other nefarious rackets. The growth inevitable brought them into conflict with ‘El Chapo’ Guzmán and the Sinaloa cartel” (Kellner and Pipitone, 2010, p. 32). The main leader was Juan García Abrego, who was arrested in 1996 and deported to the U.S. Osiel Cárdenas Guillen took his place. In the earlier 2000’s, he lured elite soldiers from the

Mexican Special Forces group to join him by offering them money. Dozens of soldiers came and they became known as “Los Zetas.” These elite ex-soldiers had specialized training in counter-insurgency, small-group tactics, weaponry, intelligence collection, and so on. They had attended the School of the Americas in Fort Bragg, North Carolina, and were exposed to all the military tactics that characterize Special Forces. Soon after the Los Zetas became the hit men of the Gulf Cartel, they earned a reputation for efficiency, discipline, and brutality (Meyer, 2007).

Los Zetas have been extremely entrepreneurial in their criminal behavior. Besides expanding their repertoire of illicit activities, they also battled with local drug traffickers to gain control of cities and corridors located in other states in order to expand and export their business. Sometimes Los Zetas created alliances with other cartels or smaller groups of mercenaries to take over important *plazas* for the drug trade, and most of the time they were able to remain the bosses. With these alliances, they have transmitted their military knowledge to hit men by providing them with training and teaching them how to conduct the drug business more effectively through other profitable illegal actions.

Drug trafficking in Mexico and the existence of powerful drug cartels would not be possible without the assistance of authorities (politicians in particular) who use their government influences to benefit these criminal organizations. This close relationship between drug traffickers and politicians had always been a known phenomenon during the authoritarian regime because it benefited both parties.

That relationship is still alive today, and it played a role in the *Michoacanazo* case.

Narco-Politics: When Drug Traffickers Meet Politicians

Luis Astorga correctly argues, “Since the beginning, the best-known drug traffickers in Mexico were related to high ranking politicians. More precisely, these politicians were suspected of being directly involved in the illegal trade and even of controlling it” (Astorga, 1999, p. 14). This scenario is not difficult to picture when imagining that this happened almost a century ago. What is more astonishing is that this symbiosis between drug traffickers and politicians is hardly any different today. It should not come as a surprise then that drug trafficking, politics (narco-politics), and corruption (narco-corruption) have been intertwined throughout the history of the drug trade in Mexico.

Drug trafficking requires an enormous network of people in order to produce, harvest, transport, distribute, and sell all the drugs. In Michoacán, this activity began as a profitable business in which some peasants, middle-class individuals, and even wealthy families became involved in order to make quick cash, get rich, or just make a living in order to survive poverty. Similar to the experience of the state of Sinaloa (Astorga, 1999), in Michoacán, people turned to the drug business not because they were criminals, but because they saw the opportunity to earn some money.

In Michoacán as well as in other regions of the country, cultivating and harvesting drugs became normalized in society because it was part of the

everyday lives of many people. It was much more profitable to grow marijuana and poppy than any other crop. There were minimal risks involved with these practices because the police and the authorities did not enforce the laws and/or were directly related to this business. Many individuals in rural municipalities, where the towns and villages are small, were willing to become traffickers because everyone knew who farmed poppy and marijuana. Thus, cultivating illicit plants became a sort of “natural” enterprise in which many locals, friends, acquaintances, and even relatives engaged. The abnormal became normal and drug trafficking no longer appeared as a stigmatized and criminal behavior, but was rather seen as a lucrative, commercial practice.

There are two main factors that encouraged the normalization of drug trafficking at that time: 1) the nonexistence of violence, and 2) the absence of local drug use. The first factor, the nonexistence of violence, was made possible because most traffickers lived in the same villages and towns and they either knew each other or were related by kinship. This closeness between traffickers kept any potential violence at bay because disagreements and rivalries were settled by the heads of the households and the older family members. Remember that family and kinship ties are strongly rooted in Mexican society. In the same manner, community and neighborhood membership are sources of identity that create bonds and allows for a backdrop under which reconciliation and negotiation processes can occur in order to settle any disputes. The second factor, zero drug consumption, allowed the communities to accept traffickers as

businessmen and adopt drug trafficking as a regular business activity because the drugs were sent to the U.S. and not consumed by locals. There were no immediate negative effects locally because of these illegal practices at that time (Recio, 2002).

However, everything changed when criminal organizations began to fight amongst themselves because each one wanted to take over and control the regions where the drugs were harvested, as well as the drug routes leading to the U.S. In addition, the fragmentation of large DTOs into smaller organizations with regional influences instead of national presences, led to bloody disputes between cartels that wanted to maintain control and scare rivals and society.

Extreme Violence from Drug Traffickers

Violence is nothing new for criminal organizations. It is one of the most effective tools used to carry out their illicit activities. When corruption is not enough, drug cartels resort to intimidation, fear, and the threat of physical harm to conduct their business successfully. “Corruption and violence are often inseparable. When corruption is unsuccessful, traffickers resort to violence: they intimidate policemen, judges, and witnesses; they form private armies; they assassinate police force members and representatives of state justice, of competitors and of enemies” (Toro, 1998, p. 140). What is new in this wave of violence, besides the high number of assassinations, is the type of tactics adopted by cartels in order to maintain control of their territory, instill terror in rivals and citizens, and to settle accounts. These tactics have been characterized by

gruesome killings, torture, brutality, and burning or dissolving bodies in acid. It also has included beheaded and dismembered bodies being displayed in horrifying scenes. For example, severed heads have been left in front of public buildings and mutilated torsos have been seen hanging from bridges.

The Value of a Bad Reputation

Violence is a powerful recourse that criminal organizations routinely resort to because it can be an effective instrument to use when reaching for their goals. “Organized criminal groups use force, or threaten its use, to accomplish their ends. They engage in killings, beatings, burnings, and destruction” (Finckenauer, 2007, p. 7). Without violence, criminal organizations would not have leverage to conduct their illicit activities. Therefore, it is clearly true that violence is a fundamental and distinctive trait of drug cartels.

It is, however, not the only effective tool used to instill fear in other criminals, victims, and competitors. Criminal syndicates also use and exploit the benefits of having a *bad reputation* (Abadinsky, 2010). A bad reputation creates status, power, and a foothold for those who hold it. This bad reputation operates as a valuable instrument because it brings advantages to those who have one and acts as a defense mechanism that protects them. If a criminal organization, such as a drug cartel or a gang is known for its implacable violence, then citizens, victims, and rivals will fear them.

A reputation is more than a general opinion about something or someone. “Reputations are judgments about vices and virtues, strengths and weaknesses,

that communities accumulate, process and reprocess about their members. They are built up over time, involve a great deal of indirect evidence and often include social representations of entire groups” (Bovenkerk, Siegel, and Zaitch, 2003, p. 27). In the case of criminal organizations, a bad reputation has to be credible enough to let rivals and victims know that violence can always be a possibility. A bad reputation means that those who enjoy it are capable of extreme violence in order to achieve their illicit activities without fearing the authorities. In other words, it allows organized crime members to function efficiently in a world of criminal chaos. As Kyle and Koslowski (2001) assert, a

Bad reputation is a valuable asset that permits criminals access to criminal markets that would, absent this reputation, be closed to them. Victims of potential victims who believe they are confronted by some omnipotent force called organized crime (or more especially mafia) are more fearful, more likely to succumb, and less likely to go to the police than would otherwise be true. (p. 170)

Applying this conceptualization to the case of DTOs in Mexico, some cartels such as *Los Zetas* and *La Familia Michoacana* have acquired such a strong bad reputation that their rivals and society hold a deathly fear of them. Merciless violence and bad reputation are a perfect combination for these criminal organizations to conduct criminal business successfully because they give their criminal activities impunity and makes things much easier and faster for them. In fact, a believable bad reputation helps drug cartels get more things done without resorting to the need to use a physical or destructive force. Besides drug trafficking, other criminal activities such as extortion, kidnapping, and private

protection have been successfully integrated into some drug cartels' repertoire of criminal acts, thanks to a bad reputation. "A credible reputation as a violent or effective protector can certainly save production costs: the fiercer the reputation, the less need for recourse to the resources supporting it" (Bovenkerk, Siegel, and Zaitch, 2003, p. 28). The more aggressive, bloody, and relentless a cartel's reputation is, the more successful their criminal career and control over territories will be.

The most common path for a drug cartel to gain a bad reputation has been through hideous murders, extreme violence, impunity, and martial discipline. For many years, *Los Zetas* cartel was the organization that, above all others, held the worst reputation. They were feared by competitors, the Mexican military, and society mainly due to their discipline, efficiency, and high-tech tactics. As ex-Special Forces soldiers, they knew firsthand how to inflict severe damage to rivals and create terror among the civilian population (Grayson, 2010). Therefore, using their ambition to control more regions, they allied with other groups and trained their hit men with their military expertise. Soon, other drug cartels learned to instill fear and apply such techniques as dismembering bodies, beheadings, torture, and urban guerrilla tactics. These actions helped increase the bad reputation of some DTOs, such as the *La Familia Michoacana* organization, to the levels of *Los Zetas*.

La Familia Michoacana (LFM) Cartel

Similar to other drug trafficking cartels that had sprung up in the last decade, *La Familia Michoacana* or just “*La Familia*,” was born in the early 2000s from members of other cartels, such as *Los Zetas* and the Gulf, to fight local drug traffickers (Grayson, 2010). These members had a convenient alliance that mutually benefited everyone. LFM cartel called itself at first *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). This was done based on the idea that all members were from the state of Michoacán. As a newly independent organization, LFM made its public debut in September 2006, when five severed heads were dropped onto a nightclub’s 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” (Finnegan, 2010, p. 40).

LFM has used fear and intimidation to pursue their criminal activities while simultaneously using a double discourse to gain social acceptance. On one hand, LMF proclaims 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 kidnaps, extorts, sells drugs, and kills people who do not pay for ‘protection’. According to an expert on Mexican organized

crime, “La Familia’s intense propaganda campaign [is] 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” (Grayson, 2010, pp. 199-200).

La Familia successfully built a social base in regions of Michoacán that were poorly developed. It uses a religious cult-like approach that highlights family values to brainwash members and create support. It has also challenged the authority of the state by creating a parallel government demanding “taxes” from businessmen (called *cuota*, meaning share in Spanish), mediating in legal conflicts, financing municipal projects, and even fighting petty crime (Grayson, 2010). I can corroborate these activities as true from the anecdotal evidence of my friends and acquaintances, as well as even once having a close relative of mine kidnapped by this organization. We had to pay a ransom, and we were among those lucky enough to have our loved one return back alive. Other people have not had the same luck.

Along with violence and intimidation, *La Familia* has taken a silver or lead (*plata o plomo*) approach to persuade state and municipal politicians and law enforcement agents to join the organization. This means that authorities either accept bribes or they—and their families—will be murdered. LFM shows no mercy to those who refuse to follow their demands. Dozens of municipal officials have been killed in the last six years for refusing to join the LFM cartel, among them five mayors, the latest one in early November 2011.

When the LFM cartel became an independent organization, it carried out an aggressive strategy to completely take control of 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 their own rules (Finnegan, 2010). 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. 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 LFM cartel became public news soon after the *Michoacanazo* roundup, when the Attorney General's Office requested a warrant of arrest for Julio Cesar 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 by saying that they were politically motivated. When his case became even more controversial, the Attorney General's Office leaked to the media a conversation between Toscano and a kingpin of LFM. He was eventually impeached by the House, losing his

parliamentarian immunity, which forced him to flee and become a fugitive (Garduño and Mendez, 2010).

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 to create dramatic legal confusion. Everything from the *Michoacanazo* files could be true, except that there is no conclusive evidence about whether or not the defendants are guilty or innocent. However, the case provides enough information to prove that municipals and state officials had ties with LFM and that federal courts suffered from external pressure to rule in this case. The following analysis begins explaining how I had access to the files that held the main content of the case.

The *Michoacanazo* Trial: Access to Files

Part Two

The *Michoacanazo* case study is a paradigmatic example of the tragic shortcomings of the Mexican criminal justice system. It shows the convergence of several problems that have plagued the Mexican political system: influence peddling, abuse of power, political corruption, legalism, impunity, narco-politics, and connivance. This case was the cause of a major political dispute between the President and the governor of the state of Michoacán when the latter accused the former of using the prosecutor's office for political benefits. The case was also used by the President to accuse federal judges of corruption, which led to a

confrontation between the executive branch and the judicial branch (El Universal, 2011a).

At a closer look, the *Michoacanazo* case is tangled in a web of controversy, inconsistent evidence, legal contradictions, half-truths, plus discretionary and legalistic interpretations of the law. After reading all the evidence, it is impossible to tell whether the entire case is true or false. What is clear by the end of the story is that all the people who were once accused are now free. Mexican society will never know if the case was a genuine attempt at curbing organized crime or simply a political maneuver to acquire electoral gains.

I first read about this 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 formerly 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 that most of his extended family still lives there. Since he took office, he has shown open interest in fighting the criminal organizations that operate in Michoacán. The *Michoacanazo* case was of special interest to the President because it made visible to the society that his “war on drugs” approach was working, despite the huge increase in drug trafficking murders.

During the final part of the fieldwork in Morelia City, 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 people in this case had been conducted. The district court that handled most of the proceedings was located there. Interviewees during fieldwork in Morelia were familiar with the case, and once I heard about it, I began to question them. Several interviewees refused 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 the interviewee Ignacio.

Ignacio has had more than three decades of experience dealing with the federal courts and has an outside perspective. Ignacio 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 even had some copies of the proceedings and the final decisions. He agreed to share some of these files with me, as long as I did not mention his name and kept the names of the defendants confidential. I assured him that confidentiality would be guaranteed, and he handed me the documents.

