

TRANSPARENCY AND RULE OF LAW IN
LATIN AMERICA

HEARING
BEFORE THE
SUBCOMMITTEE ON
THE WESTERN HEMISPHERE
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS

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TRANSPARENCY AND RULE OF LAW IN LATIN AMERICA

WEDNESDAY, MAY 25, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:40 p.m. in room 2172, Rayburn House Office Building, Hon. Dan Burton, (Chairman of the Subcommittee) presiding.

Mr. BURTON. The Subcommittee on the Western Hemisphere will come to order, and I ask unanimous consent that all Members and witnesses' opening statements be included in the record, and without objection, so ordered.

And I apologize for our tardiness. We had a meeting with the new head of the PLO just a little bit ago, and had a luncheon. We had the President of Indonesia in today, and it just has been running from place to place.

And my staff told me that I have got to be at the Hart Building for a meeting at 3 o'clock, and I am going to kill them, because that is a long way. Besides that the air on the other side of the Capitol is so rarified that I have trouble breathing. Do you want me to repeat that one more time?

I ask unanimous consent that all articles, exhibits, and extraneous tabs and materials referred to by Members or witnesses be included in the record. And without objection, it is so ordered.

I ask unanimous consent that any Member who may attend today's hearing be considered a Member of the Subcommittee for purposes of receiving testimony and questioning witnesses after Subcommittee Members have been given the opportunity to do so, and without objection, so ordered.

In the last 4 months, we have held oversight hearings on democratization in the Western Hemisphere, trade agreements, the growing threat of crime and gangs, the rising influence of China, and the deplorable human rights conditions in Cuba.

Today, the Subcommittee intends to continue our broad overview of affairs in the hemisphere by examining the state of justice sector reforms, government transparency, and the rule of law in Latin America. Now, I know that my colleague, Mr. Menendez, is very concerned about this.

One of the linchpins of a democratic state is a transparent and impartial legal system, and guarantees that all people, regardless of race, creed, or social status, will have access to it.

Where there are strong legal institutions, there tends to be greater respect for human rights, less tolerance of corrupt practices, and more effective deterrence against crime. A strong and independent judiciary leads to greater integrity of legal proceedings and outcomes that are less likely to be perceived as being compromised for political purposes.

Conversely, where there are weak legal institutions, we see higher levels of crime, less respect for human rights, higher levels of corruption, and other systemic abuses of power.

Furthermore, in these countries, we are more likely to see citizens take to the streets and resort to violence to mete out violence or bypass constitutional mechanisms. We most recently have seen examples of this type of mob justice in Guatemala, Ecuador, and Bolivia.

In countries where there is institutionalized respect for the rule of law, we are less likely to see extrajudicial killings and other abuses by police and security forces. We are less likely to see discrimination against minorities, forced labor, exploitation and trafficking in women and children.

Among other countries in Latin America, Argentina, Bolivia, Brazil, Ecuador, Colombia, and Honduras are cited in the State Department annual *Country Reports on Human Rights Practices* for the problems in these areas.

Perhaps the most glaring example of lawlessness in the entire hemisphere may be in Haiti, and this just goes on year, after year, after year it seems—the hemisphere's poorest nation, which has been chronically plagued by violence and political instability.

After the ouster of the corrupt Aristide Government in February 2004, my colleagues and I had high hopes that the United Nation's stabilization mission could finally turn this country around. Regrettably, this may not happen as we are starting to see signs that Haiti is once again slipping backwards into violence, as UN forces increasingly contend with growing security challenges.

I won't dwell on the injustices perpetrated by the Castro regime on the Cuban people for decades, as these facts should be well known to many of us from the testimony that we heard earlier this year from Cuban exiles, and directly from brave Cuban activists in Havana.

My concern, and I know that this is a concern shared by many of my colleagues, is that these "pockets of lawlessness" may expand to other countries. During our gangs and crime hearing last month, the Subcommittee heard testimony indicating that crime rates in Latin America are among the highest in the world.

And there are regions throughout the hemisphere where homicide rates are as much as three times higher than the average urban rate. The Inter-American Development Bank estimates that Latin American's per capita gross domestic product could be 25 percent higher if the region's crime rates simply paralleled other parts of the world.

These high crime rates have shaken many Latin Americans' trust in their governments, and their law enforcement institutions make them question the value of democracy in general.

A UNDP report released last year revealed that a bare 43 percent of Latin Americans fully support democracy. Other polling

data suggests that Latin Americans have little or no confidence in their Executive, Judiciary, Legislative, political parties, armed forces or police.

Additional studies conducted by the World Bank and the Center for Strategic and International Studies further support the notion that a corrupt or inefficient justice sector can slow economic development, undermine the strength and credibility of democratic institutions, and erode the social capital necessary for development.

The message is clear, so long as governments are perceived as unable to deliver basic services, such as public security, the public's faith in democracy is under threat. And throughout all of the fledgling democracies in Central and South America, we see this.

To make matters worse, there are signs that a few governments in the region are not just failing to move forward with reforms, but are in fact beginning to move backwards toward totalitarian or authoritarian rule.

The news is not all bad though. Dissatisfied with the status quo, civil society leaders in Mexico, Colombia, Peru, and El Salvador are mobilizing to hold their governments accountable, and to push for justice reform and adopting new methods of policing their communities.

Networks of national and regional civil society organizations work to better inform the public about the importance of establishing "cultures of lawlessness." Collaborative efforts have begun to develop across borders in order to formulate regional approaches to justice reform.

I look forward to hearing from our witnesses from the INL today regarding one such approach, the establishment of an International Law Enforcement Academy (ILEA) in the region. The increased intergovernmental cooperation in security and law enforcement embodied in the ILEA proposal is, in my opinion, a concept and commitment that is long overdue.

The bottom line is that states in the region that do not overcome their cultures of lawlessness pose a serious risk to our own national security. We must fully understand this and recognize that the region's problems are not someone else's problem. They are our problems as well, and we have a responsibility to help.

We need to encourage countries that have been slow to act to embrace reform, and in those countries that have recently reformed their judicial systems, we need to be prepared to provide proper training and technical expertise to see that those reforms live up to the promise of their potential.

Failure cannot be an option. In closing, I want to thank all of our distinguished witnesses for joining us today. I look forward to their perspectives on these issues and their suggestions for where we go from here. I also want to thank my good buddy and Ranking Member, Bob Menendez, and his staff for their typically excellent support in helping the Subcommittee prepare for this hearing. I now recognize Mr. Menendez for his opening statement.

[The prepared statement of Mr. Burton follows:]

PREPARED STATEMENT OF THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

In the last four months we have held oversight hearings on democratization in the Western Hemisphere, trade agreements, the growing threat of crime and gangs, the rising influence of China, and the deplorable human rights conditions in Cuba. Today, the Subcommittee intends to continue our broad overview of affairs in the hemisphere by examining the state of justice sector reforms, government transparency and the rule of law in Latin America.

One of the lynchpins of a democratic state is a transparent and impartial legal system, and guarantees that all people regardless of race, creed, or social status will have access to it.

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Conversely, where there are weak legal institutions we see higher levels of crime, less respect for human rights, higher levels of corruption, and other systemic abuses of power. Furthermore, in these countries we are more likely to see citizens take to the streets, and resort to violence to mete out justice or bypass constitutional mechanisms.

We have most recently seen examples of this type of mob-justice in Guatemala, Ecuador and Bolivia.

In countries where there is institutionalized respect for the rule of law, we are less likely to see extrajudicial killings and other abuses by police and security forces. We are less likely to see discrimination against minorities, forced labor, exploitation and trafficking in women and children. Among other countries in Latin America, Argentina, Bolivia, Brazil, Ecuador, Colombia, and Honduras are cited in the State Department Annual Report on Human Rights for their problems in these areas.

Perhaps the most glaring example of lawlessness in the entire hemisphere may be Haiti—the hemisphere’s poorest nation which has been chronically plagued by violence and political instability. After the ouster of the corrupt Aristide government in February 2004, I had high hopes that the United Nation’s Stabilization Mission could finally turn this country around. Regrettably, this may not happen as we are starting to see signs that Haiti is once again slipping backwards into violence as U.N. forces increasingly contend with growing security challenges.

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During our Gangs and Crime hearing last month the Subcommittee heard testimony indicating that crime rates in Latin America are among the highest in the world, and there are regions throughout the hemisphere where homicide rates are as much as three times higher than the average urban rate.

The Inter-American Development Bank estimates that Latin America’s per capita Gross Domestic Product could be twenty-five percent higher if the region’s crime rates simply paralleled other parts of the world.

These high crime rates have shaken many Latin Americans’ trust in their governments and their law enforcement institutions make them question the value of democracy in general. A UNDP report released last year revealed that a bare 43 percent of Latin Americans fully support democracy.

Other polling data suggests that Latin Americans have “little” or “no” confidence in their executive, judiciary, legislature, political parties, armed forces or police.

Additional studies conducted by the World Bank and the Center for Strategic and International Studies further support the notion that a corrupt or inefficient justice sector can slow economic development, undermine the strength and credibility of democratic institutions, and erode the social capital necessary for development.

The message is clear, so long as governments are perceived as unable to deliver basic services such as public security; the public’s faith in democracy is under threat.

To make matters worse, there are signs that a few governments in the region are not just failing to move forward with reforms but are in fact beginning to move backwards towards totalitarian or authoritarian rule.

The news is not all bad though; dissatisfied with the status quo, civil society leaders in Mexico, Colombia, Peru, and El Salvador are mobilizing to hold their governments accountable and push for justice reform and adopting new methods of policing their communities. Networks of national and regional civil society organizations work to better inform the public about the importance of establishing “cultures of lawfulness.” Collaborative efforts have begun to develop across borders in order to formulate regional approaches to justice reform. I look forward to hearing from our witness from INL today regarding one such approach, the establishment of an International Law Enforcement Academy (ILEA) in the region. The increased inter-governmental cooperation in security and law enforcement embodied in the ILEA proposal is in my opinion a concept and commitment that is long overdue.

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We need to encourage countries that have been slow to act to embrace reform, and in those countries that have recently reformed their judicial systems, we need to be prepared to provide proper training and technical expertise to see that those reforms live up to the promise of their potential. Failure can not be an option.

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Mr. MENENDEZ. Thank you, Mr. Chairman. I sure appreciate your kind remarks, and I want to thank you for holding this hearing, something that we advocated for, and that you are more than willing to accommodate us on, because I think that it is an essential element of our success hemispherically.

And I am glad that we are doing it in the backdrop of having seen, as we begin this hearing on the rule of law in the hemisphere, that we have seen the rule of law preserved in the United States Senate.

It is very difficult to be an advocate throughout the hemisphere and preserving the rule of law and not changing the rules arbitrarily, when you don’t do that at home. So, it is a good backdrop to begin this hearing.

Again, I want to thank you for holding this important hearing at a time in which the stability and future of the countries of our hemisphere hinge on their collective respect for the rule of law.

Today’s hearing is not only about a system of just and transparent laws, functioning law enforcement mechanism, and independent judiciaries. In my mind, it is also about corruption, and human rights, and crime, and trade, and development, and democracy.

The rule of law defines the standards and behavior of various critical institutions within a country, and the rule of law affects literally every member of society, from average citizens, to business and governmental leaders.

The region has made progress over the past two decades in areas such as justice reforms, election transparency and human rights, but our hemisphere still faces significant challenges, and I am concerned that it is the lack of the rule of law that is impacting the life of every individual.

Widespread corruption has long been a serious challenge in the region. A string of political leaders, both past and present, are implicated in charges relating to corruption, misuse of public funds, or illegal electoral maneuvers. In fact, corruption is not only lim-

ited to public high office, but it is also a part of everyday life. For example, in Mexico, nearly 10 percent of the requests for public services, as simple as connecting electricity to a house or changing vehicle ownership, involve bribes.

Latin America has become the notorious poster child for crime and violence, where crime rates are more than twice the world average. Deficient and ineffective law enforcement leaves Latin Americans feeling vulnerable and helpless, and weak criminal justice systems literally let people get away with murder.

For example, in Mexico, a staggering 96 percent of crimes went unpunished between 1996 and 2003. It is therefore not surprising that an average of only 26 percent of Latin Americans surveyed expressed confidence in the legal system.

I am also concerned that politicians in some countries are destroying the judicial system from the top down by dismissing the Supreme Courts and stacking them with judges from their own party in order to consolidate power.

And the disregard for the rule of law is taking an enormous toll in the overall development and growth of the hemisphere. By one estimate, corruption accounts for the loss of 10 percent of the region's GDP every year. The failure of public institutions to guarantee transparency, commit to fair business regulations, and protect contractual and property rights helps explain why Latin America still lags behind other regions in attracting foreign investments.

Mr. Chairman, as you know from some of our previous hearings, in my own case, I have a series of New Jersey companies that have brought their cases to my attention that I think speak volumes of the difficulties that are taking place in a whole host of these countries.

In one case, we are talking about \$30 million, and in another case, \$10 million. Actions by governmental entities—in some cases, I believe, corrupt—that are in essence arbitrarily and capriciously changing taxing standards.

In other cases judgments are received in the country in which the dispute takes place, following what is supposed to be the rule of law in that country, and then not being able to have such a judgment enforced within the country. The consequences of that are enormous, not only to American companies, but to the message that those countries in Latin America send about the lack of transparency, about the lack of a judicial system in which your contracts and investments can ultimately be preserved.