These documents and the public records acquired from news, journalists, and political analyses, are the sources of most of the information of this second part of this chapter regarding the *Michoacanazo* case. Ignacio handed me copies of the main evidence that sustained the case as well as his personal interpretation

of it. The discussion and analysis of this chapter is based on those files and archive documents and is combined with the information collected from interviewees in order to provide a documentary triangulation analysis.

The Michoacanazo Raid: A Federal Police Operation against the State of Michoacán?

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 (*Procuraduría General de la República, PGR*) headed this operation and among the detainees who were brought in were 11 Michoacán mayors, one public security director, numerous police officers, a state judge, and the Michoacán Attorney General. 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*" (Elorriaga and Castillo, 2009). 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 (Elorriaga and Castillo, 2009). State elections would take place in only a few months, and because the state government was under control by the opposition party (*Partido de la Revolucion*

Democrática, PRD), some pundits viewed these arrests as politically motivated to discredit the PRD party and influence the election (Ibarra Aguirre, 2010).

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 accused of organized crime encouragement (*delincuencia organizada en la modalidad de fomento*), and most of them were sent to a prison located in the city of Tepic, located in the state of Nayarit. Because organized crime is a federal crime, the federal judiciary handled the indictment.

Once the defendants’ lawyers began to challenge the indictment and the evidence, the defendants were transferred to a prison in Morelia, the capital of Michoacán, and 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. 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 the defendants had not properly taken into account witness testimonies and telephone recordings that were a crucial part of the indictment.

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.

The Evidence in the *Michoacanazo* trial

Legislation dealing with organized crime in Mexico is relatively new. The current Federal Law against Organized Crime (FLAOC, 2011) dates back to only 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 it 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 deal better with criminal organizations, but it also displays how the law can still have some legal loopholes that can make it quite defective.

Among the new legal statutes introduced by the FLAOC was a witness protection program (*testigo protegido*). 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. There was no prior experience of this program in the Mexican legal system before 1996. It was

basically borrowed from the American system and then adapted to the Mexican reality. Little is known about how favorable the program has been, given the secrecy and lack of transparency that characterizes law enforcement agencies in Mexico.

Whether or not this program has been effective, in November 30, 2009, a protected witness—a former commander at the federal police named Edgar Enrique Bayardo del Villar—was murdered by hit men 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 (González, 2009). There have been similar cases where 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.

Witness Protection Program (Testigos Protegidos)

Three crucial 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 criminal activities of this cartel, naming the detainees of the *Michoacanazo* case 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, being an informant, and turning a blind eye to criminal activities.

Drug Trafficking Payroll (Narco-nómina)

An important piece of evidence was a so-called *narco-nómina* (drug trafficking payroll) that was found in the truck of one of the sons of the LFC's kingpin during a police operation in the southern region of Michoacán. In 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 that the son had in his possession were a couple of handguns, an AK-47 rifle, ammunition, and some sheets of paper that had a list of names, employment positions, cities, salaries, and liaisons. The sheets' information was distributed in 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 these 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 document to support the indictment.

Partes Policiacos (Police Reports)

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 up to the arrest of the kingpin's son on January 2009. Other police reports provide information about different activities of members of the LFM cartel, 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 illegal activities of this cartel and how it operates without naming specific individuals linked to these activities.

Miscellaneous Evidence

Other evidence includes a report from the federal prosecutor's office about a search that took place in Mexico City in October of 2008. During this search, a laptop computer was seized, and there were several files of information regarding the LFM cartel on it. 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 cautious enough to avoid saying full names.

There were some surnames mentioned in several tapes that matched some of the defendants' surnames, but there was no clear evidence that the content of the tape referred to any of the defendants directly. At least, the federal prosecutor did not make a good case of these tapes. In addition, there was no expert witness saying that the voices in the tapes matched any of the accused parties.

There was also an anonymous report from December 15, 2008, in which the federal prosecutor argued that 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 it. In this report, the unknown person named several individuals indicted in the *Michoacanazo*.

This was all of the relevant evidence that the prosecutor's office used to indict and request a warrant of arrest against the defendants in the *Michoacanazo* 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 presumption of culpability of the accused party. The verdict, on the other hand, demands that there be an establishment of guilt beyond a reasonable doubt.

To untangle this Gordian knot and understand how each of these elements plays a role in the case, let us proceed to an analysis and discussion of the case in a chronological order. This analysis will begin with an explanation of the

indictment, then a brief summary of the proceedings of the trial, followed by an explanation of how and why most defendants were acquitted, and finally, a discussion of the consequences of the case.

Ad Hoc Judges: Favoring the Prosecutor's Office

Interviewee Ignacio, the person who provided me documents on this file, had a deep 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 warrants for arrests without having enough legal merits. Ignacio called these judges '*jueces de consigna*' (ad hoc judges) because they systematically sided with all 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 favor of judges. He said that the judges are well trained and most enjoy independence in their verdicts—as most interviewees argued. However, evidence suggests that ad hoc judges exist in the MFJ and that sometimes the Attorney General's Office does depend on them to indict some people.

The federal judge who issued the warrant of arrests in the *Michoacanazo* case was Carlos Alberto Elorza Amores, located in the jurisdiction of the state of Nayarit in Western Mexico. If this name sounds familiar, it should be. His name was mentioned in chapter five; he was the same judge that suffered an attack in August 2009, when one of his bodyguards died and he barely made it alive. There

is some suspicion that this judge favored requests by the Attorney General's Office to prosecute people without legal merits, and there is one example of this attitude.

On May 2010, a year after the roundup of the *Michoacanazo*, the SIEDO wanted to arrest Gregorio Sanchez, who was the mayor of Cancun, a beach resort in the Caribbean. He was running for governor on behalf of the Party of the Democratic Revolution, which is the same party that governs in Michoacán. He was accused of allegedly being linked to drug cartels and money laundering. It turns out that the SIEDO originally requested a warrant of arrest against this individual in the Sixth District Court located in the state of Mexico. The federal judge there denied the warrant, arguing that there was no evidence, not even enough for presumption as the law allows for arresting the politician (Resendiz, 2010).

This decision did not discourage the SIEDO in requesting 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 of arrest was issued. Fourteen months later, the politician was acquitted by an appellate court and released (Resendiz, 2010). This case has striking resemblance to the *Michoacanazo*. 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 warrants of arrests were issued by the same federal judge. Lastly, in both trials the defendants were released due to a lack of conclusive evidence.

Although it would be difficult to demonstrate with conclusive evidence that there are ad hoc judges who profit the federal prosecutor's office, the aforementioned cases suggest favoritism towards the Attorney General's Office by some federal judges. It is not a coincidence that the SIEDO asked Judge Carlos Alberto Elorza Amores for an indictment of a Cancun politician after another judge had refused to issue a warrant of arrest. The federal government knew that judge Carlos Alberto would authorize the detention order. The reason for this apparent favoritism, and its extent, remains unknown.

It is a fact that in the past the Mexican government has used the prosecutor's office as a tool to obtain political benefits, either by falsely accusing opponents of the regime or by jailing dissents who oppose the government (Ferreya-Orozco, 2012). It is opportunistic and suspicious that, when it is election time, the federal government tends to pull out indictments against members of the opposition parties. Whether these indictments end up convicting defendants is a different story, the goal is to have an impact on the media in order to vilify a political party or politician and 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 a detention order. Although there are legal rules that dictate how to proceed, judges have ample discretionary power when assessing the evidence of a

case. Think about the common expression of the glass of water being half-empty or half-full, and one can see how an idea in some legal cases could be interpreted either way: as legally sufficient to issue a warrant of arrest by a particular judge, while at the same time, 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 manipulation.

Proceedings

It was said earlier that 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 courts' jurisdiction 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 according to territorial jurisdiction. However, when dealing with organized crime indictments, the law allows the federal prosecutors a few exceptions. In other words, when dealing with dangerous defendants, they can send an indictment to a particular judge or jurisdiction.

Because the warrants of arrest in the *Michoacanazo* 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

proceedings began, through *Amparo* suits, twelve of the defendants were released by a higher court due to a lack of conclusive evidence because of legal technicalities. In the meantime, the rest of the defendants asked to be transferred to Michoacán where the crimes had occurred. This request took several months before being addressed by the judges. Eventually, federal judges sided with the defendants in their request to have the *Michoacanazo* file 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 an appellate court upheld the detention order of some of the defendants who had appealed the charges at the beginning of the trial proceedings (Cambio de Michoacán, 2010). This means that there were contradictory legal decisions by several courts of the MFJ. 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.

The *Michoacanazo* file was sent to the Fifteenth District Court in Morelia, headed by Judge Ulises Sánchez Espinoza (pseudonym to guarantee confidentiality), at the beginning of 2010. This district court and this judge in particular, played a pivotal role in this case because this judge released most of the defendants. He also issued an injunction favoring the governor's half-brother that allowed him to swear as a congressman and obtain parliamentary immunity, despite a detention order issued by another federal judge on felony charges

(Castillo Garcia, 2010). Some interviewees said that this judge had a reputation for being corrupt and that he had favored the defendants of the *Michoacanazo* case one way or another.

Verdicts

Before the case was sent to the Fifteenth 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 (Castillo, 2010). The defendants were gradually released because different strategies were followed to overturn the indictments, given that there were more than three dozen detainees. 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 others hung on the entire trial until the final verdicts were released.

The Fifteenth 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 these 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 and why the defendants were given protection and/or information to the LFM cartel. The judge argued that the witnesses' testimonies only included general information about matters of interest and were not specific on the circumstances of the crime.

According to the judge, the prosecutor failed to present the witnesses before the court for a confrontation and cross-examination with the defendants, despite the requests from the defense and a subpoena 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 U.S., these types of witnesses are not allowed in Mexican courts by the criminal procedural law, and therefore their testimony cannot be used even if what they say is true.

The judge of the Fifteenth District Court also dismissed the *narco-nómina* document, arguing that it was not credible enough given that it was not authored by anyone and that the prosecutor had failed to demonstrate who wrote it. The police reports were also rejected as evidence because their content could not be confirmed by any other means. The judge assessed these police reports stating that they were insufficient to prove the defendants' guilt. The same argument was applied to the electronic tapes of files found in the computer that was seized in Mexico City, as well as the rest of the evidence that was brought to support the indictment. Overall, it was not enough to convict the defendants. To conclude his argument, the judge said that because there was not a hundred percent certainty that the defendants were responsible for committing the crimes, he had to apply the principle of *in dubio pro reo*, meaning that the defendants could not be convicted when there were doubts about their guilt. (This is similar to the principle of *Beyond Reasonable Doubt* in American legal system).

Although the law has specific guidelines set up on how to assess the evidence in a trial, the judges still enjoy some discretionary decision-making power. This power is more relevant 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 is that some defendants could have been convicted with the evidence on file had the case not been politicized and subjected to external influence. The judge of the Fifteenth District Court certainly had enough independence to decide the *Michoacanazo* case, except that the data from interviewees points out that corruption played a role in how the defendants were acquitted.

“We Have a Corrupt Judge Here!”

According to information from the Council of the Judiciary, Judge Ulises Sánchez Espinoza received his law degree from *Universidad Michoacana*, the 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 as judge in the Fifteenth District Court in Morelia.

As explained in chapter five, most federal judges enjoy independence and autonomy in their rulings. It is precisely because judges have self-determination when it comes to their jobs that corrupt acts can happen. Remember, corruption

exists within the MFJ according to respondents, and although it is not a common practice, it ranges from as high as 10% to as low as 1%. Despite the fact that the vast majority of interviewees agreed that corruption existed in the MFJ, most of them avoided pointing fingers at those who engaged in it—except for the few who specifically named Judge Ulises Sanchez Espinoza.

There were at least two respondents who explicitly mentioned that the head of the Fifteenth District Court 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 Quintiliano, a young magistrate who said: "*Aqui tenemos un juez que tiene fama de ser así [corrupto], todo mundo lo sabe*" (Here we have a judge who is famous for being like that [corrupt]. Everyone knows it). Even without mention the judge's name, Quintiliano was explicit enough to explain with body language—using his fingers—that he was referring to District Court Fifteenth. Most senior officials at the MFJ, even if they acknowledged the existence of corruption, 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 by which they do not accuse peers or senior officials directly because it affects the prestige of the institution. The reason Quintiliano confided in me was that we were old acquaintances from law school, and he was extremely critical of the traditional practices such as nepotism, abuse of power, and tyrannical judges that still plague the MFJ.

Another interviewee, Patricia, said that the *Michoacanazo* trial was not free from external influence. She argued that this case was a typical example of blatant corruption from all the parties involved. Patricia said,

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 governments at the state and federal levels. In both institutions, the Attorney General’s Office and the MFJ, the state’s power intervened for arresting and releasing the defendants. One way to know that corruption took place comes from the fact that the same evidence—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).

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

I informally asked a litigant who has close ties with the federal courts in Morelia because he and his partner had worked there, whether or not the reputation of Judge Ulises Sánchez Espinoza was true. This litigant did not want to be interviewed, but told me off record that he personally knew the judge of the

Fifteenth District Court and that his reputation as a corrupt official was true. I asked him how the judge could get away with it if the verdicts could be challenged through appeals. The litigant said that there were also magistrates in appellate courts who could be “bought.” However, in some cases that was not necessary because the appellate briefs submitted by the prosecutor tended to be defective because of chronic underfunding of the prosecutor’s office. Appellate courts could simply dismiss them on technicalities. Besides this, the litigant 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. According to the litigant, this is what happened in the *Michoacanazo* trial.