If you are on the right of the side of which you are litigating, but then can have no guarantee and no faith that such litigation—even when the court rules in your favor—can ultimately be sustained, this is clearly a business culture that lacks transparency and shuns legal conventions, and jeopardizes the ability of Latin American companies to compete in the global market. At the same time, it also negatively impacts American firms doing business in the region who may be subject to capricious changes in contracts or other agreements.

Therefore, the rule of law is a core and cross-cutting issue affecting democracy, investment climate, economic growth, crime, and other issues. Addressing problems with the rule of law must be at the core of our policy toward Latin America.

Finally, as I have mentioned many times before, the Administration proposed cutting the development assistance account by 12.4 percent in Fiscal Year 2006, and proposed a smaller cut for Economic Support Funds. Since our governance programs are funded through ESF and DA, I hope that our witnesses will address how the rule of law programs will be maintained in the context of these cuts.

But our funds will make little difference unless people are willing to use political will to change corrupt systems. The GAO, in a 2003 report, related to six Latin American countries, raised concerns that governance programs may not be sustainable because local governments are either unwilling or unable to invest in them and continue them.

That same report also found that USAID, the Department of Justice, and the Department of State are not coordinating effectively on these programs. I hope that our witnesses today will give us an update on how coordination has improved since that report.

It is in our national interest and our national security interest to support the rule of law in Latin America and in the Caribbean. With these programs, we are not only protecting the interests of American investors. We are protecting democracy, human rights, trade and economic growth, and we are protecting and improving the lives of the people of the Americas. Again, Mr. Chairman, thank you for holding this hearing.

Mr. BURTON. Thank you, Mr. Menendez. And now our illustrious Vice Chairman, Mr. Weller.

Mr. WELLER. Well, thank you, Mr. Chairman. I want to thank you for your leadership in conducting this important hearing today, and of course express my gratitude to the two panels. Rule of law is at the heart of political and economic development, and the two are more closely linked than ever.

As we examined in a previous hearing, Latin America has made great strides in democracy, but a weak rule of law and transparency in many countries is impairing the solidification of democratic gains. Further, there is a direct correlation between corruption, rule of law, and economic growth. We have a historic opportunity before us to begin to reverse some of these trends through the Dominican Republic-Central American Free Trade Agreement, and the Millennium Challenge Account (DR-CAFTA).

DR-CAFTA is a state-of-the-art agreement that encompasses broad economic reforms. The agreement ensures greater transparency and decision-making, opens contracting, and will help to build trust in democratic governments and institutions by applying a rules-based, even-handed system in commerce.

As I have said before, the Dominican Republic-Central American Free Trade Agreement will not solve each and every problem. Trade agreements do not do this, but it is a good measure for improving economic opportunity in the region of Central America and the Caribbean, as well as here at home in the United States.

And, of course, we recognize that our friends in Latin America need continued commercial investment. The Millennium Challenge Account is President Bush's initiative to link U.S. assistance to a country's willingness to move in the right direction. Countries that

root out corruption, respect human rights, and adhere to the rule of law will be eligible for Millennium Challenge Account assistance.

This is an important way that the United States can and should be strengthening the rule of law in Latin America. I want to salute Honduras on achieving the status of the first country in the Western Hemisphere being awarded a \$215 million grant under the MCA.

Mr. Chairman, the rule of law in Latin America is important and must continue to partner with our Latin American friends to assist in their efforts to build strong democracies and sustain the rule of law. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Weller, and now my very dear friend, who looks like he has finally awakened from our trip, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman. I am deeply interested in today's discussion about transparency and the rule of law in Latin America. For many reasons, this can be viewed as a time of promise for Latin America. The end of many military dictatorships in the Western Hemisphere during the 1970s and 1980s is one of the most important developments as we move into the 21st century. And since the 1990s, fewer countries have experienced governmental changes by overt government and military intervention. However, one of the things that I have got to throw in here, and I want to make sure that as we promote democracy in South and Central America that we make sure that we, as a government, can do so from the appropriate moral platform. For if we are candid, we will have to admit that the United States has not always had a positive hand in supporting the rule of law and democracy in the hemisphere.

What am I talking about? Well, I am talking about what took place in Venezuela in 2002, where the Administration deviated from its stance as an authority and supporter of the democratic process by supporting the formation of an unconstitutional ad hoc government enabled by the military.

This and other such examples of U.S. support of the interruption of the democratic process is a blow to the United States authority as a country committed to democracy. That, coupled with the Administration's initial hesitation to call on the OAS to prevent an interruption of the democratic process in Venezuela, undermine the strength of that organization's democratic charter.

I am not certain that we have the moral authority, and that is what my concern is. And when we talk to these leaders, I want to make sure that we can go and have the moral authority and the reason to say that we are the purveyors of democracy and the rule of law.

Saying that, however, does not mean that we cannot, in my opinion, make our stance and truly as a world superpower behave like one and help forge the democracies in South and Central America.

Let me just say this. I am deeply interested as I started out in talking about and speaking about corruption today, and what can be done to stop it. However, I don't know how we can begin to have a serious conversation on the topic when it comes to Venezuela, or any other country, unless we discontinue the practice of intertwining personal feelings about a country with the facts.

And I think in reviewing the testimony of one of the witnesses today, it seems as though there are personal feelings that are involved there, and I think we have got to move on from that.

Now, what are the facts? The facts are that the consolidation of democracy and anti-corruption efforts are being tested in the Western Hemisphere right now. Those who suffer in extreme poverty, and do not see the benefits of emerging markets, right now are asking the question, does democracy mean anything for me?

Throughout the hemisphere, over 40 percent of the population lives in poverty. That reality makes it difficult for democratic institutions to thrive as a large percentage of citizens feel marginalized from the political mainstream.

It is imperative that we not squander the opportunity to continue the trend toward democracy in Latin America, and that could only happen if we begin to alleviate the pain, the suffering, and the poverty that those that are on the bottom rung in these countries begin to feel that democracy means something to them.

We all know of the recent survey that was done there, where some folks said they would take another dictatorship if it means that their lives would be better. We have got to begin, when we are talk about democracy, including in that democracy, whether it is DR-CAFTA, or any other trade legislation, or trade bill, or any legislation that we are going to do, to include a systematic program where we are going to show that we are going to help those who are on the bottom to participate and to enjoy this thing that we all know is great here in America called democracy.

Mr. BURTON. Thank you, Mr. Meeks. After spending time with you, I know how sincere you are about your concerns, and I appreciate those. Mr. Mack, our new and good looking young Member.

Mr. MACK. Thank you, Mr. Chairman. I want to thank you for having this important meeting, and I would also like to thank the witnesses for sharing their insight with us today. Mr. Chairman, there is a growing and gathering storm that is brewing in our backyard in Latin America.

President Hugo Chavez, together with the likes of Cuba's Fidel Castro, is spewing a populist, leftist, and strongly anti-American brand of politics that is spreading throughout the region.

Chavez was democratically elected in 1999. However, in the years since he has taken office, he has taken deliberate steps toward moving away from the principles that he ran on, and toward carrying out his revolution as an alternative to American capitalism.

Chavez, with the ideological, tactical, and strategic assistance of Castro, and the use of virtually unlimited resources from oil sales, has consolidated power, steadily eliminated or intimidated his opposition, and imposed a strong man's rule wrapped in the trappings of democracy.

I believe that Chavez is a threat to anyone who believes in democracy and liberty. Mr. Chairman, make no mistake, Chavez is trying to increase his influence in the neighboring countries, as well as elsewhere in the world. There are growing reports that Chavez is actively supporting leftist movements in Colombia and Bolivia.

Additionally, his close ties to Castro are well known and should be a concern for anyone who believes in the ideas of freedom, security, and prosperity. I think in today's hearing what is of interest also is what he has done with the Supreme Court in Venezuela, by expanding the number of judges and appointing his cronies to serve on that court. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Mack. We will now go to our witnesses. Both of our first panelists have testified before the Subcommittee before. Mr. Adolfo Franco, he is the Assistant Administrator for Latin America and the Caribbean at the U.S. Agency for International Development. He was sworn in on January 31, 2002, and before joining the USAID, he served as Counsel to the Majority on the International Relations Committee, and that is this Committee, and we appreciate his background. Obviously, he is very intelligent, or he wouldn't have been on this Committee, and I look forward to your testimony.

We also welcome back Jonathan Farrar, Deputy Assistant Secretary for International Narcotics and Law Enforcement at the U.S. Department of State. Mr. Farrar joined the State Department in 1980 as an economic officer and career member of the senior foreign service. He has extensive experience in Latin America with overseas assignments at the United States Embassies in Mexico, Belize, Paraguay, and Uruguay, and I look forward to your testimony as well.

Would you both rise and be sworn?

[The witnesses were sworn.]

Mr. BURTON. Mr. Franco, we will start with you, and if you could keep your remarks, as you know, close to 5 minutes, we would really appreciate that.

Mr. FRANCO. I will try very hard, Mr. Chairman.

Mr. BURTON. Thank you, sir. If you go beyond that much, we will stick with you, but if you are too long, we will put the rest in the record.

Mr. FRANCO. Very good.

Mr. BURTON. Thank you.

TESTIMONY OF THE HONORABLE ADOLFO A. FRANCO, ASSISTANT ADMINISTRATOR, BUREAU OF LATIN AMERICA AND THE CARIBBEAN, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. FRANCO. Thank you, sir. Mr. Chairman and Members of the Subcommittee, it is a pleasure to appear before you once again, and if you would indulge me for one moment, Mr. Chairman. I do want to thank you and Ranking Member Menendez for holding the many hearings that you have been holding on the situation in Latin America.

The work of the Committee, I think, has been wonderful, and it is of great assistance to us in the Executive Branch. And the level of activity on very important subjects is greatly appreciated. I wanted to thank you for that.

I also have great admiration for Vice Chairman Weller. I have traveled with Mr. Meeks to Venezuela. And I don't know Mr. Mack well, but I fully agree with his views on Venezuela. I am sorry to say that, Mr. Meeks.

So I want to thank you very much for that, and I am also delighted that on the second panel former Assistant Secretary Otto Reich—Ambassador Reich—is testifying, because much of the progress of the last 2 or 3 years in this area has been due to his leadership. We worked very closely together, and his commitment to take very, very tough actions, which he will talk about, is helping to ensure that the rule of law is respected in the region.

We have discussed previously the state of democracy in the Western Hemisphere, rising crime rates, gang violence, Plan Colombia, and today you are discussing transparency and rule of law, and governance in Latin America.

I fully concur with what all the Members have said. It is a linchpin to all of our programs. Our experience in development and in promoting free trade, economic growth, all the things that we have focused on, addressing human rights . . . I can't imagine us being able to be successful in these efforts without the rule of law.

The Latin America that we know today is largely democratic, as the Members of Congress have noted. Civilian governments have replaced military rule in nearly every country in the hemisphere.

As democracy has taken root, human rights violations have drastically been reduced and governments have taken actions to promote peace and reconciliation. Mr. Chairman, rule of law and intolerance for corruption have become central in many party platforms across the region, and governments are increasingly promoting initiatives to increase transparency, such as freedom for information legislation and the creation of an Ombudsman Office to monitor corruption challenges.

Governments are finally and happily showing the will to aggressively prosecute wrongdoing, although much more needs to be done. Although democracy has taken hold across our region, elected governments alone cannot guarantee good governance. That is because they remain fragile democracies. We are indeed, as Members have noted, witnessing worrisome trends, each of which is linked to poor governance. These linkages, or these weaknesses, could very well unravel the democratic gains of the past two decades. These trends include high crime rates, persistent corruption in government, and institutional weaknesses that reduce transparency and accountability, and an increasingly public distrust of fundamental democratic institutions as noted by Congressman Meeks.

And these fundamental democratic institutions include political parties, the justice system, legislators, and most importantly the police. That is why USAID continues to be engaged in a number of efforts to strengthen the rule of law to promote the justice sector and legal reforms in the region, and to increase transparency and accountability in Latin America.

President Bush has been firm in his commitment to strengthen democracy in our region as evidenced by a steady increase in funding for democracy assistance since he came into office. In 2001, USAID received approximately \$106 million for programs focused on building democracy and governance, promoting human rights, and mitigating conflict.

In 2005, we received approximately \$271 million to do the same. This is from all spigots. These sums demonstrate President Bush's and our Administrator's, Andrew Natsios, understanding that de-

mocracy building is a long-term process that does not end with elections.

As the President stated in a speech at the International Republican Institute last week, and I quote:

“When people risk everything to vote, it can raise expectations that their lives will improve immediately. But history teaches that the path to a free society is long and not always smooth.”

And that is exactly what we are experiencing in our region. With USAID support the region has progressed on many fronts. Since the 1980s, USAID has supported the creation of and the strengthening of justice sector institutions, including prosecutors, constitutional courts, judicial councils, and human rights ombudsmen.

We have supported the transition most importantly to a modern oral criminal trial in 12 countries, thereby setting the stage for long-awaited elimination of the much abused, non-transparent, all-paper systems.

USAID has trained thousands of judges, prosecutors, litigators, law professors, and community activists to ensure a smooth transition to democracy. I will be brief, Mr. Chairman, because my time has expired, but I wanted to just close by stating something that you noted, Mr. Chairman, in your opening remarks.