I read two rulings from a higher court that had upheld the release of several defendants of the *Michoacanazo*, and they were notoriously suspicious when it came to their legal terms. 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 written in the appellate briefs. The arguments were dismissed for technicalities and showed a lack of a thorough analysis of the disputed evidence because the main argument for the dismissal was written in a couple of pages. Given the size of the case, which consisted of thousands of accumulated pages, it was remarkable to read such a shallow argument in the appellate verdict.

After this court decision, the federal prosecutor does not have any instance to challenge it.

Having contradictory rulings based on the same evidence and facts suggests the existence of corruption, or at least political influence, because these rulings did not occur between lower and appellate courts, but among lower courts and then appellate courts. In democratic court systems, lower court decisions are overturned by appellate courts based on different interpretations of the facts and the law. However, in the *Michoacanazo* trial, at different stages of the legal process, different lower courts ruled in opposing ways 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 magistrates in appellate courts upheld the decisions while others did not. These inconsistent rulings suggest some sort of influence or corruption because there is no logical or legal explanation for them. Besides, if confronted with the context in which the *Michoacanazo* took place—as explained below—then this inference of potential corruption is even stronger.

There is no direct evidence that the LFM cartel bought any judge's influence in the *Michoacanazo* case, but the context of the social and criminal influence of this cartel in the state of Michoacán cannot be ignored. Based on fieldwork data, it is known that this criminal organization sent a subtle threat to all federal judges and magistrates in Morelia with a message saying, "*La Familia* is watching you" (as explained below). Even if there was not a direct threat to the

judge in charge of the Fifteenth District Court, the judge could have not ignored the implications of his decisions regarding the LFM cartel. My interpretation of the case is that a combination of factors, such as powerful trial parties, political influence, and organized crime, all intertwined to create a context where corruption probably took place in the final rulings of the *Michoacanazo*. Yet, evidence of this corruption cannot be provided directly, but only inferred from the context and circumstances of the entire case.

A Judge in the Lion's Den: Silver or Lead

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. However, we already know that this would be almost impossible to do because of the secrecy that characterizes and surrounds corruption. As mentioned in chapter four, as a qualified professional of legal matters, a judge would make sure not to leave a trace if he or she were engaging in wrongdoing. Nevertheless, it is still possible to infer whether corruption has played a role in the case by looking at the context and circumstantial information available.

The *Michoacanazo* was a thorny case to handle for many of the judges who issued rulings because of the parties who were involved. There were public officials as defendants, the federal government, a state government, and a powerful and dangerous local cartel with interests at stake. 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 up a precedent that narco-politics 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 always assumed that the *Michoacanazo* was politically motivated and wanted to clean its name with an acquittal for its imprisoned public servants. Both governments were at odds about the case, and they were willing to invest any necessary means to reach each of 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, even over federal institutions located within the state's geographic region. 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 local territory where powerful law firms, connections, and politics would intervene, even if the trial was under the jurisdiction of federal courts. More importantly, Morelia had once been one of the most crucial strongholds of this LFM cartel, and this fact could put extra pressure on any federal judge who was handling the trial. This potential pressure was an important factor to take into account given the previous threats from the LFM cartel against senior officials in Morelia. In fact, out of all the parties involved in the case, the most risky and

difficult one to deal with was the LFM cartel because of the potential consequences coming from this criminal organization.

One direct question asked to interviewees during fieldwork was whether drug cartels could constitute a threat for public servants working in the MFJ. Most interviewees agreed that these organizations could be a threat at some point if they felt that their businesses were affected by the MFJ. During the fieldwork in Morelia, a couple of interviewees mentioned that senior officials in the Michoacán jurisdiction had been threatened by a drug cartel. According to these interviewees, these officials did not say anything to the public, not even to junior officials, in order 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 the penultimate interviewee, Oscar, knew a little bit more about these threats. He explained that the LFM cartel had sent out a short letter not too long ago to all judges and magistrates of the Michoacán jurisdiction with a short text saying: “*La Familia* los está observando” (The family [cartel] is watching you). Oscar confirmed that both the judges and magistrates agreed not to tell anyone about it to prevent fear or anxiety in their employees, but many junior officials like him ended up finding out about it later.

It was mentioned earlier how dangerous and violent the drug cartels have become. In particular, the LFM cartel has instilled fear with its *silver or lead* approach to buying or controlling local authorities. 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 benefit the defendants, he must have been wary enough of the potential implications of upsetting this criminal organization throughout the *Michoacanazo* rulings. In addition to this potential pressure from the cartel, the state government also wanted its former employees out of prison, and it would do anything to achieve this goal, which also added more stress to the case.

Remember that Judge Ulises Sanchez Espinoza got his law degree in Morelia, which means that many of his former classmates and colleagues were already there and possibly held high-ranking positions in the state government. Furthermore, some former peers and classmates would be well-established litigants who had a close relationship with him as part of their everyday activities. It is important to keep in mind that before becoming a judge, Sanchez Espinoza was a state employee for a while, which means he has an old social network tied to state officials. All of these are not silly assumptions about the context of this judge, but rather 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 because there is no concrete evidence that support them. However, they can be logically deduced from the records available because there is nothing that contradicts the information.

The Attorney General's Office (AGO) began to notice a pattern of favoritism towards the defendants and the state government when the Fifteenth

District Court, through an *Amparo* suit, allowed the governor's half-brother to swear in as a congressman—which gave him parliamentary immunity—despite a warrant of arrest he had for organized crimes charges. There were other trials in the same district court in which the judge systematically rejected the petitions of the federal prosecutor to allow the arrest of the governor's half-brother (Milenio, 2010). 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.

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 Fifteenth 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 right intact to avoid being arrested. In addition, the judge had freed several of the defendants of the *Michoacanazo* through motions of dismissal, which was something unusual in organized crime trials due to the complexity and seriousness of the matters. Acquittals in these cases, if any, are normally granted at the end of the trial (Milenio, 2010). The drop that spilled the cup was when the same judge authorized a joinder by which all the trials against the kingpin's son—the one arrested in January of 2009 and who was found with the *narco-nómina*—would be jointed into the *Michoacanazo* trial and decided by the Fifteenth District Court in Morelia. This last decision was later reversed by a higher court, and the joinder did not take place (El Siglo de

Torreón, 2011). 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 and the complaint was thrown away. He was the judge of the Fifteenth District Court until early June 2012 when he was arrested and arraigned for organized crime charges (Carrasco Araizaga and Dávila, 2012).

Overall, taking into account the political, social, legal, and drug cartel-related context of the *Michoacanazo* case, it is obvious that there were clear intentions from most parties to influence the outcome of the trial by using any means possible. Whether it was political corruption, influence peddling, abuse of power, fear from a drug cartel, simply bribery, or a combination of all of them, 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. The federal government acted wrongly by opportunistically rushing an indictment against the local government to gain political and electoral benefits without first having a solid case that would lead to clear-cut convictions. 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 while providing active support to the defendants. The defendants themselves acted wrongly by using their connections, money, and political power to find loopholes in the case and be freed. It may be difficult to determine whether the

LFM cartel actively intimidated or bribed the *Michoacanazo*'s judge to help the governor's half-brother and the defendants. However, given its bad reputation as a violent and ruthless organization and its total control of the Michoacán territory, the cartel's reputation alone could have been enough to frighten any judge handling the cartel's criminal activities.

It would have been difficult for a federal judge to have impartiality and fairness in his rulings because too many powerful interests were at stake in the *Michoacanazo* case. In addition, after analyzing the judge's background and his reputation as a crooked official, a conclusion could easily be drawn that he probably favored the defendants and the governor's half-brother. This favoritism does not imply that he necessarily broke the law, strictly speaking. Sometimes, in the Mexican criminal justice system, bribery is used to make sure a particular outcome in a verdict is guaranteed, which is easier to do when the evidence is inconclusive, contradictory, and prone to multiple interpretations, such as in the *Michoacanazo*.

The Good, the Bad, and the Ugly of the *Michoacanazo*

The Good: Depending on whom you talk to, the *Michoacanazo* case can be seen as a fiasco, a case of corruption, an example of judicial independence, and/or a typical political maneuver dating back to the authoritarian regime. Despite the results, there are some positive conclusions that can be drawn from the *Michoacanazo*. For instance, the case has now set up a precedent to let municipal and state authorities know that colluding with drug cartels may have

legal consequences, unlike in the past when the federal government used to turn a blind eye to local politicians who were protecting drug traffickers. The case has been made a precedent because of the following event: there were municipal elections in Michoacán on November 2011, and the new mayors took office on January 1, 2012. Dozens of them began to receive threats from a criminal organization, the LFM cartel probably, demanding that they appoint one of the drug cartel's members as chief of police. The 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 (Prados, 2012).

The Bad: The *Michoacanazo* confirmed a long-term trend in Mexican society, that impunity is the rule and not an exception regarding crime. From the file, it was evident that some of the defendants had ties with the LFM cartel. The most obvious was the governor's half-brother. He is a lawyer and used to litigate in Morelia. I met him once when I was a litigant because we were counterparts in a legal dispute and talked to settle the case. His voice was unmistakable when the AGO leaked the tape in which he was caught chatting with the LFM's kingpin. Everyone knew it was him, or at least I did. In fact, the release of this tape encouraged congress to impeach him by an overwhelming majority of 384 votes and only 21 abstentions (Franco, 2010).

Despite the evidence, he was eventually acquitted on all the charges, but he is still on the run for fear that the AGO may have another hidden indictment

against him. On the one hand, it is discouraging that, despite the evidence available, the AGO failed to produce a convincing argument to prosecute dangerous criminals. On the other hand, it is disappointing that the MFJ contributes indirectly to the high degrees of impunity that prevail in Mexico.

The evidence of the *Michoacanazo* case was controversial and inconclusive because of the legalistic mentality that still pervades in the Mexican judicial system. In general terms, the law requires strict guidelines to prove someone's guilt. If those guidelines are not met, then judges have to free the accused parties, even if they are criminals. There was also manipulation of the criminal justice system, which is an alarming signal for a country that wants to leave behind authoritarian practices. In this regard, the current federal government is repeating old tactics that characterized an authoritarian regime that had no respect for human rights and democratic principles. This approach should be inadmissible in times of democratic transition south of the U.S. border.

The Ugly: It appears that the MFJ cannot guarantee the impartiality of judgeship in trials involving powerful parties, such as the government, public officials, and drug cartels. The *Michoacanazo* was not the typical case in organized crime-related charges, but it was not the first time a state government and the President had a confrontation in a federal court. Regardless of this, the different and contradictory rulings throughout the trial showed a lack of unified judicial criteria to decide controversial cases within the MFJ. Although this disparity of rulings could be interpreted as an expression of judicial independence,

it can also be defined as a disorganized feature of the institution in which trial courts and appellate courts have their own legal agendas, so to speak. As interviewee Patricia explained, the same facts, evidence, circumstances were interpreted differently, using a broad variety of legal perspectives, and this does not contribute to the principles of certainty and legality that should characterize the judicial system.

The case also confirms what the interviewees said about corruption: it is part of the MFJ, even if it is minimal. The probable corruption of the judge in charge of the Fifteenth District Court in Morelia falls within this category of wrongdoing: There are employees in the MFJ who engage in corruption and profit from their positions. A courtroom offers many opportunities to attract corrupt practices—which are certainly more prevalent in criminal than civil courts—because of the interests at stake. The more valuable or important the matter a trial handles, the higher the interest from the parties to influence it, either through politics, connections, influence peddling, or corruption. This is what happened in the *Michoacanazo* case. It is time now to move on to the conclusions where the closing arguments for this case and the entire dissertation will be discussed.

Chapter 7

CONCLUSIONS

This final chapter includes some empirical information that was not discussed before, such as data on sanctions against employees, gender discrimination, and sexual harassment. There are two aims for presenting these data here: one is that interviewees brought up these data and therefore are part of the fieldwork findings; and two, these phenomena are indirectly related to wrongdoing, abuse of power, institutional inertia, and corruption, thus it is fundamental to cite them.

The topic of sanctions reflects the institutional approach towards official cases of corruption and misconduct, and an analysis of this information provides a glance at the real attitude of the MFJ on the problem of corruption. Information on gender discrimination and sexual harassment provides a context to better understand the ethos of the institution because it shows features that are interconnected with wrongdoing and misconducts. These features, such as abuse of power, patriarchy, and some forms of authoritarianism, have become institutionalized. Despite the fact that they affect the organization and activities of the institution, they are taken for granted. The reason for presenting them at the end of the thesis is to make the case that MFJ still reflects cultural features that characterized the *ancien régime*. Because these features are usually expressed in subtle and euphemistic ways, it is difficult to notice their powerful influence. By understanding this cultural context and background, it could be possible to design

more realistic policies and measures for addressing the institutional problems currently affecting the federal judicial system.

The Ambiguity of Corruption

Most interviewees understood corruption as a dishonest act done to obtain benefits—usually money—through unacceptable methods, such as bribery or extortion. However, nepotism, the use of connections, and cronyism were not defined precisely as corrupt behaviors, but as inconvenient traditional practices that were part of the institution but did not necessarily influence the judicial process. Not everyone adhered to this perspective, and several respondents condemned these phenomena and labeled them in negative ways using different categories ranging from inappropriate behaviors and misconduct to gross corruption. Their responses ranged from condemnation of the problem to resignation to the current status quo, as if simply accepting that nothing could be done to change the culture.

The concept of corruption among court staff and senior officials at the MFJ was not monolithic. For some but not all senior officials, accepting any amount of money, regardless of the circumstances, was a corrupt act. Other high-ranking officials had a more flexible view and did not always condemn receiving money from the public if the money was intended to be a tip. According to them, a tip was defined as a pecuniary expression of gratitude for a job done, occurring mostly among low-ranking employees. Because practices such as cronyism, connections, and nepotism did not fit this profile, not everyone defined them as

corruption per se. Some interviewees—typically the younger generations of judges—did condemn these practices as blatant corrupt acts because they have the potential to affect the outcome of a trial.