These pockets of lawlessness are serious. The crime rates in Latin America pose not only a threat to the stability and democracy in the region, but also to our own national security.

As you have heard in previous hearings, many of the gangs and much of the crime in our country is linked to lawlessness, and a lack of access to the judicial system in our country. We remain committed to working with the Committee and with Members of Congress to address these pressing problems.

We are increasingly putting additional resources into these efforts, but it will be a long term process. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Franco follows:]

PREPARED STATEMENT OF THE HONORABLE ADOLFO A. FRANCO, ASSISTANT ADMINISTRATOR, BUREAU OF LATIN AMERICA AND THE CARIBBEAN, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. Chairman, thank you for the opportunity to appear before the Subcommittee on the Western Hemisphere of the House International Relations Committee. I have had the privilege to appear before you on a number of occasions over the past weeks, where I have discussed with you such issues as the state of democracy in the Western Hemisphere, rising crime and gang violence in Latin America and, most recently, key accomplishments related to Plan Colombia. Today, I will be discussing the related and equally important issues of transparency, rule of law, and governance in Latin America.

Last week, the elected Presidents of Central America and the Dominican Republic met with President Bush to discuss the state of play of the Central America-Dominican Republic Free Trade Agreement. They said that the overriding benefit of CAFTA, even beyond its value in promoting economic growth and generating employment, is that it will strengthen democracy. They are right. The link between economic prosperity and democracy is becoming increasingly irrefutable. CAFTA-DR is teaching us that trade, democracy, and development are all means to the same end—freedom, security, and prosperity. We at USAID recognize this in all of our efforts to promote democratic consolidation and economic growth throughout Latin America and the Caribbean.

In 2001, when USAID Administrator Natsios took office, he commissioned a report entitled *Foreign Aid in the National Interest*. The key message of that report

was the importance of mainstreaming development into the national foreign policy process. The report's findings supported the vision laid out in the National Security Strategy of the United States, published in September 2002, which served as President Bush's vehicle for announcing his determination to help build strong democracies throughout the world. This has been a core task of USAID since its inception at the time of the Marshall Plan. Indeed, much of USAID's experience in implementing large scale democracy strengthening programs commenced in Latin America in the early 1980s and focused on addressing large-scale human rights abuses perpetrated under the notorious Central American dictatorships.

I. FROM DESPOTISM TO DEMOCRACY—LATIN AMERICA HAS COME A LONG WAY

In the early 1990s, Latin America emerged from two decades of authoritarian rule, violent civil strife, and widespread human rights violations. The Latin America we know today is largely democratic as civilian governments have replaced military rule in nearly every country in the hemisphere. Indeed, many countries have now witnessed several generations of free and fair elections. As democracy has taken root, human rights violations have been drastically reduced and governments have taken actions to promote peace and reconciliation. Latin America has also witnessed an expansion of decentralization with central governments beginning to share power and responsibility with local governments. This has created new spaces of political participation for historically excluded populations and improved local governments' capacity to deliver on the promises of democracy.

The attitudes of governments in the region have also significantly evolved over the last fifteen years and political will to address these vital, but sensitive, subjects is on the rise. Rule of law and corruption have become central in political party platforms across the region, and governments are increasingly promoting initiatives to increase transparency, such as freedom of information legislation and the creation of ombudsman offices to monitor corruption allegations. "Corruption" is no longer an unmentionable word in the hallways of Latin American government, as it was just fifteen years ago, and governments are finally showing the will to aggressively prosecute official wrongdoing.

II. POOR GOVERNANCE IS THE BANE OF DEVELOPMENT

Although democracy has taken hold across most of the region, Latin America is conveying a clear message that democracy and good governance are not one and the same. I should note here that the term *governance* encompasses the capacity of the state to deliver public services, the commitment to the public good, the rule of law, and the degree of transparency and accountability. Elected governments alone do not guarantee good governance. Although Latin America has made real progress toward democratic consolidation in the past decades, we are seeing some very worrisome trends—each of which is linked to poor governance—that could very well unravel many of these democratic gains.

First, Latin America is one of the most violent regions in the world, with crime rates more than double the world average. High levels of crime are not only creating instability in many countries—they are also reducing overall productivity and discouraging investment flows. As I mentioned to the Subcommittee on April 20, in my testimony on Crime and Gang Violence, Latin America is caught in a vicious circle, where economic growth is thwarted by high crime rates and where a lack of economic opportunity, in turn, is contributing to a rise in crime. The large numbers of youth without realistic expectations of employment are fueling a growing problem of gang violence in Central America, Mexico, Jamaica, and Colombia. In addition, Latin America is contending with a number of other debilitating threats including organized crime, narco-trafficking, money laundering, and trafficking in persons. It is important to note that such illicit activities flourish where the rule of law is weak, corruption is rife and public institutions lack accountability and oversight.

A second key trend that is compromising development efforts is corruption. Corruption destroys citizen trust in government and undermines government legitimacy. Corruption exacerbates poverty, deters foreign investment, stifles economic growth and sustainable development, and undermines legal and judicial systems. The World Bank estimates that corruption and weak rule of law reduce annual growth by as much as fifteen percent. By diverting or misallocating government resources, corruption prevents public services from reaching those most in need of them.

Public sector corruption is, above all else, a symptom of failing governance. In Latin America, there are a number of drivers that are fueling corruption, all of which are linked to weak institutions and the absence of good governance structures. This third trend of persistently weak institutions is compromising govern-

ments' ability to deliver services to their constituents. For example, the civil services in many countries are still in transition after having undergone a series of reforms, and are thus characterized by weak accountability, low levels of transparency, and inefficiency. These conditions often give rise to a structure of incentives that is conducive to corrupt behavior. In addition, cumbersome legislation, bogged down with ill-defined and overlapping roles and responsibilities of various government offices, increases the discretionary power of public officials. When this discretion is coupled with lack of oversight and accountability, the opportunities for corruption further expand. We also know that corruption thrives where the rule of law is weakly embedded and where justice is partial. One study found that 96 percent of crimes in Mexico went unpunished between 1996 and 2003. Throughout Latin America, we find that laws apply to some but not to others, and laws that are enforced not in the name of the public interest, but to advance individual interests.

III. WANING PUBLIC FAITH IN DEMOCRACIES THAT AREN'T DELIVERING

The relatively young democracies of Latin America are struggling with governance challenges that are eroding government legitimacy and stability which brings us to the fourth disturbing trend that is characterizing the region—undermined public support for democracy. According to one United Nations study, only roughly 43 percent of Latin Americans are “fully supportive” of democracy. Last year, USAID-funded public surveys on attitudes toward democracy revealed some very worrisome findings. The surveys revealed that, as citizens become increasingly frustrated with rising levels of crime, soaring corruption, and poor service delivery, they are losing their faith in democracy and democratic institutions. Even more troubling, the least trusted democratic institutions in Latin America are also among the most important institutions in a democracy—political parties, the justice system, legislatures, and the police.

IV. POOR GOVERNANCE STRAINS ALL DEVELOPMENT EFFORTS

When governance and rule of law are weak, all efforts to promote democratic development suffer. The rule of law is an essential underpinning of democracy and a market economy. It establishes and protects legitimate democratic authority, safeguards human rights and civil liberties, provides a venue for dispute resolution, and is a necessary check against the abuses of executive power. Good governance and rule of law are critical to every sector in which USAID works, including economic growth, health, education, and the environment.

For example, efforts to reduce poverty and promote free trade and economic growth cannot compete with the offspring of bad governance, which include poorly defined property rights, high transaction costs and economic risks, corruption, and greatly reduced domestic and foreign investment. A prerequisite for trade integration is a rule-based system where contracts are honored, where governments provide the legal infrastructure needed for transparent enforcement, and where information can be exchanged openly and freely. Former Secretary of State Colin Powell accurately zeroed in on the problem when he remarked that “Private capital is a coward, a chicken. It flees from corruption and bad policies. It doesn't want to go where there's a conflict. It doesn't want to go where there's corruption.”

In the health sector, we see the same trends affecting governments' ability to deliver much needed health services. A World Bank study last year concluded that even a very modest improvement in corruption levels results in a 29 percent decrease in infant mortality rates and a 52 percent increase in satisfaction among recipients of public health care. The same holds true for the education and environment sectors. In the education sector, expenditure leakages and bribes for services have been shown to eat up upwards of 50 percent of national education budgets. In the environmental arena, corruption in the extractive industries, such as forestry, mining, natural gas, and oil, is particularly destructive, not only due to the large sums of money typically involved, but also because of the long-term devastation that such activities can pose to a country's natural resource reserve if proper safeguards are not institutionalized.

V. USAID PROGRAMS

The United States continues to be Latin America's largest donor. President Bush has been firm in his commitment to the strengthening of democracy in our region, as evidenced by the steady increase in funding for democracy assistance since he came into office. In FY 2001, USAID's budget for building democracy, strengthening governance, promoting human rights, and addressing conflict in the Latin America and Caribbean region was approximately \$106 million. This year, FY 2005, the USAID budget for the same activities is approximately \$271 million. These numbers

demonstrate President Bush's and Administrator Natsios' understanding that democracy-building is a long-term process that does not end with elections. As the President stated in a speech at the International Republican Institute last week, "When people risk everything to vote, it can raise expectations that their lives will improve immediately—but history teaches that the path to a free society is long and not always smooth."

USAID continues to be engaged in a number of efforts to strengthen the rule of law, promote justice sector and legal reform, and increase transparency and accountability in Latin America. In fact, justice sector modernization remains the largest focus of USAID governance programs in the region. Rule of law and justice reform initiatives are undertaken as part of democracy promotion programs, with the goal of establishing democratic authority, protecting rights, exerting a check on other branches of government, and complementing efforts to build security in post-conflict situations. In addition, legal reform activities such as commercial code reform, development of tax law systems, intellectual property rights protection, and commercial dispute resolution, are undertaken to promote economic growth.

With USAID support, the region has progressed on a number of fronts towards increasingly modernized justice systems—specifically, the transition to oral, adversarial trials and a consolidation of the independence of the judiciary. In 1992, Guatemala became the first country in Latin America to comprehensively reform its Criminal Procedures Code. Eleven countries followed in Guatemala's footsteps, resulting in twelve countries that have adopted some form of modern accusatory, oral criminal proceedings. This set the stage for the long-awaited elimination of the much abused all-paper systems. As a result of these reforms, between 1982 and 2002, the incidence of pre-trial detention dramatically declined in many countries. In Mexico, for example, the level of pre-trial detention declined from 74 to 41 percent and, in Bolivia, from 90 to 36 percent. Oral criminal trials have also significantly reduced the length and cost of trials. In Bolivia, the length of trials dropped from an average of four years to four months, while the cost of trials decreased from an average of \$2,400 to \$400.

Since the 1980s, USAID has supported the creation of and strengthening of other justice sector institutions, including independent prosecutors, constitutional courts, judicial councils, and human rights ombudsmen. USAID has trained thousands of judges, prosecutors, litigators, law professors, and community activists to ensure a smooth transition to modern judicial systems. In Honduras and Bolivia, every criminal judge in both countries was trained on their newly adopted criminal procedures. USAID also works with national and regional civil society networks to improve citizens' roles in monitoring government functions to guarantee that government is serving the interests of its constituents, and to ensure that citizens have access to information that will help them understand and evaluate government decisions.

The National Security Strategy clearly identifies development as the third key tool, along with defense and diplomacy, for achieving national security. We have come to recognize that security is the foundation upon which all progress in development rests. USAID is increasingly working with police and the range of other actors in the security sector chain—including the judicial and legal systems, the military, and communities—to address pressing security challenges in the region. To do so, countries must overcome the legacy of police in many Latin American countries as law breakers rather than law enforcers. Community policing efforts in El Salvador, Jamaica, and Colombia are demonstrating that transforming the historically negative relationship between the police and the communities they serve into a collaborative relationship based on mutual trust, is not an unrealistic goal.

Here in the US, a common quip is that there are too many lawyers, too much law. However, in many other parts of the world, Latin America included, the opposite is often true. The issue is not too much law or too many rich lawyers, but too little access to law and often, not enough of it. Binding contracts and the courts that should justly and judiciously enforce them are often reserved for a small elite, while the majority of the country is left to deal with arbitrary action and decision. The challenge then is to increase the access and quality of justice for all citizens. In Guatemala, Colombia, and El Salvador, justice centers, justice houses, and alternative dispute resolution mediation centers are providing a variety of services to the poor, ranging from arbitration and witness protection to neighborhood dispute resolution and family violence response services. These justice centers and houses are not only increasing access to legal services, but also to other social services, and are making justice for the poor more swift and more effective.

USAID also supports the development of modern, computerized case-tracking systems to improve the administration of justice and reduce opportunities for corruption. In Guatemala, the number of lost files dropped from 1,000 in 1997 to 1 in 1999. Improvements in legal education and new merit-based selection systems are

ensuring that more and more judges and prosecutors are selected based on their merit, rather than personal connections.

The legitimacy of governments is derived from the governed. Only if governments are accountable to democratic oversight and bound by and respectful of the rule of law can governments claim to act on behalf of the people. It is this legitimacy which gives governments the capacity to implement successful anti-corruption reforms and generates support from society for these reforms. In January of this year, the Administrator highlighted the need to address corruption when he approved USAID's new Anti-Corruption Strategy. Using the strategy as our guide, we will do more to spotlight the dynamics of grand corruption—corruption that involves the most vested, economic and political elite in a country and generally the largest sums of money. This will involve tackling the very incentives structures that allow those to benefit from the status quo. We understand that this is no small task. We will work closely with our colleagues at the State Department and other agencies, and reformers in the countries where we work, to study the problem and develop new programs to deal with grand corruption that complement our ongoing efforts to address lower-level administrative corruption. We will also improve our understanding of how corruption affects the various sectors in which we work and design multi- and cross-sectoral programs to address it. Finally, we will support reformers with rapid response assistance, and stand behind diplomatic initiatives that raise anticorruption issues to the highest level. All of these efforts will help support United States leadership in combating corruption and building good governance across Latin America and the world.

VI. CONCLUSION

The *Foreign Aid in the National Interest* report that I mentioned early on in my testimony rightly states that, “no amount of resources transferred or infrastructure built can compensate for—or survive—bad governance. Predatory, corrupt, wasteful, abusive, tyrannical incompetent governance is the bane of development.” The President’s Millennium Challenge Account, or MCA, recognizes the fundamental correlation between governance and the effectiveness of development aid. Eligibility for MCA funds is contingent on, among other things, a government’s commitment to “ruling justly.” As President Bush stated, since “good government is an essential condition of development [the MCA] will reward nations that root out corruption, respect human rights, and adhere to the rule of law.” That is, a government must first demonstrate the political will and clear commitment to addressing corruption and improving governance in their country before they will be considered for MCA assistance. USAID will continue to work closely with the Millennium Challenge Corporation on the MCA “Threshold Program”—an MCA program currently administered by USAID that supports countries the MCC has determined to be on the threshold of MCA eligibility. Three countries in Latin America were among the first to achieve eligibility for MCA assistance—Bolivia, Honduras, and Nicaragua—and two have attained MCA threshold status—Guyana and Paraguay. I look forward to continue working with my fellow panelists and colleagues in the Department of State, Millennium Challenge Corporation, and other agencies to promote economic growth and democratic consolidation in the Americas.

Our partnership with Latin American governments to strengthen the rule of law and increase transparency and accountability is one of mutual benefit. It is clearly in the US Government’s interest to utilize our toolkit of diplomacy, defense, and development to counter the destabilizing effects that poor governance, corruption, and weak rule of law have on political and economic systems throughout Latin America, and the threats they pose to vital American interests. President Bush, during his meeting with the Presidents of Central America and the Dominican Republic, emphasized the benefits of continued cooperation with our neighbors in Latin America. He stated, “The United States was built on freedom, and the more we have of it in our backyard, the freer and safer and more prosperous all of the Americas will be.”

Working in partnership with Latin American governments, we can be true to the principles that President Bush and Secretary Rice have called essential to the health of all democracies—security, prosperity, and dignity. Working in partnership, we can honor the hundreds of thousands of Latin Americans that gave their lives in their struggle to leave a better, more democratic and just world behind for their children.

Mr. Chairman, this concludes my statement. I welcome any questions that you and other Members of the Subcommittee might have.

Mr. BURTON. Thank you, Mr. Franco. Mr. Farrar.

TESTIMONY OF MR. JONATHAN D. FARRAR, DEPUTY ASSISTANT SECRETARY, BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. FARRAR. Thank you very much, Mr. Chairman, Congressman Menendez, and other Distinguished Members of the Subcommittee. Thank you very much for this invitation to discuss one of the pillars of our foreign policy in the Americas, promoting democracy and the rule of law.

The INL Bureau has a three-prong strategy. First, to disrupt overseas production and trafficking of illicit drugs through counter-drug and anti-crime assistance.

Second, to establish economically-viable alternatives to illegal drug production, and to improve the quality of life for those who would otherwise be tempted into illegal activity.

And, third, to establish stable, criminal justice systems to strengthen international law enforcement and judicial effectiveness, while respecting human rights.

To confront these international challenges, the Department of State expanded INL's mandate back in 1993 from a narcotics focus to one that encompasses all aspects of international crime. Under this new mandate, our programs began to achieve a balance between near-term operations and longer-term institutional building.

Our programming includes sustainable alternative development, crime prevention and education, and drug abuse prevention and treatment programs. We now have a comprehensive range of bilateral, regional, and global assistance programs to foster cooperation among states and build up their law enforcement capacities.

INL remains committed to its core mission of protecting the United States from illicit drug and trafficking. Every country in the hemisphere is threatened by international drug trafficking organizations. Corruption, intimidation, and near limitless resources are subverting democratic institutions and the rule of law.

While this is more obvious in producing countries like Colombia or Peru, it also takes the form of an opportunistic virus in the transient countries of the Central Americas and the Caribbean, seeking to operate where justice sectors are vulnerable, and budgetary pressures have forced cutbacks.

In response, we have begun working on a transit zone strategy to address these threats. With the increase in crime related to narcotics comes the threat of narco-corruption and its potentially deleterious effects on law enforcement.

INL's efforts also support a broader strategic goal of preventing transnational criminals from using already established drug networks to smuggle other illegal goods and persons into the United States. Combined, our efforts can cast a wide net above the Andes to help keep drugs off our streets and out of the communities.

INL's training for police and other judicial sector officials varies across the 30 countries in which we work in Latin America and the Caribbean. Our focus is on modernization and professionalization.

Historically the majority of our training has been in the area of counternarcotics, and in fact, we work very closely with DEA in determining training needs for the counternarcotics police and to provide support to DEA specialized units.

We encourage subregional training as a way to promote cross-border law enforcement cooperation. It is a way to achieve a multiplier effect for our investment. However, our longstanding goal has been to create an International Law Enforcement Academy (ILEA) in Latin America, like those in Europe, Asia, and Africa.

In my May 11th testimony before this same Committee, I indicated that we would decide an ILEA site by the end of this month. I can confirm today that we are on track with that schedule and look forward to an announcement of our site choice around the time of the upcoming OAS general assembly meeting early next month in Fort Lauderdale.

A U.S. interagency survey team has traveled to the countries interested in hosting the academy, and has assessed potential sites. After the announcement of a site selection, we will begin negotiations on a bilateral agreement.

We have been pleased by the level of interest among governments to be the host, and hope that this high interest is a favorable indicator that the upcoming negotiations can be completed expeditiously.

And in the meantime, the site selection has not held up training. Our first ILEA course in Latin America on interagency coordination to prevent terrorist attacks was held in El Salvador last month.

On the bilateral front, we are providing a wide array of assistance in the Andean countries and Mexico in particular. I would like to touch just briefly on our programs in Colombia, Mexico, and Haiti.

In Colombia, our training is extensive, and includes counter-narcotics, anti-money laundering, forensics, evidence handling, port security, and many others. Under President Uribe's leadership, Colombia has used our support to make considerable progress. Two of the primary recipients of our training are the specialized units called the carabineros and the junglas, both of whom have played a key role in Colombia's counternarcotics successes of recent years.

Mexico is INL's second oldest program and remains one of our most important. We have funded training for law enforcement officials at many United States academies, including the FBI Academy. We also provide training, technical assistance, and equipment for border security, including safety and rescue.

Last year, our narcotics assistance section organized or financed over 120 courses for 6,000 Mexican law enforcement personnel. The Federal Investigations Agency in Mexico, or AFE, is one of our major successes, and has proven to be an effective law enforcement institution that enjoys trust among its United States counterparts. Like Colombia, political will has been the critical factor in the success of our efforts in Mexico. And important reform efforts have been accelerated under President Fox.

Finally, I would like to mention just briefly our programs in Haiti. In many ways our programs there could be a model for cooperation between INL and USAID. In Haiti, we are deeply involved in a broad based international effort to build up a criminal justice system from the ground up.

All three pillars of the criminal justice system there—police, judicial sector, and the prisons—are in desperate need of reconstruc-

tion, and our partners include the UN, the OAS, and especially USAID.

It would be difficult to understate the challenges that we face. INL and USAID last year developed an overall strategy for the justice sector in Haiti, and we have been working together ever since on this difficult task.

USAID has the lead in the justice sector reform program aimed at developing a functioning judiciary, and it includes prosecutors and judges. Meanwhile, our INL-funded civilian police are a key element of the UN CIVPOL program in Port-au-Prince and elsewhere to train and rebuild the Haitian National Police.

Our police advisory group, which is attached to our Embassy in Port-au-Prince, is fielding programs to recruit, train, and field new Haitian national police. And we also have an OAS vetting team to screen all potential recruits via oral or written exams, and background checks. And our police advisory group works very closely in trying to create new mechanisms for accountability among the police. As a result of the President's firm commitment to battle the international drug trade and advance the rule of law around the world, we have made progress.

By thinking longer term, we have seen positive results and a greater return on our foreign assistance investment. Thank you very much.

[The prepared statement of Mr. Farrar follows:]

PREPARED STATEMENT OF MR. JONATHAN D. FARRAR, DEPUTY ASSISTANT SECRETARY,
BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S.
DEPARTMENT OF STATE

Department of State Mission Statement—Create a more secure, democratic, and prosperous world for the benefit of the American people and the international community.

INL Mission Statement—Blunt the impact of international drug traffickers and other crime groups on the United States, American citizens, and U.S. friends and allies.

DRUG AND OTHER CRIME THREATS TO INTERNATIONAL SECURITY

Chairman Burton, Congressman Menendez, and other distinguished Members of the Subcommittee, the Department of State appreciates this invitation to discuss one of the pillars of its foreign policy in the Americas—promoting democracy and the rule of law. The Department's Mission Statement, in fact, calls on us to:

“create a more secure, democratic, and prosperous world for the benefit of the American people and the international community.”

The Bureau of International Narcotics and Law Enforcement Affairs (INL) is the State Department Bureau principally responsible for policy development and foreign assistance in the area of criminal justice, the key sector of any society that keeps “security” and “democracy” in balance. However, it is important to stress here that INL is only one of many players at the Department involved in rule of law and security issues. Likewise, these are key preoccupations for all of our embassies in the Americas.

I would like to mention in particular the very energetic efforts by Assistant Secretary Roger Noriega and the Bureau for Western Hemisphere Affairs (WHA) to promote rule of law, principles of anti-corruption, and a strong hemispheric approach to fighting narco-trafficking. WHA helps provide overall foreign policy direction for the region, and justice and security rank high in its foreign policy priorities. Also, WHA oversees the use of Economic Support Funds (ESF) for justice development and anti-corruption projects in the Americas. The U.S. Agency for International Development (USAID) and INL—the primary program implementers for this ESF funding—maintain close and effective coordination to ensure complementarities among our policies and programs and to avoid duplication.

The key thrusts of INL's hemispheric strategy is to work with our U.S. agency and international partners to:

- *Disrupt overseas production and trafficking of illicit drugs through counter-drug and anti-crime assistance and coordination with foreign nations and international organizations.* This includes striking directly at trafficking organizations by disrupting their operations, arresting and imprisoning their leaders, and seizing their assets while destroying illegal drugs at the source. We seek to blunt the impact of transnational crime on the United States by working with foreign governments, inter-governmental groups (e.g., G-8) and with international organizations (e.g., the United Nations and the Organization of American States) to set international standards, close off safe-havens to criminal groups, pool skills and resources, and improve cross-border cooperation.
- *Establish economically viable alternatives to illegal drug production and improve quality of life.* The enforcement and disruption efforts cannot succeed without the essential complement of helping to wean growers away from drug farming through alternative livelihoods.
- *Facilitate the establishment of stable criminal justice systems to strengthen international law enforcement and judicial effectiveness while respecting human rights, bolster cooperation in legal affairs and societal support for the rule of law.* Much of our work is aimed at helping partner governments to identify, investigate, and successfully prosecute criminals and criminal organizations. In addition to promoting "top-down" reform, we are also supporting grassroots-level initiatives to promote a "culture of lawfulness."

This last goal—the focus of today's discussion—is the necessary foundation for achieving success toward the first two.

OVERVIEW—LAW ENFORCEMENT TRENDS

The United States has long recognized that illicit drug trafficking and other forms of transnational organized crime pose serious threats to the security of the United States, as well as the security and stability of other countries or regions. Following September 11, 2001, international drug and crime threats began to be viewed in the context of broader security interests, including terrorism, as well as in relation to social, political and economic development.

Transnational criminal enterprises remain active in a wide range of activities that threaten US interests and US security—document forgery, alien smuggling, global firearms trafficking, money laundering, financial fraud and counterfeiting, high tech and computer crimes, many of which are also linked to terrorism facilitators.

Corruption is a threat to national security as it facilitates crime and terrorism, and undermines economic and democratic development. Drug trafficking and other forms of organized crime exploit weaknesses in criminal justice institutions in ways that undermine our interests and those of our partner nations. Police, being on the front line, are most vulnerable, but we have seen the same exploitation of prosecutors, judges, the military and even legislators—and in the private sector among bankers, lawyers, journalists and others. In recognition of the need to confront these international crime challenges in an integrated manner, the Foreign Assistance Act was amended in 1986 to add anti-crime authorities, beyond the existing authorities to fight international narcotics crimes.

Our predecessor office—the Bureau of International Narcotics Matters (INM) accomplished much in terms of mobilizing the Western Hemisphere to combat drug production and trafficking, but focusing solely on narcotics hindered us in addressing many of the deep-seated institutional problems that kept partner nation police forces from being effective in combating crime in all of its forms, including drug trafficking.