According to Transparency International, the non-governmental organization that monitors corruption worldwide, judicial corruption is “any inappropriate influence on the impartiality of the judicial process by any actor within the court system” (Transparency International, 2007, p. xxi). If this definition were used as the yardstick to measure corruption in the MFJ, then this problem would have a narrower and more specific understanding in which a broad range of practices would be labeled as corrupt acts. It would not be so difficult to figure out that the use of connections, nepotism, and cronyism can influence a verdict, and that they should be defined as corrupt acts without any hesitation.

Payoffs

One of the heuristic questions anticipated that judicial corruption takes place through hidden and/or subtle mechanisms by which politicians or government officials try to influence MFJ employees in order to benefit defendants with drug trafficking charges. Those benefits to defendants would be in the form of lesser sentences, parole benefits, and keeping them in state prisons rather than subjecting them to supermax penitentiaries. The question also included a suggestion that widespread and rampant corruption would not exist in the federal judiciary.

The *Michoacanazo* case offers a glimpse of judicial and political corruption where defendants who have ties to a drug cartel probably received benefits. These benefits allowed defendants to be released from prison rather than be given mitigating sentences. It was striking to find out that benefits went beyond the anticipated assumptions of the question. However, the *Michoacanazo* was a murky case, and it does not represent most of the trials that happen under federal jurisdiction. The *Michoacanazo*, though, reveals that corruption exists in the institution and that under some circumstances drug cartels can have a powerful impact on a trial if they want to.

Data from interviewees show that although corruption takes place in federal courts, it is not a serious problem nor does it affect the vast majority of trials. One may be tempted to say that it is a rare phenomenon because of the few official cases of corruption that become public. However, official acknowledgement of corruption does not speak for the real number of cases that probably occur within the MFJ. A noticeable hint of this inconsistency is the number of people sanctioned for misconduct and corruption vis-à-vis the number of complaints submitted.

One revealing piece of information about the official discourse on corruption is that the head of the MFJ does not welcome scrutiny in their internal affairs. When an official is found guilty of corruption, this word is never mentioned anywhere. The Council uses other words, such as serious fault (*falta grave*) or slight fault (*falta no grave*) to describe employees' misconduct or

corruption. Data from the Council's website from the year 2011 shows the case of an administrative employee who was dismissed for corrupt behavior. The behavior was described by the Council as follows: "*Obtuvo un beneficio económico adicional a la contraprestación que recibe con motivo de sus funciones, pues solicito dinero con el compromiso de que se dictara una sentencia absolutoria*" ([The worker] received an economic benefit in addition to the salary that she or he already gets as employee, by asking for money in exchange for the promise that the defendant would be acquitted). Although it is true that the word corruption does not appear in the Mexican criminal code—instead there are specific behaviors such as bribery and malfeasance that are penalized—there is reluctance from the Council to name this behavior with negative connotations. This attitude dovetails with the stubbornness of the institution to prevent unsavory internal issues from going public by disguising them as insignificant problems.

The vast majority of interviewees—including high-ranking officials—acknowledged that corruption exists in the MFJ. The only discrepancy among them was the amount of corruption that prevails: estimates ranged from 1% to a maximum of 10%. Because more than half of the respondents' perception was between these two numbers, it is possible to deduce that the prevalence of corruption varies from 5% to 10% depending on the jurisdiction and the type of court. Corruption in this context is based on the definition provided by Transparency International—any inappropriate influence in the impartiality of a trial within a court by anyone. This definition of corruption includes the use of

connections, cronyism, and nepotism, as long as they are employed to affect the outcome of the judicial process.

The Impact of the War on Drugs

The third heuristic question predicted that death threats from drug cartels against court staff and senior officials had become more frequent in recent years, and that the MFJ would have to come up with new policies to respond to these threats. During interviews, many interviewees acknowledged that drug cartels were a threat to the MFJ, but not everyone agreed with this perspective. Those who felt intimidated by potential harm from cartels cited cases where MFJ officials have been threatened or targeted by these criminal organizations, such as the judge from the state of Nayarit who was attacked in August 2010. These interviewees usually knew of threats against peers or court employees in their jurisdictions or somewhere else, although they did not specify if these threats came from drug cartels or someone else.

Some respondents said that threats from drug cartels against court employees were not common because drug traffickers, or their attorneys, for that matter, knew that staff and junior officials could not decide a trial. Only the judge had the power to free or jail a defendant in a sentence and most judges would not dare to acquit a criminal if there is no evidence in the trial supporting that decision. The corollary was that high salaries, social status, and the overall job benefits of working at the MFJ discouraged most senior officials from engaging in corrupt acts.

An interesting argument to explain the unlikelihood of a judge or junior official accepting bribes from drug cartels is that once someone does it one time, she or he has to keep working forever for the cartels. Judges are not stupid, and it would be improbable that any high-ranking official would agree to be bribed by drug traffickers' lawyers. Yet, there are exceptional cases in which judges and/or magistrates probably accept bribes from attorneys representing drug cartel members. Because this statement would be difficult to prove, there is no direct evidence of these cases; however, the *Michoacanazo* trial offers an example of a case in which a drug cartel possibly influenced the judicial process, through either threats or economic incentives.

Overall, many interviewees implied that threats against court staff and senior officials have increased in the last decade. The number and type of threats vary from jurisdiction to jurisdiction. Some threats came via phone calls to secretaries, and others were made to process servers face-to-face by angry defendants serving time in prisons. In Tijuana once, a junior official received a *corona de muertos* (a funeral wreath) in her office as a threat, implying that she would be dead soon. Two interviewees recount the cases of two judges who had to flee Chihuahua and Baja California states after receiving credible death threats related to the verdicts of trials under their jurisdiction. Another subtle threat against senior officials in the jurisdiction of Michoacán was mentioned in chapter six: *the family is watching you*. It was made by the *La Familia Michoacana* cartel, and it surely made some judges feel uneasy given the bad reputation of this

criminal organization. There is not enough information from the collected data to determine what percentage of these threats comes from drug-related cases, but it is reasonable to conclude that not all of the threats were made by drug cartels. Sometime angry parties who blame the judge or the judicial system for an adverse verdict can also send a threat.

Regardless of the origins of threats, the MFJ has developed mechanisms to cope with them to guarantee senior officials protection against potential harm. Among other things, the MFJ now provides armored vehicles for judges in district courts who handle high-profile cases of drug trafficking or for those who work in jurisdictions along the Mexico-U.S. border. The Council of the Judiciary, in coordination with the Attorney General's Office, supplies bodyguards for senior officials who have received credible threats. The efficacy of bodyguards was proven when the judge in the state of Nayarit was attacked and guards saved his life, although one of them was killed. Job rotation of senior officials in jurisdictions with high levels of organized crime has been another way to defuse threats and avoid potential cronyism between judges and law firms that do defend drug cartel members.

To protect the federal court premises, the MFJ has hired private security officers to guard all buildings that belong to the institution. The Council has invested in metal detectors and x-ray machines to scan suitcases, backpacks, and any bags that come into the federal courts. All employees and visitors have to wear badges while doing business in the courts. Visitors and litigants also have to

sign up and show a picture ID to have access to the premises. In addition, people who want to talk to a judge need to make an appointment and justify their interest in speaking to the judge. Although a decade ago a few of these measures—such as wearing badges to access the courts—were irregularly applied, today they have become an official policy in all jurisdictions, and they are strongly enforced.

These changes have had a positive impact among citizens and the community of attorneys that litigate in federal courts because it shows that the institution can be professional and well organized. In this regard, the federal judiciary distances itself from the state judicial systems, which tend to be less organized to protect their employees and premises—with a few exceptions—probably due to the lack of money and support from state governments. This professionalism and better organization are among the positive changes that the 1994-1995 judicial reform brought to the MFJ.

Gift-giving in the Judicial Process

The last heuristic question suggested that judicial corruption related to drug trafficking involved cronyism and social networking in which elite attorneys would influence people working in the MFJ through gift-giving and political support. Gift-giving would be done in the form of expensive gifts, money, and paid services while political support would be provided to help officials move up the hierarchy.

From the collected data, there is not enough information to assume that gift-giving takes places in the MFJ. One informant asserted that sometimes

magistrates ask for expensive watches or paid trips to foreign countries in exchange for benefits to a party in a trial. However, no one else was able to confirm this fact. Although it is not unlikely that some senior officials may request these gifts to take advantage of their positions, it is improbable that they engage in blatant corruption. It could be argued that in cases where the evidence is blurred (the typical example of the glass of water being half-empty or half-full), chances are that a luxurious gift may incline the balance of justice if the senior official is dishonest.

Nonetheless, gift-giving among public officials in Mexico has been a common practice for decades, used to create social networks and circumvent bureaucratic procedures. During the authoritarian regime, gifts to the boss in the form of bottles of cognac or aged whiskey were a systematic practice to maintain cordial relations between clique members, friends, and acquaintances. The judicial power was not excluded from these practices, and sometimes low-ranking court staff would also receive presents. I remember that during my years interning at the state judiciary, occasionally secretaries of the court would accept jewelry or perfumes from litigants and law firms that conducted business in their courts. Every December, it was common for judges to receive several *canastas navideñas* (Christmas baskets) from law firms that litigated cases under these judges' jurisdictions. In other words, gift-giving in bureaucratic setting was normalized because it was a beneficial practice for both giver and receiver and could be done without breaking any law. As Riding correctly points out, "The practice of giving

presents as a way of reaffirming friendship, expressing thanks or gaining attention [was] considered normal, part of a century-old tradition of tribute: the present is given in exchange for nothing specific, but it serves as a point of communication” (Riding, 1985, p. 122).

I do not doubt that gift-giving still exists in the MFJ, but it is not as widespread as it used to be in the past, and it does not have the same meaning and intention as it did before. Many attorneys who litigate in federal courts cultivate good relationships with court staff and judges, not necessarily to corrupt them, but to enjoy preferential treatment in their trials. Gift-giving is the best strategy to strengthen these relationships. Although this might be defined as unethical, it would not be seen as corruption in itself, but as a clever strategy to navigate the bureaucracy of the judicial system.

It is possible that in drug-related cases when the interests at stake are high, cronyism, influence peddling, or political connections can influence the outcome to benefit defendants, as the *Michoacanazo* case showed. Nevertheless, I do not consider this kind of influence a regular practice because officials generally do not want to do business with attorneys who are representing drug cartels for the obvious potential implications. As mentioned earlier, the job benefits attached to the federal judgeship are so exclusive and of such high quality that the risk of losing them for illegal and dangerous associations with drug cartel members would be stupid for most of senior officials.

Finally, there is no evidence in the fieldwork of political support or benefits to court employees or junior officials to go up the hierarchical ladder in exchange for gifts. The recruitment process and the decision-making mechanisms to select judges and magistrates are now all in the hands of the Council of the Judiciary. There are two ways to become a judge or magistrate: a) highly competitive recruitment processes where only the best of the best applicants are selected, and b) through connections and nepotism where some applicants are selected in ad hoc recruitment competitions. Political support to go up the ladder can only come from the Council, not from outsiders.

To support the aforementioned argument, question number 9 of the questionnaire asked whether or not having connections or friends in the Council of the Judiciary could facilitate career advancement within the MFJ. Almost two-thirds of the sample admitted that it would definitely help and that this help does not necessarily have to be in the form of favoritism. As one interviewee explained, first-hand information about rules on recruitment or inside tips would be enough. The perception that having connections and friends at the top is a useful way to get ahead is consistent with other negative official practices taking place there.

There was the assumption among many interviewees that bureaucracy, cronyism, and nepotism have hampered the transition to a more independent, democratic, and inclusive federal judicial system. Additionally, there is strong resistance from the people in power at the MFJ to implement large-scale changes

to leave behind the shadow of authoritarianism. This resistance has been stubbornly asserted in the official discourse addressing corruption because there is still an attitude of denial as well as a poor record of prosecuting those who engage in such misconduct. This criticism can be corroborated by the institution's own records on how it has managed internal corruption cases.

Institutional Accountability

One way to measure how the MFJ has officially approached wrongdoing—corruption in particular—is to look at the sanctions imposed on judges and employees when they engage in misconduct. In the past, finding this information out was almost impossible because it was kept out of public scrutiny so well and was for internal use only. Thus, outsiders were not allowed to know the content and decisions regarding these sanctions. Since government transparency has become a mainstream policy in Mexico in the past decade, civil society has demanded more accountability from all branches of government. Most government agencies now must make information, such as their budgets and internal affairs, public so that it may be scrutinized. Starting in 2011, the MFJ began to publish on its website information about senior and junior officials who had been sanctioned for different forms of misconduct (Sánchez, 2012).

The Council of the Judiciary, as the administrative part of the federal judiciary, has been in charge of imposing sanctions on court employees and publishing the information about them. As a rule, the Council always keeps the names and personal information of employees confidential. To publish this

information, the Council has listed on its website a link under the title *Sancionados* (sanctioned employees), showing a graphic with data distributed in rows and columns. Rows account for employees' positions (e.g. magistrates, judges, and secretaries of the court) and columns account for the type of sanction an employee has received, such as warnings, unpaid leaves of absence, economic sanctions, and dismissals (*Consejo de la Judicatura*, 2012). According to this website, in the year 2011 the Council sanctioned 45 employees. Almost half of these (20) were senior officials—judges and magistrates. Among these officials, two—one judge and one magistrate—were dismissed for serious misconduct. (See table below.)