The "INM-to-INL" transformation involved an expansion of our topical interests to include financial crime and terrorist financing, arms trafficking, alien smuggling, cyber crime, and intellectual property rights theft. The change also included a reassessment of our whole approach to programs and training. More fundamentally, it also required us to do a reassessment of our longer-term interests. Those interests clearly indicated a need to concentrate on building capable institutions to complement near-term operations-driven programming. We also recognized the need for increased public engagement in improved law enforcement, anti-corruption and rule of law as a basis of democracy and as a deterrent to terrorism. Finally, the increasingly transnational nature of the problem militated in favor of multilateral engagement—regionally and internationally.

Under this expanded mandate, and with significantly increased funding approved by the U.S. Congress,¹ our programs began to achieve a balance between near-term operational support and longer-term institution-building, as well as emphasizing so-called “soft side” sustainable alternative development, crime prevention and education, and drug abuse prevention and treatment programs. INL now supports a comprehensive range of bilateral, regional, and global assistance programs that foster cooperation among states and build up their law enforcement and justice capacities.

Improving the professionalism of law enforcement and justice institutions is a key element in promoting economic, democratic and social development. Moreover, progress in those areas is critical to cleaning up the environments from which criminality, terrorism or other security challenges may arise.

Understanding the interplay between security and development is especially important regarding countries emerging from instability.

President Bush said in his foreword to the *National Security Strategy of the United States* that:

“The events of September 11, 2001 taught us that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states. . . . *Poverty, weak institutions, and corruption* can make weak states vulnerable to terrorist networks and drug cartels within their borders.”

Foreign investment is critical to economic growth and job creation. However, investors are not going to invest in areas plagued by crime and violence, or in areas where they cannot count on the (civil) justice system to function adequately to protect their business interests, patents and contract matters and so forth. The lower the integrity and capacity of the criminal justice system writ large, the lower the investment, and the lower job creation, which, in turn, can push the desperately poor or the frustrated young in the direction of criminal activity. We see this in continued widespread *campesino* involvement in drug crop cultivation in South America and Mexico and, as we are seeing now in Central America in particular, the rapid expansion of urban youth into street gangs.

USAID has similarly also broadened its longstanding programs for foreign law enforcement since 9/11 in the context of improving governance, including for countries which may be vulnerable to exploitation by terrorists. Administrator Franco will address this in his statement.

INL remains unwaveringly committed to its core missions of protecting the United States from illicit drug production and trafficking as well as other transnational crime. Every country in this Hemisphere is threatened by international drug trafficking organizations. Corruption and intimidation fueled by drug organizations’ substantial resources are subverting democratic institutions and the rule of law, undermining stability, distorting economic development, and even—in some cases—supporting terrorism. While this is more obvious in producing countries like Colombia or Peru, it also takes the form of an “opportunistic virus” in the “transit countries” in Mexico, Central America and the Caribbean—seeking to operate where justice sectors are vulnerable.

In response, INL has begun work on a transit zone strategy to address threats in these areas. With the increase in crime related to narcotics comes the threat of narco-corruption and its potentially nefarious effects on law enforcement, political, and business institutions. Adding to this challenge is the increasing threat in the region from organized street gangs.

In an effort to reinforce the anti-corruption program assistance and training we are providing to partner nations, the Administration is also making effective use of Section 212(f) of the Immigration and Nationality Act to revoke or refuse issuance of visas to foreign officials implicated in corruption. Recently two high-level politicians in Nicaragua fell under this section of the law as being ineligible for visas to the United States. The revocations sent a strong message to corrupt officials everywhere that such abuses of authority will not be tolerated.

As a result of these connections among drug and other crimes with instability, administration of justice and law enforcement reform programs must, in most cases, be conducted in tandem with a strong counternarcotics and anti-corruption efforts.

¹The U.S. Congress has approved an increase in funding from \$304M in FY 2000 to \$1.051B in 2005; INL also manages another \$1.817B from other accounts, such as for Iraq, Afghanistan, and other special programs.

INSTITUTION BUILDING

The challenge is to develop criminal justice programs that respond to the threats faced by partner nations. We also coordinate with programs administered by WHA, USAID, and law enforcement agencies.

Oversight of INL's international police programs in Latin America and the Caribbean is provided by Narcotics Affairs Section (NAS) Officers, other Embassy officers in the field, and U.S. law enforcement agencies.

INL's assistance for law enforcement and other judicial sector officials varies significantly among the 30 countries with which we work in Latin America and the Caribbean. The focus is on developing already-established police forces. Factors such as geography, level of development, host nation capacity, political will, drug trafficking and criminal threat levels help to determine the type and level of assistance provided.

Historically, the majority of INL law enforcement assistance has been in the area of counternarcotics. In fact, in most countries, INL works very closely with DEA and other agencies in determining training needs for the counternarcotics police in general and in providing support to specialized units. In recent years, we have begun to also focus on other law enforcement and justice areas—like counter-terrorism, money laundering, trafficking in persons, alien smuggling, and organized crime investigations—needed to confront the gamut of transnational crimes.

Potential participants in all U.S. training programs are vetted at the local level and in Washington, through the databases of the appropriate agencies and offices in compliance with relevant laws and regulations. This vetting is designed to detect human rights violators and individuals who have engaged in narcotrafficking.

In the most cases, INL uses a "train the trainer" approach to give the recipient country the capacity to provide some of this training in the future using their own resources. This force multiplier concept has been very successful in countries like Bolivia and Colombia, where we have invested significant amounts of resources in training over the years.

Clearly, we face challenges training police in some countries in which low education levels, cronyism and nepotism, poor leadership, and corruption are pervasive. Most INL training programs include an anti-corruption component and instruction on respect for human and civil rights.

Evaluating police training programs in countries with limited infrastructure, like Haiti, or in countries with significant internal violence, like Colombia, is a long-term process. It has often taken a decade to assess the success of such training programs. Frequently, police training programs are delivered in hazardous environments to address urgent needs. Such programs are designed to be as efficient as possible under the circumstances. As circumstances evolve, so do the INL programs.

All U.S. trainers are subject-matter experts, and the majority are certified trainers within their own organizations. In addition to active duty law enforcement personnel, INL uses retired law enforcement personnel with significant experience working in the region and in conducting training. Due to the security environment of many countries, INL often turns to Department of Defense (DoD) for specialized training for elite counternarcotics units.

In Guatemala, for example, the U.S. Special Forces conduct annual training for the Guatemalan narcotics police in such skills as entry and exit training and small unit tactics. In Colombia, U.S. Special Forces teams of the Colombian National Police's elite "*Jungla*" CN assault forces, and the CNP's Rural Mobil *Carabino* Squadrons that are featuring so prominently in President Uribe's ambitious Democratic Security program—and particularly his successful effort to bring GOC forces into all of Colombia's 1098 municipalities for the first time ever. To date, DoD trainers have trained all three "*Jungla*" Airmobile Interdiction companies and some 43 *Carabino* Rural Mobile Squadrons.

U.S. LAW ENFORCEMENT COOPERATION WITH LATIN AMERICA

ILEA: INL actively encourages hemispheric nations to participate in sub-regional training as a way to promote cross-border law enforcement cooperation. It is also a way to achieve a multiplier effect for our investment. Several of our programs—such as in Bolivia and Guatemala—include personnel from other countries in their training centers. However, our longstanding goal has been to create an International Law Enforcement Academy in Latin America, like those in Europe, Asia and Africa.

A U.S. interagency survey team has traveled to a number of countries that have expressed interest in hosting the new academy. The team has assessed potential sites based on the criteria used for the selection of other *ILEA* sites worldwide, and

the interagency ILEA Policy Board will make a determination based on this assessment.

In parallel with the site selection process, we have continued to make progress in developing a training program for the new ILEA. INL and other departments that participate in the ILEA program conducted an inter-governmental curriculum development conference in March in Panama.

Organization of American States: INL is also working through multilateral organizations such as the Organization of American States and the United Nations. In this hemisphere, we have collaborated with the OAS's drug commission (CICAD) and its terrorism committee (CICTE), as well as the annual Meeting of Ministers of Justice (REMJA), to promote model legislation, minimum standards, and best practices in all facets of counternarcotics. These standards have helped countries throughout the region to strengthen their domestic capacities to fight crime and to work with neighbor states. Hemispheric evaluation systems for anti-drug and anti-corruption efforts bring peer pressure to bear on countries to fully support their hemispheric anti-drug and anti-corruption alliances. It is working.

For example, the Multilateral Evaluation Mechanism (MEM) for anti-drug performance has encouraged governments to advance in compliance with international conventions, to establish essential control regimes, to institute drug abuse prevention and treatment. All OAS member states are now party to the 1988 UN Drug Convention, almost all have national anti-drug strategies, and most now have control regimes for money laundering.

Through the OAS, we have strengthened collaboration among governments to attack and dismantle the major drug cartels through a unified strategy. The *Anti-Drug Strategy in the Americas*, reinforced by the Multilateral Evaluation Mechanism (MEM) has achieved policy "buy in" by the rest of the hemisphere to shared responsibility and accountability. Working multilaterally, INL has encouraged the adoption of higher legal standards and promoted standardized and coordinated approaches to combating transnational threats such as money laundering and chemical diversion. There has also been a measurable expansion of drug abuse prevention and treatment throughout the region due to INL-funded OAS and UN efforts.

BILATERAL ASSISTANCE PROGRAMS:

The Andean region is the source of virtually all of the world's cocaine. Ninety percent of the cocaine and about half the heroin entering the U.S. is either produced in or passes through Colombia. Therefore, we provide a comprehensive package of assistance including: eradication of illegal drug crops; alternative development; training and material support for stronger law enforcement and criminal justice institutions; interdiction support; education and training from human rights to anti-money laundering; border security; culture of lawfulness (school-based and police); and drug prevention and treatment.

Colombia:

The US anti-drug strategy in Colombia is—through successful eradication and interdiction programs—undermining the narcotics industry, while also methodically and decisively extending democracy and strengthening security throughout Colombia by building up the democratic institutions that provide security and justice.

INL law enforcement training in Colombia is extensive and includes training in counternarcotics, anti-money laundering, forensics, evidence handling, port security, contraband detection, organized crime, bomb detection, asset forfeiture, human rights, anti-corruption, light unit tactics, pilot and mechanics training, and advanced investigations to name a few.

Training for prosecutors and judges is often funded by INL and provided by USAID or the U.S. Department of Justice. In 2004, a total of 10,727 prosecutors, judges and criminal investigators received intensive training to help move Colombia into its new accusatory system. This more efficient and transparent system is expected to be operating nationwide by 2008.

To enhance the rule of law, our projects have assisted the Government of Colombia in establishing 37 Justice Houses (*Casas de Justicia* in Spanish), which provides access to justice for poor Colombians. Make no mistake: this is not a small victory or goal—it is at the very heart, in our view, of sustainable progress and U.S. support. So far, these *Casas de Justicia* have handled almost three million cases, easing the burden on the over-taxed judicial system. Remarkably, USG initiatives have also established 35 new Oral Trial courtrooms and trained over 10,000 lawyers, judges and public defenders in oral legal procedures—similar to those in the U.S.—which are designed to reduce impunity, provide transparency, and accelerate the traditionally snail-paced judicial process.

INL has helped to establish police units in 158 new municipalities, many of which had not seen any government presence in decades. For the first time in the Colombian history, there is now a federal presence in all 1,098 of Colombia's municipalities. This is an enormous step forward for the people of Colombia and their democratically-elected government.

Colombia also invests significant amounts of its own funding in training. The National Police maintains its own professional education system administered by the police's instructional division. The two principal professional schools for members of the National Police are the General Santander Police Cadet School and the Jiménez de Quesada Noncommissioned Officers School, both located in Bogotá. INL provides extensive technical assistance to the police instructional division, particularly in the priority area of counternarcotics. The National Police also operates seven smaller schools throughout the country. These schools offer a five-month basic training course for recruits as well as in-service training; and courses on subjects as diverse as Colombian history, human rights, counternarcotics, and riot control. INL offers specialized training in all of these schools as needed.

Two of the primary recipients of INL funded police training are the *Carabineros* and the *Junglas*, both of whom have played a key role in Colombia's counternarcotics success of recent years. The *Carabineros* are 150-man, mobile rural police squadrons that have been instrumental in establishing public security and a government presence in Colombia, while also ensuring security for our aerial spray program. The *Junglas* are jungle commando units made up of about 166 commandos. There are currently three *Junglas* airmobile interdiction companies operating.

We must continue to build on the success of the Andean Counternarcotics Initiative. In Colombia, President Uribe has aggressively taken on the fight against illegal drug production and the narco-traffickers. The U.S.-supported spray program in Colombia has reduced coca cultivation by more than 30 percent since its historic peak three years ago. In 2004, Colombia's spray and manual eradication efforts resulted in the eradication of 135,000 hectares of coca and 3,000 hectares of heroin poppy. Increasing amounts of cocaine and heroin were seized. The number of murders and kidnappings sharply declined. Net production of cocaine continued to fall from 460 metric tons to 430 metric tons. Opium poppy production also continued to decline—down fifty percent over the past three years.

Under President Uribe's leadership, and with our support, Colombia has made considerable progress in combating drug traffickers, terrorists and the narcoterrorist organizations: the FARC, AUC and ELN.

As a result, the momentum is shifting toward stability, the rule of law and democracy. Continued U.S. support is critical to ensure that this momentum continues.