Table 1.3 Official sanctions against employees for year 2011

Sanciones que se han impuesto derivadas de los asuntos tramitados en la Secretaría Ejecutiva de Disciplina

2011

	APER. PRIV.	AMON. PRIV.	APER. PÚBL.	AMON. PÚBL.	SUSP.	INHAB.	DEST.	SAN. ECON.	TOTAL
Magistrados de Circuito	3	3	0	1	3	0	1	0	11
Jueces de Distrito	1	2	0	1	3	0	1	1	9
Secretarios de Tribunal	0	0	1	0	1	0	0	0	2
Secretarios de Juzgado	3	1	0	4	2	1	0	0	11
Actuarios Judiciales	0	0	0	0	5	1	0	0	6
Defensores Públicos Federales	0	0	0	0	0	0	0	0	0
Oficiales Administrativos	2	0	0	0	2	1	1	0	6
Total	9	6	1	6	16	3	3	1	45

On the same webpage, a link under the name *Conductas* (behaviors) explains, case by case, the context and basic information of each sanction imposed. For instance, a judge was dismissed for lacking professionalism and for not performing his or her work according to the rules, such as leaving the court earlier than expected and delegating sensitive responsibilities to junior officials. There is another case from 2011 in which a judge was sanctioned for serious misconduct, but it did not merit dismissal, just an economic penalty. Most of these 45 sanctions were not defined as serious faults (*faltas graves*) according to the Council's criteria; however, there are no guidelines available to know what those criteria are or how they are defined.

According to the Council's data, since its establishment in 1995 and as of December of 2011, there have been 1,035 sanctions against MFJ employees (*Consejo de la Judicatura*, 2012). Out of this number, almost 60% (627 sanctions) have been against judges and magistrates; the remaining 40% (408 sanctions) were against secretaries of the court, process servers, and typists. Out of these 627 sanctions against senior officials, only 82 have been considered serious faults that merited a dismissal. Among them were several cases in which judges acquitted defendants who were accused of drug trafficking crimes and kidnapping. Other officials were dismissed for meeting with litigants representing cases under the judges' jurisdiction or for asking for money in exchange for a favorable verdict (Sánchez, 2012). This is the first time that the MFJ has officially acknowledged the existence of corruption. However, this latter information was not published on

the Council’s website, but only came out when requested by a Mexican magazine called *Contralinea*, which did an investigative report on these data. See table below (Sánchez, 2012).

Table 1.4 Overall complaints against employees 1995-2011



Inconformidades recibidas en la Secretaría Ejecutiva de Disciplina del Consejo de la Judicatura Federal 1995-2011

Origen de la inconformidad	Números de quejas
Quejas administrativas	10,229
Denuncias	469
Investigaciones	233
Expedientes varios	11,483
Procedimientos disciplinarios de oficio	1
Total	22,415

Fuente: Consejo de la Judicatura Federal

Limitations of Accountability

Despite efforts to make the MFJ’s official approach against wrongdoing and corruption more transparent, some practices still undermine progress. They are discretionary decision-making actions, an inefficient sanctioning process, and defective bylaws. In most of the procedures to determine whether someone was guilty of misconduct or corruption, it took more than a year—sometimes almost two—to impose the sanctions (*Consejo de la Judicatura*, 2012). This means that a dishonest federal judge or employee who has been accused of wrongdoing can still work for months or even years before being dismissed if he or she is found

guilty. More often than not, this delay was the result of bureaucratic procedures that still prevail in the MFJ. The existence of this bureaucracy should not be a surprise for an institution characterized by strong hierarchies and rigid regulations. What is disappointing is the persistence of authoritarian judicial criteria disguised as legality to address these problems. This issue merits a close examination.

New Council, Same Old Administrative Procedures

According to Provision 132 of the Organic Law of the Federal Judiciary (Ley Orgánica del Poder Judicial Federal, 2012), the procedure to sanction an employee requires conclusive evidence (*elementos probatorios suficientes* in the Mexican judicial jargon). This evidence has to be in the form of documents or tangible factors that can determine without a doubt that someone is responsible for wrongdoing or misconduct. There is no other official way to investigate corruption or misconduct because Mexican law has set up strict guidelines when it comes to prosecuting public officials. The MFJ has failed to update their own bylaws to include new technology that could allow more flexible requirements when it comes to collecting evidence. This failure has kept in place traditional legislation that makes it complicated to uncover and sanction wrongdoing in their internal affairs. Without new approaches able to cope with the challenges of the twentieth-first century, the traditional methods to sanction employees seem obsolete and reproduce the conventional pattern of impunity that has characterized corrupt acts among public servants.

One striking example that highlights the inefficiency of the Council is the disparity between the number of complaints against MFJ employees and the sanctions imposed: There have been more than 22,000 documented allegations of misconduct (*inconformidades* in the jargon) throughout a 16-year period—1995-2011—in the Council. Out of this number, only 1,035 have ended in a sanction against an employee, which means less than 5% (Sánchez, 2012). This dissimilarity between complaints and sanctions could be due to several factors, such as false accusations or dissatisfaction with a verdict, but more often than not, it is because of how difficult it is to prove, without hardcore evidence, that a judge or employee has engaged in wrongdoing. As mentioned earlier, as professionals of the law, officials at the MFJ know better than anyone else how to cover their tracks in cases of misconduct and corruption. Despite this fact, the Council has not challenged its own procedures to facilitate the prosecution of wrongdoing, and this omission has contributed to the existence and reproduction of corruption because perpetrators know that impunity will surely prevail.

Two more serious loopholes also weaken official efforts to cope with corruption. One is that none of the sanctions imposed by the Council leads to criminal prosecution. That is to say, regardless of the seriousness of a judge or employee's behavior—whether they are illegally freeing criminals or abusing power—the only punishment the Council imposes is a non-criminal sanction. Indeed, the prosecutor's office can indict a federal judge for crimes such as embezzlement or bribery, but it would require an accusation and evidence

provided by the Council. This rarely occurs because the MFJ has had a non-written policy of “not airing its dirty laundry in public.” The few exceptions for accusing an employee are high profile cases, such as the secretary of the court caught with millions of pesos in bank accounts mentioned earlier.

The second loophole comes from the impossibility of changing a verdict that has been the result of corruption or misconduct. If a senior official decides a trial on the basis of external influence (whether it be bribery or political corruption) and she or he is eventually found guilty and sanctioned for this misconduct, the Council cannot reverse the verdict: According to bylaws, the head of the MFJ cannot interfere with the judges’ sentencing power. Of course, a verdict from a trial court can always be appealed, although this does not guarantee that it will be reversed. Verdicts from appellate courts, however, cannot be challenged by the prosecutor’s office, even if corruption has played a role in them. The *Michoacanazo* case is an example of this loophole. The Attorney General’s Office’s only option for complaint against potential corruption from the judge of the Fifteenth District Court was to file an administrative complaint, but this did not change the verdicts.

The official record dealing with wrongdoing and corruption in the MFJ shows that the head of the institution does not want to embrace far-reaching changes to transform the status quo. There is resistance to adopting a new legal paradigm to keep up with the demands of justice in the twentieth-first century. The inertia from traditional ways of defining and understanding the law and its

institutions limits the scope of the MFJ to think differently when coping with challenging issues.

Among many senior officials, the attitude of “if it ain’t broke, don’t fix it” prevails and contributes to resistance of major changes. Many of them think that the 1994-1995 judicial reform is still unfolding and that enough dramatic changes have already occurred since the creation of the Council of the Judiciary. These officials, in both the Supreme Court and the Council, assume that legality is a sacred tenet of judgeship. Yet they have failed to realize that blind obedience to the law can lead to injustices when there is a disconnection between the legal system and the demands of everyday social reality.

When the Rule of Law Leads to Impunity

The MFJ has been praised for its unconditional respect for the rule of law. The institution itself is proud of this principle, and it has an official policy to protect individual rights based on strict obedience to the law even if this generates impunity. For the MFJ, legality trumps punishment of criminals and justice for victims. The most striking example of this attitude—and, unfortunately, the most common—is when criminals walk free from prison due to legal technicalities or mistakes from the prosecutor’s office. A judge in a district court shared a case under his jurisdiction to explain this official policy for applying the rule of law unconditionally:

Un caso que me pasó recién llegué a este juzgado es que había un juicio donde dos personas habían sido detenidas por delitos graves, y aunque sí eran responsables del delito, por la forma en que se llevaron a cabo esas detenciones fueron arbitrarias y

violando gravemente las garantías de los detenidos de modo que resolví dejarlos en libertad. (When I first came to this jurisdiction, I had a case where two people had been arrested for felony charges. Although they were responsible for their crimes, I had to free them due to serious infringements to their civil rights and the arbitrariness of their arrests.)

This description is the archetypical representation of the most known face of impunity and injustice in the Mexican federal judicial system. The MFJ is not the only one to blame for these maladies. Other government agencies in the criminal justice system as a whole also play a role in this process, and errors such as deficient criminal inquiries, inadequate police investigations, defective work from the prosecutor's office, and a literal interpretation of the law contribute to the problem. Then, when a federal judge looks at the whole indictment, the case appears deficient and inconclusive, which eventually leads a decision that frees a perpetrator. It would be unfair to blame only the MFJ for releasing criminals on the grounds of process violations. The work of the prosecutor's office is crucial to producing a credible conviction, and many times, it fails to provide enough evidence to get a conviction. In fact, defective indictments are the main reason why judges release criminals based on technicalities. However, the MFJ has also contributed to the problem by reproducing judicial criteria and jurisprudence that reinforce legalism and a blind adherence to the law.

Interviewee Quirina, an expert in the federal judiciary, was extremely critical of this common practice in the MFJ. She said that legitimacy in a trial should be justified by rational verdicts that bring justice to those who resort to the

judicial system. Instead, she said, the MFJ has taken a path that solves disputes by strictly applying the law without really providing justice. She pointed out,

Los operadores de la ley—jueces, magistrados, ministros, personal de los tribunales—todavía funcionan con una mentalidad autoritaria porque los criterios judiciales con que justifican sus resoluciones y trabajo son rigoristas, legalistas, y olvidan la esencia de un juicio. (The operators of the law—judges, magistrates, justices, and court staff—still perform their duties with an authoritarian mentality because the judicial decisions behind their verdicts and general work are rigorous, legalistic, and they forget the essence of a trial).

To contextualize her criticism, Quirina said that after the 1994-1995 judicial reform that resulted in the establishment of the Council of the Judiciary, all of its “new” members belonged to the MFJ’s rank and file—justices and counselors were appointed from a pool of federal judges and magistrates—who already had a preconceived notion of what judgeship meant. According to her, their judicial criteria and sentencing guidelines reproduced the authoritarian thinking and patterns that had prevailed within the MFJ during the tenure of the ancient regime. By not introducing a new generation of law experts, who probably would be exposed to different legal paradigms and interpretations of the law, the MFJ only changed its façade, but the mental framework remained the same.

In many ways, the MFJ keeps repeating old practices (e.g. nepotism, rigid judicial criteria, cronyism, and bureaucracy) that do not reflect well upon a branch of government that should maintain exemplary behavior in a transitional democracy. As long as the MFJ refuses to acknowledge the need for an overhaul

of its bylaws and sentencing criteria, Mexican society will continue blaming this institution for the impunity and the lack of justice in Mexico.

The Generational Gap: Old vs. New Judges

The 1994-1995 judicial reform eventually led to internal changes that brought up a new generation of senior officials. The appointing system designed by the Council to select new judges and magistrates opened the door to a new generation of lawyers. Many interviewees argued that there were currently two kinds of judges within the MFJ: 1) those who belonged to the old guard (*los de la vieja guardia*), meaning the older segment of the MFJ population), and 2) those who were part of a new generation (*los nuevos jueces*). The old guard judges (which included magistrates) had been appointed long ago based on the traditional system of cliques, political favors, and traffic of influence that was predominant in the institution before the judicial reform. The new generation has been appointed through rigorous examinations and based on credentials, rather than due to political influence. Interviewees used other nicknames to designate these two types of senior officials, such as the new wave vs. the old wave and the new school vs. the old school. I will use the term *old* and *new guard* to identify them.

Not surprisingly, several interviewees characterized the old guard as more traditional, hierarchical, older, and more conservative in their behavior and sentencing criteria. They tended to be labeled as “tyrannical judges” and less prone to develop an equal relationship between the judge and subordinates. The new guard was more inclined to new ideas and to creating better relationships

with their subordinates. Ernesto, a secretary of a district court with 15 years of experience, had this to say on the topic:

Hay dos tipos de jueces, los de la nueva escuela que son más liberales y flexibles y los de la vieja escuela que son más duros y difíciles de tratar. Afortunadamente abundan más los de la nueva escuela los cuales tienden a simplificar las cosas y ser más abiertos. (There are two types of judges, those who belong to the new school, who are more liberal and flexible, and those of the old school who are tougher and difficult to deal with. Fortunately, there are more of the former judges and they tend to simplify things and be more open-minded.)

This generational gap has been an unintended consequence of the 1994-1995 judicial reform. Judges and magistrates who are appointed based on competition and credentials are empowered to speak their minds because they do not owe their positions to anyone but themselves. These officials are now challenging many of the traditional practices that characterized the MFJ, such as rigid sentencing criteria and bureaucracy, by introducing theories of law and vanguard ideas from abroad.

The Council *campechanea* to appoint senior officials selects judges on personal merits or based on nepotism or favoritism. When the system works, it is extremely competitive, and candidates have to be well prepared in theoretical and practical grounds. It is not unusual for these candidates to hold masters and doctorate degrees in fields related to law or criminal justice, which give them an edge on new ideas and critical thinking. One advantage of well-educated judges is that they tend to challenge the paradigm of positivism, which is deeply embedded

in the mindset of traditional senior officials, whose only knowledge of judging and law comes from within the institution and through personal experiences.

Confrontation between the old guard and the new generation of senior officials takes place mostly when deciding cases in appellate courts because it requires consensus. Remember, appellate courts are called Collegiate Courts and they are made up of three magistrates, which demand some kind of agreement in every verdict. Consensus here can be reached when at least two magistrates agree with a sentence.

Quintiliano, the youngest magistrate in the history of the MFJ to reach this position at the age of 33, described the generation gap:

Los magistrados de mayor edad no tienen mucha capacitación porque confían más en su experiencia de los años. Esto es un gran problema al momento de sentar criterios porque la vieja guardia es tradicional y se resiste a innovar porque no conoce mucha teoría y técnica jurídica. Me tomó mucho cabildeo y votos particulares para que al menos uno de mis compañeros entendiera una perspectiva innovadora. Los criterios añejos tienen mucho positivismo y eso ya está superado, y si yo aceptara eso sería como un 'infierno jurídico' porque solo se aplica el derecho de manera rigorista y no hay justicia. (Older magistrates do not have very much schooling because they trust their experience from years in the judgeship as the only source of knowledge. This is a serious issue when deciding a trial and setting up precedents because the old guard is traditional and resists innovation due to a lack of legal theory and juridical technique. It took me a lot of lobbying with my peers and many dissenting opinions to convince at least one of my colleagues to undertake a more progressive perspective in the sentencing guidelines. The sentencing criteria these elder magistrates apply are too positivist and archaic. If I were to accept that archaic notion, it would be like a "juridical hell" [for me] because that approach is a rigorous application of the law without true justice.)

Although innovative ideas from the new generation of judges are a positive trend in the MFJ, they are far from becoming mainstream policy. It will take several decades before these ideas to bear fruit because progressive judges will first have to reach the top of the MFJ and then gradually introduce the changes. Unlike common law that allows judges to make law when there are no precedents, the Mexican legal system prohibits this action and legislative statutes regulate the sentencing guidelines. Thus, judges cannot apply innovative theories and concepts in their verdicts if they are not allowed by the law and/or binding precedents. In fact, it is illegal to decide a trial using arguments that are not explicitly approved by legal doctrine set up by appellate courts and the Supreme Court. Judges who do otherwise can face serious sanctions, including dismissals. The legal principle *stare decisis* (to stand by decisions)—by which judges must respect the precedents set up by higher courts in prior decisions—is a cornerstone of the Mexican legal system and all judges in both the state and federal judiciaries must comply with this legal standard.

Structural and Institutional Inequalities at the MFJ

A similar problem in the MFJ, rooted in patriarchalism and authoritarianism from the past, is structural and institutional inequality. This inequality, or rather inequalities, had not been acknowledged until recently. Inequalities in the MFJ are subtle, but well established, in both the institutional and cultural realms. Culturally speaking, the MFJ's ethos reflects traditional values, patriarchalism, centralism, hierarchical divisions, formalism, bureaucratic

organization, and a strong resistance to innovation. These features are represented in a myriad of ways, in wage disparities, labor divisions, office space, social status, and above all in gender discrimination.

First, there is a huge income gap between justices and council members and low-ranking officials, despite the fact that most of the intellectual and physical work is done by the latter. Gender discrimination has led to inequalities in which many women have been confined to clerical work while men hold most of the powerful decision-making positions. According to the Council of the Judiciary, more than 50% of the employees in the MFJ are women, but they account only for 20% of judges and magistrates. At the top of the institution, this disparity is even worse: out of eleven justices, only two are women, and there is not a single woman among the seven members of the Council of the Judiciary.

Patriarchalism and deep Catholicism are two factors that have intertwined for centuries to keep Mexican women in traditional roles, such as housewives and mothers, or to constrain them to doing jobs defined as feminine. This is not the case anymore in the larger conditions of Mexican society, where women have been able to reduce the gender gap and make gains in urban settings in the past two decades. Nevertheless, broad gender inequalities still remain.

What came as a surprise during the fieldwork were the arguments interviewees used to justify gender inequalities. Except for one female, all interviewees agreed that the MFJ did not discriminate against women. The reality was—according to these respondents—that women did not want to become

judges or magistrates because it conflicted with their roles as mothers and wives. They cited the long working hours, frequent job rotation in multiple jurisdictions, and sketchy schedules—including working on weekends—to support their claim.

Magdalena, a female judge with 32 years of experience in the MFJ, responded to question 12 with these words: “*No es discriminación sino una decision personal de las mujeres de no participar porque ello implica muchos otros compromisos de cambiarse de adscripción y si se tienen hijos o están casadas lo piensan mucho*” (It is not discrimination [against women] but a personal decision not to participate [in the selection process to become judge] because it means too much hassle, such as moving out to other jurisdictions, and they [women] think twice about doing this if they have children or are married).

Another interviewee, Sara, a brand new judge, said,

Muchas mujeres privilegian la vida personal por encima de cuestiones laborales y se resisten a ser titulares porque saben que van a tener cambios de adscripción, lo cual implica moverse con toda la familia y es difícil que el esposo siga a la esposa. (Many women choose personal life over a professional career, and they decide not to become judges as a personal choice given that they would have to move frequently with their family. Not to mention how difficult it is for the husband to follow the wife.)

These two respondents represent how most of the interviewees would explain the gender gap among judges and magistrates. Although these arguments are true in the sense that gender inequalities in Mexico have long been present and are visible in many institutions, the MFJ has failed, first, to acknowledge this unequal treatment against women, and second, to implement changes to reduce gender disparity.

Traditional Gender Roles and Stereotypes

Preconceived notions of gender roles are usually hidden in practices that have been present for decades and have become naturalized norms. For instance, the work schedule and setting in district courts has been organized in a way that seriously limits female employees from performing their duties as mothers and heads of households. Unpredictable work demands from many judges do not allow mothers to pick up children from school on a regular basis or bring work home.

Although the nature of the job requires extended periods of work, the MFJ has not set up clear-cut regulations to allow employees with particular family needs to take time off. It is up to every senior official to manage the employees' work schedule. The way court work is distributed in the MFJ treats males and females identically in order to avoid labor preferences and discrimination, but this approach ignores the biological and sociocultural implications of motherhood and parenting in Mexican society, which puts most of the burden on women. To end this gender inequality, the work setting in the MFJ would require a more flexible treatment for employees with parenting responsibilities. This is something that the institution refuses to acknowledge and change.

Interviewee Ramón, a scholar specialized in the MFJ who at some point worked in a district court, summarized the gender discrimination in these words:

Falta equidad de género en el PJJ. La institución no discrimina en sí, pero no ha llevado a cabo políticas que compensen las desventajas que padecen las mujeres por su rol tradicional en la sociedad de tener hijos, ser madres, atender el hogar, además de

trabajar. (There is a lack of gender equality in the MFJ. The institution does not discriminate per se, but it has not carried out an active policy to offset the disadvantages that women suffer from their traditional roles in society for having children, being mothers, caring for the household, and having jobs).

Only recently has the MFJ begun to take steps towards addressing this problem. For instance, in 2008, the Supreme Court, aware that gender discrimination may exist, created a new office called *Coordinación General del Programa de Equidad de Género del Poder Judicial Federal* (General Coordination of the Gender Equality Program of the Mexican Federal Judiciary). This office and its program aim to create awareness about the topic of gender equality among judges and personnel. The goal was for employees to be familiar with gender equality in their sentencing guidelines and to construct a work setting free from gender discrimination and violence (Suprema Corte de Justicia de la Nación, 2012).

This new Office of Gender Equality conducted ethnographic research in 2008-2009 within the Supreme Court to find out whether there was any discrimination against women and how pervasive the problem was. It also carried out a national survey among MFJ employees that included all jurisdictions (Dirección de Equidad de Género de la Suprema Corte de Justicia de la Nación, 2009). The findings from these two studies maintained that institutional discrimination against women exists throughout the MFJ. The glass ceiling is one mechanism that perpetuates the problem.

The creation of an office about gender equality means nothing if there are no specific actions taken towards changing the status quo. Although it is understandable that any policy intended to reverse the long-term patterns of unfair treatment against women would take years to effect institutional change, there is evidence that gender inequality is not a priority for the head of the MFJ or other branches of government. Several trends reinforce this conclusion. For instance, a woman has never been a Chief Justice. Neither the Supreme Court nor the Council has ever considered installing a gender quota so that more women could have access to high-ranking positions. If there were a real intention to reverse gender discrimination, the Council would set up a recruitment process for female employees to help fill the judge and magistrate positions. However, this process would be considered discriminatory against men because there is a misunderstanding of what gender equality means in the work setting. Many employees, some women among them, think that gender equality means to treat men and women equally without any consideration of the social roles of mothers and wives play in the conservative Mexican society. This hegemonic male worldview has been institutionalized and, because the leadership of the MFJ is overwhelmingly made up of men, it seems unfeasible that there will be a change of the status quo in either the short or the medium term.

A graphic example of how pervasive structural gender inequalities are in both the MFJ and the Mexican society is the process by which the latest Supreme Court justice was appointed. In September of 2010, Justice José de Jesús Gudiño

Pelayo died of a heart attack while vacationing in London. President Calderón sent a triad of female candidates to the Senate for the selection of one of them (Excélsior, 2010). None of these candidates was able to receive at least two-thirds of the votes and be appointed. Apparently, the reason was a political dispute because none of these women—all of them district court judges—had party affiliations, and this undermined consensus among senators.

This shows that politics do intervene in the composition of the Supreme Court, but first and foremost, it makes visible a hidden attitude that consists of considering women less capable of assuming high-ranking positions. This belief was highlighted in the conclusions of the national survey conducted among MFJ employees: respondents said men have more capacity to be bosses than women do. Although the Supreme Court did not directly intervene in the aforementioned appointment process, it surely maintained contact with the President to provide feedback on the candidates' credentials. The fact that no women were included in the second triad sent by the President suggests that the MFJ did not lobby or argue enough to accommodate a female candidate and make the Supreme Court more gender equitable.

As a direct consequence of the prevailing gender discrimination in the federal judiciary, there is another serious problem that the institution has done little or nothing to tackle: sexual harassment. Unwanted sexual advances happen to both males and females within the MFJ, but overwhelmingly women suffer the

most from this behavior—typically by males in powerful positions. Due to its implications, this issue is addressed next.

The Persistence of Sexual Harassment

Not every interviewee acknowledged that sexual harassment existed in the MFJ, mostly because they had not experienced it or had never heard of it in their everyday activities. Almost one-third of the interviewees—mostly females—declared that unwanted sexual advances were something that many women employees faced, usually coming from judges and magistrates, and that it created a stressful situation for them. According to several interviewees, sexual harassment was typically conducted in subtle but systematic ways through innuendos, suggestive remarks, and behavior disguised as part of the socialization process between coworkers while doing everyday activities. Secrecy characterizes sexual harassment, and this makes it difficult to witness and investigate when it is occurring.

Some respondents said that sexual harassment was not a common practice within the MFJ, but given that it does not take place in explicit ways, it well may be that some employees know and others do not, depending on their gender or position. What seems to be certain is that it happens more often than is acknowledged by senior officials. Since women suffer the most from it, it is possible that many males just ignore it because of the patriarchalism that prevails in the institution. The fact that this practice is not known or experienced by many employees does not mean it is nonexistent. In other words, unwanted sexual

advances may be dispersed, but they take place on a regular basis against some women.

Two female interviewees, Teresa and Karla, recounted in detail their experiences as victims of sexual harassment by a judge and a magistrate, respectively. The circumstances and sequence of events were similar in both stories: a) the victims were both young, single, and pretty and belonged to the lower levels of the hierarchy; b) they were directly hired by the harasser to work in a closer and personal setting with him; c) unwanted sexual advances increased gradually as time passed; d) the victims had to quit their positions when the situation became unbearable for them; e) the victims never reported the harassment because they needed to keep their jobs and they feared that reporting would have led to reprisals, and f) in neither of these two cases did the harassers face any legal punishment for their behavior.

Karla, who suffered aggressive sexual harassment twice, said,

Sí existe acoso sexual en el PJF, lo he visto y lo he experimentado directamente en muchas ocasiones pero dos experiencias en particular me han marcado. Una fue en Tlaxcala donde me ofrecieron trabajar en un colegiado y el magistrado desde el primer día que llegué me empezó a hostigar de manera indirecta primero, y luego directamente. La otra experiencia también ocurrió con un magistrado aquí, que me contrató de su secretaria particular y empezó a hostigarme de manera sutil y después las cosas se fueron haciendo más tensas hasta que tuve que renunciar. (Yes, sexual harassment exists in the MFJ. I have seen and experienced it personally several times, but two experiences in particular left an unforgettable mark on me. One was in the jurisdiction of Tlaxcala where someone offered me a job working in an appellate court and since day one, the magistrate began to harass me, subtly at the beginning and openly later on. The second experience took place here [in the jurisdiction where the interview

was conducted] with a magistrate, too. He hired me as his private secretary. He began to harass me in subtle ways and then things developed into a tense situation where he would not stop, and I had to quit working for him).

For most victims of sexual harassment in the federal judiciary, it is difficult to confront and stop harassers because the legal and social environment of the institution is against them. As explained by some interviewees, victims think twice before reporting unwanted sexual advances for several reasons. First, there is no a clear and safe process through which to channel complaints. When a victim reports sexual harassment, the Council opens an investigation that normally takes months to conclude, and peers and coworkers eventually have to testify in it. In the meantime, the victim usually keeps working under the harasser's authority. This allows time for retaliation in different ways, such as putting pressure on the victim to work exhausting schedules or possibly dismissing the victim and making her look like a deficient employee. Most of the time, if the harasser is found guilty (depending on the circumstances of the harassment), he only receives a warning and reprimand as punishment. The victim, on the other hand, becomes labeled as troublemaker and hardly anyone would hire her again in the MFJ because her references from the former superior would all be negative.