Bolivia:

Counternarcotics progress in Bolivia is being jeopardized by increasing cultivation in the volatile Yungas region and by the increasing transshipment of Peruvian and Colombian cocaine. Moreover, we are very concerned about serious challenges to Bolivia's stability from radical opposition groups that threaten the country's hard-won gains in democracy, economic development and the fight against drug trafficking.

The U.S. Embassy's Narcotics Affairs Section (NAS) works with the Government of Bolivia in operating the Law Enforcement Development Program (LEDP) for Bolivia's National Police (BNP). This program was recently expanded to include the training of counternarcotics police and prosecutors. It is also the principal channel for the NAS's anti-corruption and police/prosecutorial reform activities. The program's long-term goal is to establish long-term institutional stability within the BNP and the Attorney General's office through a variety of means, with a special focus on training police and prosecutorial personnel. It will also support USG-sponsored training of BNP officials in modern investigative techniques that may help lead to successful terrorism-related prosecutions.

The Program focuses on administrative and organizational development, improvement of criminal investigative capabilities and development of training resources and capabilities of both police and prosecutorial personnel. It has improved the quality of training programs provided through existing National Police entities, including comprehensive reform of the police education system.

The LEDP coordinates with United States Military Advisory Group and Drug Enforcement Agency (DEA) in the Embassy on training Bolivian security forces and with the United States Agency for International Development (USAID) regarding training for prosecutors. The LEDP training cycle starts with a basic course to create a common foundation for all actors (approximately 200 new police per year), then moves into more specialized treatment of topics tailored to the needs of the specific police or prosecutorial activity.

The *Garras del Valor* School is an academy for training counternarcotics police in such courses as: jungle survival skills, basic criminal investigation procedures, the Bolivian legal system, human rights, and advanced or refresher courses ranging from intelligence, information management to defensive driving and first aid skills. The *Garras* School also serves as a regional training center for counternarcotics police from other Latin American countries.

The Bolivian Navy Riverine unit—the Blue Devil Task Force (BDTF)—patrols the country's extensive river system to interdict drugs and drug processing precursor chemical trafficking. The BDTF also runs a riverine interdiction training school in Trinidad, Bolivia that is attended by students from other countries (most recently Panama).

Mexico:

Mexico is INL's second oldest program and remains one of its most important. It was primarily an eradication program until 1990 when a major air interdiction program was launched. After the Government of Mexico took over funding of its federal police aviation program in 1994, INL began to concentrate its resources on law enforcement training and institutional development. INL and our partner agencies focus on raising the standard of federal policing, along with the overall justice system.

Recognizing the need for progress toward longer-term reform goals, we shifted from traditional "cycles" of providing basic training year in and year out to short-term, operations-focused training. The Mexican Attorney General's office (PGR) training facilities seek to ensure that the newly-acquired skills and expertise are "institutionalized" and become a regular aspect of every new agent's or prosecutor's formation. Themes of integrity and accountability, and respect for civil and human rights, are woven throughout U.S.-provided training.

While the NAS' Law Enforcement Training and Professionalization program is primarily in support of the PGR and its sub-agencies, it has begun to provide training for state and local law enforcement through the regional academies operated by the Mexican National System of Public Security (SNSP), helping to improve domestic training capacity.

In addition, INL has funded training for Mexican law enforcement officials at many U.S. law enforcement academies such as the FBI Academy. INL provides training, technical assistance, and equipment for border security, including safety and rescue. The U.S. Department of Justice, with INL funds, provides training and technical assistance to specialized investigative units that target organized crime, narco-trafficking, and money laundering. INL organized or financed over 120 training courses to over 6,000 Mexican law enforcement personnel in 2004.

Mexico's Federal Investigations Agency (AFI) has proven to be a much more effective law enforcement institution than its predecessors, and is trusted by its U.S. counterparts. Working with Mexico's crime information center (CENAPI), AFI uses high-tech tools and analytical systems to work smarter against drug cartels, kidnapping rings, and other criminal organizations. The newly-established Mexican Office of the Special Prosecutor for Organized Crime (SIEDO) is beginning to make inroads against the drug cartels. In each of these cases, INL has assisted with major improvements in physical plant, equipment, training, and internal controls.

Political will has been the critical factor in the success of INL's program in Mexico. Important reform efforts were accelerated under Mexican President Fox. Seizing the opportunity, INL's field office began working more closely with strategic planners and others responsible for designing a better-functioning justice ministry. Extensive reforms of personnel systems, pay and benefit scales, and institution of checks and balances within law enforcement and justice institutions allowed the Fox Administration to avoid some of the mistakes of previous governments. U.S. technical assistance helped the PGR to raise minimum standards for investigators and police, establish more objective selection criteria, initiate background checks, create a civil service system with merit-based promotions, and to modernize training—making it more relevant to field personnel.

In Mexico, INL supported an innovative school-based crime prevention and rule of law program called the "Culture of Lawfulness." This program, sponsored by the US-based National Strategy Information Center, has been very successful in deglamorizing gang membership and drug use and promoting respect for law. The Government of Mexico plans to extend it nationwide.

Guatemala:

INL funds established the Regional Anti-Narcotics Training Center that primarily trains Guatemalans, but has also included students from 12 other Central and South American countries. Training includes a "boot camp" for the anti-narcotics po-

lice. This school is especially proficient in training narcotics and explosives detection dogs and their handlers. In 2004, INL took over the management of a model community policing project in Villanueva, Guatemala, a small city facing many challenges, including a serious youth gang problem.

The NAS has a resident DHS Customs Advisor who provides both basic and advanced contraband detection training to Guatemalan law enforcement officials. The advisor also provides this training in the other Central American countries. This training greatly improves the capacity of law enforcement to detect narcotics, illegal arms, and illegal aliens.

INL has invested significant funding for Guatemala over the last three years to provide anti-money laundering training. The U.S. Treasury Department has been one of the primary providers of this training, which was instrumental in convincing Guatemala to pass modern money laundering legislation and be removed from the Financial Action Task Force (FATF) list of non-complying countries for money laundering.

Honduras:

INL and WHA are partnering INCLE and ESF funding to implement a comprehensive criminal justice assistance program. A law enforcement development advisor works with the Ministry of Public Security's Frontier Police, and the project focuses on field training for this group of officers with authority for counternarcotics and border control operations. During the first year of operation, drug seizures in Honduras skyrocketed, with the Government seizing about six metric tons of cocaine—more than the previous five years combined. This year, the advisor will emphasize training in investigating high-level narcotics and money laundering cases.

Jamaica:

This is another example of INL-WHA partnership. ESF funding is used to support a Law Enforcement Development advisor who works with the Jamaican Police Commissioner on restructuring the Jamaica Constabulary Force. The advisor also coordinates with other donors on their police reform/modernization efforts, including the United Kingdom's police modernization project and USAID's community policing project. INL funds bring in professional U.S. trainers and provide specialized equipment.

Haiti:

In Haiti, INL is deeply involved in a broad-based international effort to build a criminal justice system from the ground up. All three pillars of the criminal justice system (police, judicial sector, and prisons) are in desperate need of reconstruction. Our partners in this international effort include the United Nations (MINUSTAH military and civilian police), the OAS, and USAID.

INL-provided civilian police are a key element of the UN CIVPOL program at work in Port-au-Prince, Cap Haitien, and elsewhere to train and re-build the Haitian National Police. Our Police Advisory Group, which is attached to our embassy in Port-au-Prince, is designing and implementing programs to recruit, train, and field new classes of Haitian National Police (HNP). An OAS vetting team screens new HNP recruits through written and oral exams. Our Police Advisory Group will also focus on helping the HNP and relevant ministries to create accountability measures.

INL and USAID last year developed an overall strategy for justice sector reform and are working together to move forward in this difficult task. USAID is leading a justice reform program aimed at developing a functioning judiciary that includes prosecutors and judges. It would be difficult to overstate the challenges that this reform effort faces. INL's programs complement USAID's program.

CROSS-CUTTING EFFORTS

Because many international criminal threats are transnational in nature, we have organized our responses—training and programs—to respond transnationally as well. This enables us to promote consistent messages around the world, as well as to encourage governments to develop common policy and legislative frameworks for combating these shared threats. A few examples include: anti-corruption and transparency, money laundering and financial crime, and human smuggling.

Anti-Corruption and Transparency

Early in his Administration, President Bush identified the fight against corruption as a key foreign policy objective. In support of this objective, INL provided political and financial support for UN negotiations to establish the first global convention against corruption. That convention was concluded in 2003 and has been signed

by 123 countries including the United States and most of the countries in this hemisphere. INL also provided assistance and experts to help more than 60 countries implement anticorruption commitments through mechanisms within the OAS, Council of Europe, Stability Pact and others. As part of a long-term process to help build popular support against corruption among the next generation, INL has supported the expansion of the Culture of Lawfulness education program to promote rule of law, combat corruption and crime.

Money Laundering

International drug traffickers are closely linked to transnational organized crime groups engaged in a broad range of illegal activities that threaten U.S. interests, including trafficking and smuggling of persons and contraband, money laundering, intellectual property rights (IPR) theft, and trafficking in small arms.

An estimated \$750 billion in profits from these and other forms of organized crime are laundered worldwide annually. Consider the corrupting and distorting impact on national and international economies and financial sectors of this level of money laundering.

Fighting financial crime, criminal or terrorist, is a complicated and sophisticated undertaking. Even when the newly-created financial intelligence units that we have helped to establish around the Hemisphere uncover evidence of financial crimes, some justice systems are currently capable of prosecuting them successfully.

Some countries have outdated laws, systems that inhibit information sharing between bank regulators and prosecutors, and courts that are not prepared to handle these kinds of cases.

Therefore, institution building in this critical area involves working, at a minimum, with legislators and treasury officials to establish laws and regulations, with regulators and financial intelligence units to be able to detect suspicious transactions, with prosecutors and judges to prepare and adjudicate such cases.

We work very closely with the Financial Action Task Force (“FATF”)—and its two sub-regional task forces here in this hemisphere—and with the OAS’ CICAD unit. The task forces have developed international “best practices” and also conduct intensive evaluations of national control systems.

CICAD’s Money Laundering Experts Group has taken the international standard established in the 1988 Convention as well as the FATF recommendations and developed model legislation used by countries throughout the hemisphere as a template for modernized legislation. INL, the Inter-American Development Bank and other assistance donors have also provided funding to CICAD and the UN Crime and Drug Office (UNODC) to help establish financial intelligence units and conduct training for government officials, judges and legislators.

Human Smuggling and Trafficking and Terrorist Travel

INL works with other agencies and international partners to combat illegal movements of people and generally improve border and travel security. In keeping with 9/11 Commission recommendations, the Departments of State, Justice and Homeland Security, together with Intelligence Community agencies, have designed the U.S. interagency Human Smuggling and Trafficking Center (HSTC) to improve cooperation across intelligence, law enforcement and diplomatic lines in combating three interrelated criminal activities:

- terrorist travel facilitation (through false documents, communications, safe houses, clandestine routes, etc.);
- human smuggling (deriving huge profits for its perpetrators); and
- trafficking in persons (for exploitation)

These crimes are global, but the United States often is most heavily affected by criminal organizations operating in Western Hemisphere countries. INL works with the State Department Office to Monitor and Combat Trafficking in Persons to provide assistance to governments and other international partners to thwart this activity.

CONCLUSION

INL counternarcotics and law enforcement assistance efforts focus on reducing the cultivation, production, and transshipment of dangerous drugs to the United States; working with other countries and international organizations to reduce the influence of drugs in other countries; developing programs to help nations track and prevent money laundering and terrorist financing; assisting other nations in reducing demand for drugs; and promoting development of justice sector institutions and support for the rule of law.

As a result of the President's firm commitment to battling the international drug trade and advancing rule of law around the world—buttressed by unwavering Congressional support—we have made substantial progress. However, drug trafficking, international organized crime and corruption present a continuing challenge to freedom, security and stability.

By thinking longer-term, concentrating on strengthening criminal justice institutions, building rule of law and promoting regional cooperation against shared threats, we are seeing positive results, and an improved security, as well as a greater "return" on the U.S. foreign assistance "investment."

I appreciate your interest and attention, and welcome any questions you wish to ask.

Mr. BURTON. Thank you, gentlemen. You know, we just got back from a couple of trips down into Latin America, and Mr. Meeks talked about the problems of poverty. We have in the past—because it was so apparent that the economies of the Caribbean countries was in real jeopardy, and we had a terrible illegal immigration problem, and we had to do something about it, and so we passed what was called the Caribbean Basin Initiative.

And that, we believe and hope, will be replaced with a two-way proposal called CAFTA and the Andean Free Trade Agreement in the not too distant future. I have not always been for these free trade agreements, but I am for CAFTA and the Andean Free Trade Agreement because I believe that not only is trade important for the economies down there, but stability in those fledgling democracies is very, very important.

And one of the things that concerned me when I talked to these leaders down there—President Uribe in Colombia, and the leadership in Costa Rica, we talked about Venezuela—is the high rates of poverty and unemployment. And CAFTA and the Andean Free Trade Agreement I think can go a long way toward bringing investment into those countries to create employment and help deal with the poverty issue.

But what I would like to ask you is, have your agencies or have our Government talked to any of the other Governments in Central and South America about possibly conducting a leadership forum, if you will, of all the Presidents or leaders in those countries to talk about ways that, collectively, we can attack this problem of poverty?

Because I believe the biggest enemy of these fledgling democracies and of freedom in the entire hemisphere is the persistence of the poverty rates. They are very high. And people do get frustrated when they don't see any changes when they go from a totalitarian or military dictatorship into a free democracy. They are not all that patient for very long.

So have we ever considered through our governmental agencies trying to get the leaders, their economic leaders, and possibly even their Presidents together to talk about the collective problem of how do you deal with poverty, and how do you deal with the situation of creating jobs that will eliminate that or minimize it so that there is hope for these people, and so that they will support democratic institutions?

Mr. FRANCO. Mr. Chairman, that is a very good question, and the short answer, and I will expand on it, is yes. And we do this through a variety of fora. The most important one is of course the meeting of the Presidents at the summits.

The next summit, which will be held in Argentina in November, and of course President Bush will represent the United States as one of the hemispheric leaders, is squarely focused on the issues of poverty reduction, and the tools necessary for change. I completely subscribe to what Chairman Weller had said on this. We need to not only promote free trade, but transparency, and rule of law.

For example, a trade agreement is a set of agreed to and adhered to rules. That is what brought about a lot of the changes, I believe, in Mexico, as an example. So the short answer is that at the top, these meetings are at the Presidential level, and actually we will be meeting at a very high level in Fort Lauderdale the first week of June for the OAS General Assembly, which Secretary Rice will attend.

And there is an agenda, and there are specific items to review—how long it takes to start a business, for example—and these are things that President Bush talks to us about, and have what we call summit goals.

Let us reduce the time it takes to start a business by 50 percent during the next 5 years, for example, and better harness remittances. As the President has said, the summit produces a commitment by hemispheric leaders to put in place the right policies, and then the resources necessary to make them a reality.

At the end of the day the only way to grow out of poverty is through private sector investment. There is not enough public sector money in the United States or anywhere to change Latin America by simply providing more foreign aid.

I run the foreign aid program, and there is an important role for it, but Mr. Weller is absolutely right. The way to do it is with the right policies. We have to stay there for the long term, and certainly provide assistance to address minimum social services in the interim. But that is the ground or that environment which will change these societies.

Mr. BURTON. Let me just make a suggestion, and of course you probably have already thought about this, but we have some of the greatest free enterprise minds in the world here in the United States. We have entrepreneurs who have the ability to go bankrupt, and 6 months later, they start a new company and they are making a lot of money again. They know how to turn a company around.

Has there been any thought to, in addition to coming up with seed money for new private enterprise companies being started in these fledgling democracies, has there been any thought to trying to recruit retired businesspeople and others who have expertise in setting up businesses and creating jobs, and creating a growing private sector to be participants in these fledgling democracies?

Mr. FRANCO. Absolutely. Mr. Chairman, you sound just like our Administrator, Andrew Natsios. We have an initiative called the—

Mr. BURTON. Great minds think alike.

Mr. FRANCO. They do.

Mr. BURTON. Don't laugh about that. We will clear the room.

Mr. FRANCO. The Global Development Alliance is precisely that. Michael Porter, who is a champion in that area and a Harvard professor, has written a book on economic clusters. He took this idea

and then brought in people from industries, like Microsoft, into USAID's programs and decision-making process, and more importantly to have them serve as advisors to conferences and Latin American businesses particularly on competitiveness. So we are doing that, and it is a growing initiative at our agency.

Mr. BURTON. Well, it sounds to me that you need a 2- or 3-pronged approach.

Mr. FRANCO. I agree.

Mr. BURTON. You need to have something like CAFTA, which stimulates foreign investment. You need the people who have the expertise to teach people how to create businesses and create jobs. And you need the seed money to do it. I know that there is not enough money that the United States could not take care of all of that. But collectively, maybe the Latin American countries, Central and South America, could figure out a way to come up with some seed money to help get some of these companies started.

Mr. FRANCO. I agree, sir.

Mr. BURTON. And I am happy that you have some people who have expertise and that are going to be working on this, but did you have to get somebody from Harvard? Couldn't you have gone to the Big Ten, or someplace like that? My humor is not really getting across today. Never mind. Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. Your humor is never lost on me. I want you to know that. Mr. Administrator, I appreciate both your service and your testimony, but I want to just understand in listening to some of the answers that I didn't misconstrue something that you said.

It is not our suggestion that trade alone is going to make the rule of law in Latin America and what we seek for it to be; is that the case?

Mr. FRANCO. That is correct. There is no silver bullet.

Mr. MENENDEZ. Because one of my concerns as you answered the questions is that you said it is not about more assistance from this Government that is going to make the rule of law happen.

But as I understand it, but certainly maybe it isn't just assistance alone, but without our assistance, I don't know how we are going to incentivize and motivate opportunities for the rule of law to take place in this hemisphere, because I don't see any other entity that is likely to do that.

And since I think it is in our national interest to do it, and not just about being a good neighbor. I think it should be a robust part of our policy. And so which goes to my question that I said in my opening statement. Now, I understand that our governance programs are funded through the development assistance accounts and the Economic Support Funds, which are taking over about 35 percent of those accounts. And under the President's Fiscal Year 2006 budget, he proposed a 12 percent cut to DA, and a smaller cut to ESF. Given those cuts, how will you maintain the governance accounts?

Mr. FRANCO. I do not want to suggest that our foreign assistance programs and our assistance is unimportant. I agree with you fully. It is fundamental. My only comment was—and I think we share this view—that money is not the only solution to the problem.

Mr. MENENDEZ. Agreed.

Mr. FRANCO. I took note when you were speaking. Political will is key. Those were your words. And I completely agree with that, Mr. Menendez. The political will and the commitment, which I think President Bush is seeking from hemispheric leaders, is fundamental. We have poured a lot of money into a lot of countries throughout the world, and have seen—and these are World Bank studies—billions of dollars spent with insufficient change.

So we need to understand, and I think you and I agree on that, that political commitment—and that is precisely what the Millennium Challenge Account is premised on; good governance and commitment, and political will at the top are fundamental ingredients to make things a success.

Now, with respect to the resources that we are allocating to democracy and governance, and I thought that you might ask this based on previous hearings, and so I had prepared, and if I could with the Chairman's agreement, a chart that I would like to make part of the record and share with you, of the amounts of resources that we are providing from all spigots, and not just development assistance accounts and Economic Support Funds.

The chart includes the ACI funds that we manage, which go to these activities in the Andean region. I think the total from all spigots should be the measure.

Because to be honest with you, some years we have less ESF available and the DA account goes up or down; or ACI is more available. We take a holistic approach to our budget. But I think the fundamental way to look at it, and the fair way to look at it, is what we are spending on democracy and government as a whole.

Mr. MENENDEZ. I understand that, and I respect the filibuster, believe me. I am a strong supporter of the filibuster. But let me get to the essence of my question. I understand the all spigots concept. Let me just get specific so you can answer this specific question.

Will you not have to suffer some cut in governance programs if the President's budget cut is in fact upheld by the Congress?

Mr. FRANCO. No.

Mr. MENENDEZ. Then what will you cut? Because you cannot receive a cut and tell me that nothing gets cut. Every time I ask the question, nothing gets cut. Something is going to get cut unless you have a Houdini ability to produce 12 percent from somewhere else.

Mr. FRANCO. We are reducing some programs in the economic area to do more on the democracy programs. I think the all spigots is the fair way to look at this.

Certainly that is the analysis that we have for OMB, in terms of our internal presentations. In 2005, this fiscal year, it is \$159.9 million from all spigots under our democracy and governments account. For 2006, including the new transition initiatives account that we are requesting, which will be for democracy programs, is \$164.9 million, an increase.

So the President's numbers for democracy and governance are actually increasing in the next fiscal year, and that has been the trend throughout the Bush Administration.

Mr. MENENDEZ. Well, could you submit to us—and also the transitional accounts, that is only one or two countries; isn't that correct?

Mr. FRANCO. Haiti, which is a huge country for priorities for democracy and governance for our region.

Mr. MENENDEZ. Right. But when you take that extraction out and you look at the rest of the hemisphere, you have an enormous gulf. One other question, and I have several others that I will submit for the record, and I hope that we will get your written responses to.

Mr. FRANCO. I will do so.

Mr. MENENDEZ. In testimony from one of our other witnesses, there is a concern about USAID's priorities in the rule of law reforms in Latin America. Specifically, that we are diverting funds from traditionally supported rule of law reforms in Latin America to support trade agendas under the guise that it is also categorizing it as democracy assistance. Are we doing that?

Mr. FRANCO. Well, part of our trade capacity building—and I can support what Chairman Weller said on this—has to do with rule of law, and it has to do with rule of law for these simple purposes.

For these countries, part of the negotiation process, and I work closely with USTR, is that they have to have a number of their government ministries reforming customs, for example. A number of other issues must also be addressed in terms of corruption and transparency.

That is just a prerequisite. That came from Ambassador Zoellick when he was the head of USTR, and I think that it is the same from USTR's Rob Portman. There are conditions that are explained very clearly to governments that need to be addressed before we can really engage in serious trade negotiations.

We do consider those, and we do attribute those costs as governance, good governance costs, because they are reforming ministries, and they are about transparency. They are about accountability, and they are about functioning systems that can deliver on trade.

Mr. MENENDEZ. Well, I would like—because increasingly we seem to be focusing all of our monies increasingly in the trade context, and that simply isn't going—that dog simply won't hunt at the end of the day. It may be for just those that have the vision of trade as the panacea for all.

But to quote you before, it is not a silver bullet in and of itself, and when we use an increasing amount of our Economic Support Funds, and when we use an increasing amount of our development funds, and rule of law funds, in the context simply of trade, then we are leaving a whole other region barren.

And I hope, if Ambassador Zoellick and Ambassador Portman are using that as one of the elements, I hope that they look at Peru, which this Committee has heard a whole host of testimony on of companies that have been arbitrarily and capriciously deprived of their rights, and we are contemplating entering into an agreement with them, or extending an agreement with them, and I want to see how we justify that set of circumstances.

Mr. FRANCO. But that is precisely what trade is about. I have a great deal of respect for Ambassador Zoellick, and I think he is right, that is what trade is about. When we talk about our trade capacity-building activities, Mr. Menendez, we are talking about them in terms of what we do at USAID to strengthen the govern-

ment institutions that will create a fair and transparent business environment.

And all the Members have talked about this, and you mentioned the New Jersey companies, we need an atmosphere that is conducive to doing business. And therefore that is good governance. When we talk about trade, in terms of what we do in trade capacity, it is strengthening the institutions that can enforce contracts and that can make systems completely transparent, judicial systems that are oral and that are open to the public, and functioning ministries.

That is in my view of a very important part of governance that is absolutely—I agree with you—linked to trade. And I think that holds in my estimation, and I think I can speak for the President—the ultimate promise for the region, because that is how job creation and poverty reduction will be achieved.

Mr. MENENDEZ. We have made these trade agreements with these countries that I am talking about, and we have Andean preferences with them, and we are getting ripped off. So that in and of itself has not achieved the success in the rule of law.

So I don't want to belabor the point, but the view that we marshal all of our resources in all of these different elements, and that we think that the future of the disparity of wealth in this hemisphere, that the things that flow from that disparity of wealth, the undocumented immigration, the new health crises that we are facing, the narcotics flows, the lack of bio-diversity, the lack of a greater middle class to ultimately sell our products and services, I think is something myopic.

I agree that trade is an element of it, but we seem to be fixated on the altar of trade to the expense of everything else.

Mr. FRANCO. I just have to comment on that briefly. I would like to have a more extensive dialogue and possibly a briefing, if we need it. I don't really think it is a fair characterization to say that we put all of our resources into the trade area.

I think that there are linkages between trade and good governance. We are not being fast and loose. We can go into the details with the numbers. I believe we have strengthened ministries in the past that we might not have focused on as a consequence of trade. I think that is a fair comment.

But I don't think we have done it at the expense of other things in the justice sector. We have not done it at the expense of HIV/AIDS, which this President has expanded dramatically in our region.

And I think in terms of all spigots, meaning U.S. Government spigots, including the Millennium Challenge Account, the resources are substantial.

Mr. MENENDEZ. Mr. Chairman, I don't want to belabor the point, but I do want to say that we definitely need to have an extensive briefing.

Mr. FRANCO. Very good, sir.

Mr. MENENDEZ. Because the numbers will speak for themselves.

Mr. FRANCO. They will.

Mr. MENENDEZ. And we have got to get down to the brass tax of what the numbers are, and where they are being spent, and how they are being spent, because respectfully, I think we have a dif-

ferent understanding of it. So I would be happy to be enlightened at the end of the day.

Mr. FRANCO. I spoke to Jessica, and I would like to meet with her next week as a pre-brief to meeting with you, sir.

Mr. MENENDEZ. Absolutely. Absolutely. Thank you, sir.

Mr. FRANCO. Thank you.

Mr. WELLER [presiding]. Thank you, and thank you, Mr. Menendez. And I, for one, believe that if we can use trade negotiations to help better enforce the rule of law, it is a good thing for everyone, and not just U.S. investors, but for domestic investors in that particular country.

Mr. FRANCO. I agree, Mr. Chairman.

Mr. WELLER. So I believe that is a good investment, but I look forward to the briefing, and certainly will pass that on to Chairman Burton, that request from Mr. Menendez.