Second, it is complicated to investigate and gather conclusive evidence of sexual harassment because witnesses would be coworkers and peers and they probably would refuse to accuse their boss of any misconduct in order to protect their own jobs. Remember, the internal rules to impose sanctions against junior

and senior officials rely on traditional procedures, which require concrete and unmistakable evidence to declare someone guilty. This is hard to carry out in sexual harassment cases, although not entirely impossible. In 2006, a magistrate in Mexico City was put on a six-month unpaid leave of absence for sexually harassing a subordinate employee; it was not until May 2011 that he was finally dismissed for this misconduct (Méndez, 2011).

In addition, harassers tend to prey on powerless victims who usually need the jobs and/or want to secure permanent status in their positions. It is unlikely that the daughter of a senior official working in a district court would face sexual harassment because her father's social status protects her. Unfortunately, sexual harassment is relatively easy for harassers to perform because the sociocultural setting of the institution favors its existence. The prevalence of other practices such as strong hierarchies, abuse of power, tyrannical judges, and a male-centered culture, all intertwine to reproduce this problem, leaving few or no consequences for the perpetrators. Patricia, an interviewee with 30 years of experience in federal courts, said that the higher up the hierarchy the more common the problem is. She explained, "*Sí existe el acoso sexual y es parte de la cultura de muchos titulares de tener una secretaria particular que es bonita y que tenga un cuerpazo. Y a mayor nivel de la jerarquía este aspecto es mucho más visible*" (Yes, sexual harassment exists [at the MFJ], and it has become part of the culture for many senior officials who want to have a private secretary, one who is pretty and has an

attractive body. The higher the official is up the hierarchy, the more common this problem becomes).

According to interviewee Teresa, by not having appropriate institutional remedies available, what most victims typically do when tackling unwanted sexual advances is walk a fine line between running away and openly rejecting the harasser. This is unfair and should be unacceptable, but it is the most convenient and pragmatic approach for those females who find themselves powerless and caught in the hands of abusers.

This information is supported by the two studies conducted by the Supreme Court between 2008 and 2009 that were mentioned earlier. One study found that sexual harassment exists in the MFJ and that women were far more likely than men to suffer from it. The other one concluded that there is not a special mechanism available for victims to resolve sexual harassment cases in the entire MFJ (Dirección de Equidad de Género de la Suprema Corte de Justicia de la Nación, 2009). If confronted with the sociocultural setting that characterizes the MFJ, the existence of sexual harassment fits in naturally—so to speak—with the ethos of the institution. In any organization that is male-centered, traditional, hierarchical, centralist, and reluctant to acknowledge gender discrimination, sexual harassment will find fertile soil in which to thrive. This has been the case in the MFJ, and for the time being, it remains that way. Structural changes may take place over time that may alter this, but it remains to be seen.

It would be unfair not to acknowledge some of the small steps that have occurred in the recent past that do address sexual harassment. The Council of the Judiciary has become more vigilant about senior officials' behavior and has encouraged a professional judgeship in and out of the courtrooms, to be respectful and have consideration for all subordinates. It has also improved the process for filing complaints against superiors—not only for sexual harassment but also against any type of abuse. The Council systematically investigates any misconduct and usually follows a protocol that includes a whole process to gather evidence and reach a conclusion for each complaint. However, bureaucracy, traffic of influence, and the use of cliques sometimes undermine the impartiality of this process because those harassers who have connections in the Council can get away with their crimes. Interviewee Ramón had this to say on the topic: *“Cuando le presentan una queja a un juez siempre se aconseja que vaya a ver a un consejero para amarrar el asunto”* (When there is a complaint against a judge, people recommend visiting a Council member to fix the issue in advance).

What Ramón is explaining is that having connections or friends in the Council helps to avoid being sanctioned. Besides connections, there are other factors—such as who the victim or the harasser is, in what jurisdiction the harassment occurred, and the circumstances of it—that can play a role in whether a harasser is sanctioned. However, data from the Council suggest that the probabilities of avoiding a sanction are higher than the opposite.

Overall, despite some steps towards addressing institutional inequalities, there is no consistency between what the head of the MFJ says and what it does. On the one hand, the Supreme Court claims that the institution is an archetype of a new judicial branch, promoting a positive image of itself in media campaigns. On the other hand, this seems like empty rhetoric because the institution keeps reproducing policies, attitudes, and practices that reinforce inequalities and contradict this so-called new image. There is a simple fact that summarizes the discrepancy between the discourse and the reality of the federal judiciary: those senior officials in charge are the first who benefit from the status quo, and there is no real interest in changing because that would affect their power and privileges. For the final section of the conclusion, I will lay out the various arguments on the positive changes that have taken place in the MFJ, as well as the negative practices that still affect it today.

Studying Corruption in the MFJ: What We Have Learned

This research sheds light on many misunderstandings and hidden aspects of corruption in the Mexican federal judicial system. First, corruption does exist at this institution; it is not as widespread as it is usually thought, but it occurs depending on different variables, such as the type of case, the trial's parties, the judge, and the interests at stake. Fieldwork data show that corruption accounts for 5% to 10% of the cases. These percentages might be seen as high, but considering the context of corruption in Mexico, where this problem is prevalent, the MFJ has managed to have low levels of corruption. Furthermore, compared to state judicial

systems, the difference in corruption levels between the MFJ and the local judiciaries is even greater, with the former having far fewer problems than the latter.

Given the complexities of everyday activities in federal courts, it is not easy to influence the judicial process by a simple act of corruption, as many people believe in Mexican society. There was a consensus among respondents that work setting, procedural law, peer surveillance, permanent supervision by the Council, and public scrutiny all make it harder to engage in corruption. Nevertheless, this has not prevented some officials at all levels of the hierarchy from committing corrupt acts. The emphasis of this statement should be that, compared to the twenty years ago, there has been serious progress in tackling corruption in the MFJ.

Second, although corruption in the MFJ is mostly associated with bribes, this concept has multiple definitions, a characteristic that is widespread in Mexican society. Besides bribery, corruption can also mean influence peddling, cronyism, traffic of influence, nepotism, abuse of power, petty corruption (e.g. *mordidas* and tips), and even sexual harassment. This pluralistic definition of corruption suggests that corruption is a contested idea within the MFJ, and employees as well as high-ranking officials disagree about what phenomena should be categorized as corruption. Likewise, corruption was understood mostly as a legal problem, meaning the breaking of the law, although beneath this

interpretation there was an understanding by interviewees that sociocultural elements play a determinant role in the larger social realm in Mexican society.

Fourth, respondents had a clear notion that corruption cannot be eradicated completely from the institution. Court officials understand that corruption always will be part of the judicial system. Nevertheless, interviewees pointed out that it is possible to reduce the problem to minimal levels. In this regard, high salaries, professionalization, and an authentic civil service career (compared to the recent past before the 1994-1995 reform) have been crucial to reducing corruption and encouraging judicial independence.

Finally, phenomena such as patriarchalism, nepotism, abuse of power by some judges, cronyism, gender inequalities, and sexual harassment have become normalized within the MFJ. These practices were defined as part of the MFJ's ethos, and they reproduce a work setting where misconduct and corruption are more likely to occur because personal and group interests overcome the rule of law. This scenario suggests that corruption in the MFJ—even if it is minimal—cannot be addressed as an isolated problem because it would not change the circumstances where corruption nourishes. Instead, any action or policy to tackle corruption in the federal judiciary must include a holistic perspective that also deals with the aforementioned practices.

Improvements and Challenges of the MFJ for the Twentieth-first Century

There is no doubt that the Mexican federal judiciary has changed for the better in the last 16 years since the 1994-1995 judicial reform. These changes

have operated in different spaces and times throughout this period and have created a distance from the past authoritarian regime that governed Mexico until 2000. Among the most visible changes of the recent past are the following:

- 1) There has been a professionalization of the judgeship in which new generations of lawyers who are younger, well-educated, and eager to shift the legal paradigms are filling in high-ranking positions;
- 2) there has been an institutionalization of a civil service career based on meritocracy that generally works, but sometimes is undermined by nepotism and the use of connections;
- 3) there was a substantial increase on salaries at all levels—except for typists—to reward professional standards and decrease potential misconduct, which has contributed to professionalizing the judicial career;
- 4) there has been a considerable reduction of petty corruption—more evident for the absence of *mordidas*—to the point where no grease payments are needed to carry out every day proceeding in trial courts;
- 5) there has been an increase in the number of district courts and appellate courts throughout the country to provide better service to society;
- 6) as a result of professionalization and good salaries, judges and magistrates have become more independent in their decision-making power;
- 7) the institution has become more transparent and accountable, although not enough to claim victory;
- 8) the adoption of technological and digital tools has made the administration of the justice as well as the employees' work more efficient and easier;
- 9) there is more willingness to receive public scrutiny in both, internal issues and decisions taken in cases under the federal courts' jurisdiction,

but still secrecy is preferred by those in power; 10) some first steps have been taken to tackle corruption and misconduct among senior officials by exercising more control and scrutiny on them; 11) there has been an unprecedented policy to train and educate employees to become better public official through courses, workshops, and lectures from the Institute of the Judgeship, and 12) the implementation of recruitment processes to select judges and magistrates through rigorous competitions—except when nepotism and connections play a role in the appointment process—has become a crucial policy for guaranteeing judicial independence.

There have been other subtle changes, which are not as visible as the ones mentioned above, such as the greater availability of material resources. These positive improvements have taken years to take root, and some of them are still in progress and are far from being perfect but are heading in a direction in which they could become institutionalized and part of the everyday activities of the MFJ. Contrasting these changes with the context before the 1994-1995 judicial reform, they seem like a giant step in the administration of justice because the difference is quite evident between the “before” and the “after.” Behind all these changes lie the political implications supporting them. The MFJ has been able to distance itself from the sphere of influence that the executive branch had for decades. The strong Presidentialism that prevailed during the 71-year rule of the party-government kept the federal judiciary in the shadows. Slowly but steadily, the

MFJ has gained more autonomy and independence—compared to the past—to perform the true separation of powers that is required in any democracy.

Nevertheless, there are still many challenges ahead for the MFJ before it can become a fully independent and reliable branch of government in the context of the 21st century. Yes, the institution is more independent than before but still legal and political contingencies make it susceptible to influences from the two other branches. There are two realms where these contingencies take place: in the budget and in the appointment of justices and Council members. According to law, the MFJ still depends on the President and Congress to approve its annual budget, which requires that the Chief Justice lobbies every year to obtain higher allocations of resources to meet the MFJ's needs. This allows some political intromission from the executive and legislative branches to maintain certain control over the federal judiciary. The best scenario would be to have a percentage of the whole government budget regularly directed to the judiciary with no need for lobbying. The law that dictates this budget policy dates back to the ancient regime's epoch, and there is no political willingness to change it; thus, it will remain as it for the near future.

Regarding the appointment of justices and Council members, this process is essentially a political one. This process has become influenced by ideologies and political parties, which end up selecting justices on the grounds of politics rather than merits and credentials. This eventually can affect case decisions by the Supreme Court that are dealing with high profile trials. This is similar to the U.S.

justices who are typically selected by the President according to political ideology, but in the Mexican case, the selection process goes beyond ideological realms and turns into cronyism, connections, and possibly political interference. Because of these undesirable effects, the MFJ cannot claim itself as a fully independent branch.

There are other issues mentioned throughout this dissertation that have thwarted the federal judiciary from becoming a branch of government that effectively performs its checks and balances of power and brings justice to those who demand it. Most of these issues come from old practices that were institutionalized in the past and are difficult to uproot because of the inertia of bureaucracy and unwillingness by senior officials to adopt new paradigms. To make matters worse, these issues are intertwined in the sophisticated network of traditions, culture, socialization, hierarchies, and mores that characterize this institution. Among the most common of these problems are the following:

- 1) The existence of nepotism, a practice deeply rooted in most of the minds of people working in the MFJ that has become normalized because its negative connotation has been erased; 2) there are excessive hierarchies that emphasize obedience and loyalty above the goal of serving justice. Although power structure is necessary to organize any institution, the command hierarchy in the MFJ goes beyond this target leading to cronyism, cliques, and rivalries between groups that undermine the judgeship; 3) there is strong centralism, in both power and resources. This feature complements in a negative way the

hierarchical structure in place because sometimes abuse of power is tolerated which affects those at the bottom of the ladder the most; 4) there is resistance to full openness for public scrutiny, and total transparency has not been fully achieved because personal and pragmatic interests prevail; 5) bureaucracy in some sectors of the judiciary still exists, and those who benefit from the status quo resist any changes; 6) many senior officials do not teach professionalism and honesty by example and do not serve as desirable models to peers and court staff. There is inconsistency between senior officials' words and their actions; 7) the MFJ tends to be defensive and unwilling to acceptance criticism. It does not encourage self-criticism to improve what is not working properly; 8) the institution does not reward honesty and good work, nor does it punish corruption and misconduct in a systematic manner. This leads to impunity for employees who engage in misconduct; 9) the MFJ has not set high standards of behavior for court staff and senior officials; and 10) justices are not accountable for their personal behavior because nobody supervises their actions. Although they can be impeached for gross misconduct, they usually get away with practices such as nepotism, cronyism, and influence peddling because there is no one who oversees their activities. The case of Justice Balderrama mentioned in other chapters is a clear example of this institutional weakness.

A particular phenomenon that deserves special attention is the responsibility of the federal judiciary in the problem of impunity in Mexican society. The MFJ is still caught in old schemes of legalism that perpetuate this

problem in the name of adherence to the rule of law. For most federal judges—in trial and appellate courts—the rule of law is considered a sacred paradigm by which verdicts have to adhere to a literal interpretation of the law. This strict judicial criterion has allowed many criminals to be freed, and senior officials justify their decisions on legalistic grounds. Even if this is true, the MFJ should be more flexible in their interpretation of the law in order to keep up with the dynamics of social reality. Because of this failure, there is a disparity between what the law holds as legal and the real world of everyday life, and many times the work of the federal judiciary is unable to make a connection between these two realms.

These are the major challenges that the Mexican federal judiciary must face in the coming years in order to leave behind the negative practices that still prevail within the MFJ. It is impossible to predict how long it will take for this branch of government to transform into the institution that Mexican society demands. Regardless of this uncertainty, it appears that only when the new generation of judges have filled in positions as justices and council members at the top of the MFJ—to exert a majority in the Supreme Court and the Council of the Judiciary—then this institution will be able to leave behind the conservative and rigid thinking inherited from the past century. Then will come a time when corruption, misconducts, and wrongdoing will be rare occurrences because the principles governing this branch will be professionalism, honesty, kindness, ethics, and respect. Hopefully, this will be the case.

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APPENDIX A
QUESTIONNAIRE IN ENGLISH

Date _____ Hour _____
City _____
Position _____
Seniority _____

1. In the Mexican legal community, the Mexican Federal Judicial (MFJ) has a reputation of being an extremely demanding institution for those who work here, is this true? What do you think about this reputation? Do salaries offset responsibilities? What about work schedule?

2. What is the most difficult task of working in the MFJ?

3. According to your experience, what is the best feature of the MFJ and what would be need an overhaul?

4. How see themselves people working in the MFJ and how would you define their job duties?

5. Overall, Mexican society has a negative image of the judicial power based on the idea that there is systematic corruption there, what do you think of this reputation? Could it be possible to reverse this reputation?

6. Would you consider that the job of the prosecutor's office impacts the performance of the MFJ?

7. How centralized the MFJ is? If so, does this affect the institution?

8. How much discretionary power a judge or magistrate has to organize and rule his or her courtroom?

9. Would you think that having friends or connections within the Council of the Judiciary helps to climb up the hierarchical ladder of the MFJ?

10. Do you think that the appointment of judges and magistrates is absolutely impartial sometimes the use of connections can influence who is appointed in a particular jurisdiction?

11. Considering the historical context of the Mexican political system, do you think the judicial branch, in particular the Supreme Court and the Council, have become fully independent from the executive branch, or there are still reminiscences of this influence?

12. More women than men work in the MFJ and yet most of the judges, magistrates, and justices are males, what do you think is the reason for this gender difference? Does this suggest a subtle but real institutional discrimination against women?

13. Do you think there are cases of wrongdoing or corruption in the MFJ? If so, what type of corruption would that be (feel free to explain in detail)?

14. Given the violence and economic power of drug cartels, is there any potential risk for employees of the MFJ who handle organized crime and drug-related trials?

15. Do you know instances where employees in the MFJ have been threatened or intimidated for doing their job? If so, without mentioning names could you please explain how and why that happened? How has the head of the MFJ reacted to protect its employees from threats?

16. What types of trials are more prevalent in this jurisdiction?

17. Considering the social inequality that prevails in Mexico, would you think that the salaries of judges, magistrates, justices, and council members are justified? How the court staff's perception of these high ranking officials' salaries?

18. Would you consider that there is absolute impartiality and independence in trial courtrooms and the Supreme Court during proceedings and the verdict?

19. Based on your experience, are there any topics about justice and impartiality which I did not ask but should have asked? Please feel free to add whatever you think is important.

APPENDIX B
QUESTIONNAIRE IN SPANISH

Fecha _____ Hora _____

Ciudad _____

Cargo _____

Antigüedad _____

1. ¿Entre la comunidad jurídica mexicana, el Poder Judicial Federal (PJF) tiene fama de ser una institución muy exigente para quienes laboran aquí, qué tan cierto es esto y porqué? ¿Horario, salario compensa responsabilidades, vida privada es posible, más difícil para hombres que mujeres?

2. ¿Cuál es la tarea más difícil de trabajar en el PJF y porqué?

3. ¿De acuerdo con su experiencia, qué está funcionando bien en el PJF y que requeriría algún cambio para mejorar la institución?

4. ¿De qué manera la gente que trabaja en el PJF se ve a sí misma y cómo definiría sus responsabilidades laborales?

5. En general, la sociedad mexicana tiene una idea negativa del poder judicial asociándolo con la corrupción sistemática que ha afectado al país por décadas, ¿qué tan cierto es esta imagen negativa? ¿Qué cree usted debería hacer el PJF para revertirla?

6. ¿Estimaría usted que el trabajo (integración de averiguaciones previas) del ministerio público federal repercute en el desempeño del PJF para brindar un mejor servicio público a la sociedad?

7. ¿Qué tan centralizado está el PJF y porqué? ¿Cómo afecta esto a la institución?

8. ¿Qué tanta discrecionalidad tiene un juez o magistrado para organizar y mandar en un juzgado o sala? ¿Cuáles serían las ventajas y desventajas de esta discrecionalidad?

9. ¿Consideraría usted que tener amigos o contactos en el Consejo de la Judicatura ayudaría para avanzar más fácilmente en la carrera judicial dentro del PJF?

10. ¿Considera usted que las designaciones de jueces y magistrados en el PJF son absolutamente imparciales o algunas veces el uso de relaciones pudiera influir en quien va a determinada jurisdicción?

11. Considerando la historia del sistema político mexicano, ¿Se ha liberado el PJF, y en particular la Corte y el Consejo, de la influencia política e injerencia que el poder ejecutivo ejerció en el pasado o todavía existen reminiscencias de ello?

12. Más mujeres que hombres trabajan en el PJF y sin embargo la mayoría de jueces, magistrados y ministros son varones ¿A qué cree usted que se deba esta diferencia de género? ¿Acaso existe una discriminación sutil pero real en la institución en contra de las mujeres?

13. ¿Consideraría usted que existe algún tipo de deshonestidad o corrupción en el PJF? De ser afirmativo, ¿de qué clase?

14. ¿Dado su poder económico y la violencia con que se conducen, cree usted que los carteles del narcotráfico constituyen una amenaza para los funcionarios del PJF?

15. ¿Conoce usted de casos en este juzgado donde alguien del personal haya recibido amenazas o intimidación por hacer su trabajo como funcionario? ¿Conoce de atentados a algún miembro del PJF? ¿De qué manera el PJF ha respondido para proteger a sus empleados?

16. ¿Qué tipo de juicios/asuntos son los que más abundan en este juzgado? ¿En qué porcentaje estos juicios son mayoría comparado con otros juicios?

17. ¿Considerando la desigualdad social que prevalece en México, estimaría usted que están justificados los sueldos de los jueces, magistrados, ministros y consejeros del PJF? ¿Cómo percibe el personal de los juzgados el salario que ganan los funcionarios aludidos?

18. ¿Considera usted que existe absoluta independencia e imparcialidad tanto en los juzgados de distrito como en la Corte para resolver asuntos?

19. ¿De acuerdo con su experiencia, considera usted algún otro asunto que afecte la pronta y expedita impartición de justicia en el PJF que debemos abordar en esta entrevista?

APPENDIX C
INFORMATION LETTER IN ENGLISH

Challenges for the Mexican Federal Judiciary in the 21st Century: An
Ethnographic Study

Dear _____ Date _____

My name is Gabriel Ferreyra Orozco, I am a lawyer and a graduate student under the direction of Professor Doris M. Provine in the Department of Justice Studies, School of Social Transformation at Arizona State University. I am conducting an ethnographic research to study the Criminal Courtrooms of the Mexican Federal Judiciary.

I am inviting your participation, which will involve a semi-structured interview one hour long, where I will ask you some questions about the following topics: How the MFJ is organized and structured according to the employees' perspective; what are the best assets within the MFJ and what needs to be changed or improved; what the risks or dangers are for handling trials that involve organized crime and drug cartels and if employees are exposed to any threat from them; what employees working at the MFJ think about the current wave of crimes perpetrated by the cartels; whether this image of violence affects how employees handle and decide everyday trials related to drug trafficking; what kinds of wrongdoing, if any, occur or may occur within the courtrooms; and if there are any kinds of corrupt practices present in the courtrooms.

You do not have to answer any question, and you may stop the interview at any time. Your participation in this study is voluntary. You can choose not to participate or to withdraw from the study at any time, there will be no penalty. You will not have any benefit in this research and there are no foreseeable risks or discomforts to your participation. However, your participation is extremely valuable for a better understanding of the MFJ.

To guarantee absolute confidentiality, the interview will not be recorded, nor will any personal information be requested, except your position (e.g. judge, secretary, process server, etc.). Only fieldnotes will be taken during the interview. The results of this study may be used in reports, presentations, or publications but your name will not be known.

If you have any questions concerning the research study, please contact the research team at: School of Social Transformation, ASU, P.O. Box 974902, Tempe, AZ 85287-4902, Doris Marie Provine, e-mail: marie.provine@asu.edu and Gabriel Ferreyra Orozco gferreyr@asu.edu. If you have any questions about your rights as a subject/participant in this research, or if you feel you have been placed at risk, you can contact the Chair of the Human Subjects Institutional Review Board, through the ASU Office of Research Integrity and Assurance, at (480) 965-6788. Please let me know if you wish to be part of the study.

Gabriel Ferreyra-Orozco _____

APPENDIX D
INFORMATION LETTER IN SPANISH

Retos del Poder Judicial Federal en el siglo XXI a la luz de una investigación etnográfica.

Estimado Lic. _____ Fecha _____

Mi nombre es el Gabriel Ferreyra Orozco, soy abogado titulado por parte de la Universidad Michoacana de San Nicolás de Hidalgo y estudiante de posgrado bajo la tutela de la profesora Doris M. Provine en el departamento de Estudios sobre la Justicia, afiliado a la Escuela de Transformación Social en la Universidad Estatal de Arizona. Estoy llevando a cabo una investigación etnográfica sobre el Poder Judicial Federal (PJF), en particular los juzgados de distrito.

Por medio de este documento lo invito a participar en esta investigación, lo cual consiste en una entrevista entre usted y el suscrito de aproximadamente 1 hora de duración, donde le formularé una serie de preguntas relativas a los siguientes temas:

El objeto de esta investigación es estudiar desde una perspectiva interna la estructura y organización del PJF, qué piensan sobre el PJF quienes laboran en esta institución, qué tipo de trabajo es el más desgastante, y qué tipo de juicios son los que más prevalecen. De igual forma, dadas las condiciones de violencia extrema en el país, se busca saber si existe algún tipo de riesgo para la seguridad de los empleados del PJF encargados de manejar juicios relacionados con la delincuencia organizada y los carteles de la droga. Saber si existen amenazas en contra de los funcionarios y cómo ha respondido el Consejo de la Judicatura ante esta nueva realidad. Asimismo, se busca saber a qué tipo de presiones están sujetos quienes trabajan en el PJF y cómo se hace frente a las mismas. Finalmente, (sin mencionar nombres) qué tan frecuentes son los casos de deshonestidad en el PJF y cómo se resuelven los mismos.

Usted tiene el derecho de no responder a cualquier pregunta cuando lo considere conveniente y también tiene el derecho de dar por terminada la entrevista en cualquier momento que lo desee. Su participación en esta investigación es totalmente voluntaria y si considera no participar o cancelar la entrevista al momento que así lo considere conveniente, no hay ningún problema de mi parte.

Su participación en esta investigación es extremadamente valiosa para lograr un mejor entendimiento del Poder Judicial en México y saber entender mejor esta institución. La finalidad es recabar información científica que una vez publicada pueda servir de sustento a promover mejores políticas en los tribunales federales que beneficien a la impartición de justicia. En esta investigación no existe ningún perjuicio ni beneficio a su persona por participar o no participar.

Para proteger la confidencialidad de esta entrevista, no se recabará ningún dato personal, excepto el cargo que usted desempeña en el PJF y su antigüedad. Durante la entrevista únicamente se tomarán notas y apuntes por parte del suscrito para recordar los temas abordados en la misma. Los resultados de este estudio

podrán ser usados en reportes, presentaciones y/o publicaciones siempre guardando estricta confidencialidad sobre la fuente personal de la información.

Si tiene alguna pregunta en relación a la presente investigación, además de mi persona puede contactar al Investigador Principal de este estudio. Doris M. Provine, correo electrónico: marie.provine@asu.edu y al suscrito gferreyr@asu.edu. Si tuviera alguna otra pregunta en relación a sus derechos en cuanto participante de este estudio si considera que ha sido puesto en alguna situación de riesgo, usted puede contactar al Jefe del Consejo Institucional Sobre Asuntos de Investigación Social al teléfono (480)965-6788 en Arizona.

Gabriel Ferreyra Orozco _____

APPENDIX E
INSTITUTIONAL REVIEW BOARD APPROVAL

To: Doris Provine
WILSN

From: Mark Roosa, Chair *SM*
Soc Beh IRB

Date: 03/11/2011

Committee Action: **Exemption Granted**

IRB Action Date: 03/11/2011

IRB Protocol #: 1103006147

Study Title: Challenges for Mexican Federal Judiciary in the 21st Century: An Ethnographic Study

The above-referenced protocol is considered exempt after review by the Institutional Review Board pursuant to Federal regulations, 45 CFR Part 46.101(b)(2) (3) .

This part of the federal regulations requires that the information be recorded by investigators in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects. It is necessary that the information obtained not be such that if disclosed outside the research, it could reasonably place the subjects at risk of criminal or civil liability, or be damaging to the subjects' financial standing, employability, or reputation.

You should retain a copy of this letter for your records.