Mr. MENENDEZ. That you, Mr. Chairman.

Mr. WELLER. I have a couple of examples that I would like to refer to, and I would refer to Mr. Franco, but after I ask a direct question of Mr. Farrar. I have had repeated meetings with your agency, with the INL, regarding the status of the International Law Enforcement Academy.

I appreciate the statement that you have made in your testimony today, but this project has been a long time coming, and it has been dragging along for several years, and at the same time, we have concerns about potential smuggling of human or other assets through the criminal network which crosses our boundaries from Central America on north.

And at the same time, we have tremendous concerns about narco-trafficking through the region. Our own hemisphere, our own neighborhood, is the only neighborhood without an International Law Enforcement Academy.

And the question that I have for you, Mr. Farrar, and if you could give me a fairly short answer is, when are we going to have it? Are we going to have this International Law Enforcement Academy in place this year?

Mr. FARRAR. As I indicated, you have focused our attention undoubtedly. The interagency team has done all its work. It has rated the countries, and submitted its recommendations, and it has gone to the ILEA policy board. We should have a decision this week.

The next step is to go out and negotiate with the host country. I can't tell you how long it will be. My hope is that it will be short, because the interest level is incredibly high on the part of the potential host, and so we would hope that that would shorten the negotiations.

Mr. WELLER. Do you believe that there is the opportunity to have this ILEA in place this year, this calendar year? Is that your goal?

Mr. FARRAR. Yes, there is certainly that opportunity.

Mr. WELLER. Well, we certainly want to continue to work with you. A lot of us feel that we are behind the eight ball when it comes to what is really a priority for this entire region, and increasing the opportunity for law enforcement in the entire hemisphere to work more closely and in a more coordinated and cooperative fashion.

Mr. Franco, I would like to focus on a couple of cases. You know, as we talk about the rule of law—and, of course, you know, I am looking at this from the perspective of a Member of Congress who responds to their constituents, and in this case, you know, we have American companies that Mr. Menendez has referred to, and particularly in Peru, that have been of concern to him.

And I have constituents here that come to me, and I have always been a strong advocate that we work with our friends in the hemisphere, and that the rule of law means that when there is an investor dispute, that will be resolved in a timely, fair, and transparent manner.

And I was recently in Belize, and had the opportunity to talk with Prime Minister Musa about a case which I am very concerned about. You know, the United States Embassy that we are building there right now, which I think is about a \$50 million project, the largest construction project in the history of Belize. And we had a United States company that invested and made a commitment to invest \$60 million in the Belize telecommunications company, which was privatized to bring the private sector in to upgrade that.

And unfortunately as it appears by all cases that the government failed to honor its level of commitment, which in turn, jeopardized the financing that would have been in place for this U.S. company. And then in turn, the government turned around and said, “Gee, you couldn’t get the financing, and we are taking the company back.”

I am not going to argue the merits of that case, but the U.S. District Court in Florida, who has ruled against the Government of Belize, and it has also ruled in favor of the company, and put in place a penalty of \$50,000 per day. And since that date, the penalties have accumulated to \$1.8 million.

With unanimous consent of the Committee, I have a statement from the company that I would like to put into the record.

[The information referred to follows:]

PREPARED STATEMENT OF SENATOR HOLLAND REDFIELD, VICE-PRESIDENT FOR
CORPORATE AFFAIRS, INNOVATIVE COMMUNICATION CORPORATION, LLC

Belize Telecom Ltd. (“Belize Telecom”), a subsidiary of the U.S. company Innovative Communication Company, LLC (“ICC LLC”), purchased a controlling interest in the primary telephone company of Belize—Belize Telecommunications Limited (“BTL”)—from the Government of Belize (the “Government”) in March 2004 at the Government’s request. Since that time, the Government has illegally seized BTL.

In reliance on the Government’s contractual commitments to pass legislation and make other concessions to make BTL a viable investment, ICC LLC has invested, through cash or obligation, over \$60 million in BTL. Because of the Government’s failure to keep these commitments, however, ICC LLC has been unable to obtain financing for \$57 million of the \$60 million it owes.

On February 9, the Government seized control of BTL when Belize Telecom could not make a required payment due to the Government’s violation of its commitments. On March 11, the U.S. District Court in Florida ruled that this seizure was illegal. In the face of the Government’s defiance, on March 31, the court found the Government in contempt of court. This penalty was set at \$50,000 per day and accumulated to \$1.8 million.

Undisputed Facts

1. The Government came to the United States and received financing from the International Bank of Miami of approximately \$100 million.
2. As part of agreements with Belize Telecom, ICC LLC, and U.S.-based International Bank of Miami, the Government explicitly submitted itself to the ju-

risdiction of the U.S. District Court, Southern District of Florida, and waived sovereign immunity.

3. The U.S. District Court in Florida found it had jurisdiction over the Government in this matter because of the contracts the Government signed at the time Belize Telecom acquired BTL and in subsequent legal agreements.
4. On March 11, 2005, the U.S. District Court in Florida issued an injunction against the Government finding that the Government illegally seized control of BTL on February 9, 2005.
5. On March 31, 2005, the U.S. District Court in Florida held the Government in contempt of its court order and imposed financial sanctions on the Government which now total \$1.8 million.

Mr. WELLER. But, Mr. Franco, I just wonder from the standpoint of Belize, and the work that you have been doing on establishing a more effective rule of law, and of course looking after investor disputes on behalf of our United States constituents, what would you advise United States investors thinking about investing in Belize?

Mr. FRANCO. In Belize specifically?

Mr. WELLER. Yes.

Mr. FRANCO. Well, in terms of Belize, I don't know the details of that case because unfortunately it is one of the countries in the region where we do not have a presence, in terms of a USAID mission.

So I can certainly discuss it with my colleagues and Secretary Noreiga, who would know more about this Belize situation. But I will say this in general: I do meet with investors and companies, and most recently a country with a great deal of concern is Bolivia, in terms of potential energy investments there.

What we try to do first of all as the U.S. Government, because you are absolutely right, Mr. Chairman, as I think it is important that we do our job of ensuring that there is a level playing field. And that level playing field is transparency and all the things that the Members have talked about, such as responsiveness. So we impress that very heavily on our host governments where we work, that we don't expect special treatment. We just want the treatment that every other company and everyone should be entitled to.

So we reiterate that. My advice to companies specifically, and I want to answer the question two-fold, is it depends on the country context and where it is. We try to provide companies with as much information as we can about the investment climate and previous experiences.

And often we say tread with care, or we can't make a recommendation. We are not a guarantor, but we certainly are a repository for information. Secondly, I just want to tie that answer to the trade agenda again.

Most of the countries of the region where we work at USAID are interested in the free trade agreement, and we impress upon them that transparency, accountability, and the rule of law must be addressed.

A system that is functional and responsive is a prerequisite to signing a free trade agreement with the United States. We tell them that you and the Congress will be looking at this very closely.

So our position, vis-a-vis these governments, is that they need to get this right. We ask, what do you need from us—Mr. Menendez's point—in terms of resources to get it right? We also emphasize the

need for political will and commitment to make a system transparent and fair. That is the message that we send.

And I think in that regard, going back to trade, that is good governance. That is how a society begins to change for good and for the good.

Mr. WELLER. Well, Mr. Franco, first let me just thank you for your interest in this particular case.

Mr. FRANCO. I will follow up, Mr. Chairman.

Mr. WELLER. And we do appreciate your attention as well, and Secretary Noreiga and the State Department's attention to this as we look out for the interests of our own constituents, who clearly, according to the U.S. District Court in Florida, our own judicial system, have been treated unfairly.

And that also ties in with another issue in the Nation of Nicaragua, a struggling democracy. As we know there, there appears to be the leftist Sandinistas that seem to be resurgents. Many say that they control the judiciary system in Nicaragua.

There is a law which has been put in place in Nicaragua, Nicaragua Law 364, which United States companies apparently doing business in Nicaragua are subject to. But what I find hard to believe is that under this law, the judiciary has proceedings without the participation of the defendants, and they have already levied almost \$715 million in judgments against U.S. companies.

I know that USAID is very active in Nicaragua. I have had the opportunity to visit with the good people that you have had in place there. Judicial reform has been a priority for you in Nicaragua.

Mr. FRANCO. Yes, it has.

Mr. WELLER. What can you share with us, and what steps in the case of Nicaragua or Belize should the United States Government be taking to look out for the interests of our constituents who are being subject certainly to our standards?

We believe in the opportunity and right to defend yourself in a court of law. In this case, to the U.S. investors who have been denied that opportunity and being subject to penalties and fines.

Mr. FARRAR. Well, first, Mr. Chairman, in terms of the specific case in Belize, or anything in Nicaragua, please bring these to my attention and I will follow up with them personally.

With respect to the steps that we have taken, Nicaragua I can address, because we do have a program there. You are absolutely right. The judicial justice reform program in Nicaragua is one of our key programs.

We have had difficulties, and I regret to report to the Committee that Nicaragua has one of the worst judicial systems in the hemisphere, in terms of transparency, in terms of, frankly, corruption.

And we continue to press the Nicaraguans on the need to reform this just beyond trade, but on the need to fulfill the expectations of democracy. Unfortunately, that is not entirely in the hands of the Executive and the President for a variety of reasons in that country.

But we are alarmed about the system, and the capriciousness, and the impunity in Nicaragua, and the future of the CAFTA, and the relationship with the United States will be analyzed closely with respect to progress that is being made to address these issues.

We have suspended our judicial program at one time in Nicaragua, as you might recall, Mr. Chairman. I think we talked about it about a year ago. This is some conversation that I had with Ambassador Moore at the time, and that was a very strong signal that created a lot of publicity.

As we all know, when our Ambassadors speak to most of these countries, it is headlines, so as not to draw as much attention, we do drive a very fine line of not intervening in the internal affairs of a country. But at the same time, I think we have an obligation to stand up for the principles that we believe in, and also in the case of, or in specific cases, to voice our concerns. So I will carry that.

That is a subject that we continue to press Nicaraguans on, in terms of continuing to make progress on the bilateral relationship, will hinge largely on judicial reform. We are doing a lot on the training part, with the mediations alternative resolutions.

But frankly the appointment and the people serving in some of these positions are of grave concern to us in Nicaragua.

Mr. WELLER. Well, as one of those who has been a strong supporter of the Millennium Challenge Account Program, and I think Nicaragua is one of the countries which is currently in the process of negotiating an agreement with the United States, I certainly hope that we keep this in mind as we communicate with our friends in the Nicaraguan Government.

Many of us here are trying to be students of the politics in Nicaragua because of the complications there over the last generation. But clearly the treatment of United States companies and United States investors appears not to be fair, certainly by our standards and what I would consider to be global standards.

Mr. FARRAR, do you have any comments on either of those cases, or what you believe in your role that the U.S. Government should be doing on behalf of U.S. investors in these cases or in other similar cases?

Mr. FARRAR. Sure. Our programs in both of those countries are very modest and focus principally on the counternarcotics and trying to stop the flow of drugs that are coming up through the transient zone. Again, they are very small, and we don't have anything in the judicial sector either.

Mr. WELLER. Well, thank you. And Mr. Meeks.

Mr. MEEKS. Thank you. My good friend, Mr. Franco, good seeing you again as always.

Mr. FRANCO. Good to see you, sir.

Mr. MEEKS. Let me just ask a couple of quick questions, because I just have some concerns. You know my concerns are always about trying to take care of a number of those individuals that are on the bottom.

And law and order, and transparency, is all very important. And many countries as a result of the Inter-American Convention Against Corruption have adopted some of these new laws to promote transparency.

However, from what I am hearing from a number of individuals is that they have adopted the laws, but they are not enforcing the laws. So the laws are on the books, and they are supposed to have

transparency, and they are supposed to have the law of order, but they are not being enforced.

So my first question to you is, what do you think we can do with the inter-American to help strengthen the Inter-American Convention Against Corruption, and what should the role of the OAS be so that we can be assured that once the laws are on the books that they in fact are being upheld and there is some follow-up?

Mr. FRANCO. Well, that is an absolutely excellent question. You know, we used to say in the old days that the Soviet Constitution, if you have ever read it, is a beautiful document. Too bad nobody ever enforced it.

And to some extent what we have in Latin America is not a lack of laws. In fact, it is a highly legalistic system. If you look at the systems throughout, there is a rich body of law. It is a question, and you are absolutely right, Mr. Meeks, of enforceability of the laws.

Now, that is a combination, if I can tell you, of a couple of factors, the history of the problem and political will. When we use the word anti-corruption, that sounds like a very good thing. It is like being for motherhood. Everyone is for anti-corruption, except the people engaged in corruption, because those are the people who are benefitting from abusing the system. Unfortunately, and historically, the people doing the corruption or engaged in the corruption are the people who are usually better off.

They are the people who have access to systems and control the society at different levels. So that has been a challenge overall, to dislodge vested interests that are not democratic. So that creates first of all a need for enlightened leadership, which I think we are seeing in our region for the first time with many leaders in the region.

And they are President Saca, President Berger, President Bolanos, President Maduro, President Uribe. We have a lot of committed leaders in our region, and they are setting the tone at the top and below the top.

They have very, very good leadership, but it needs to be more persuasive, and that leadership needs to be sustained, and they need—and that gets us to the second point, which is Mr. Menendez's point—resources. Enforceability requires resources and is often a police function. I know that Jonathan might speak to this, but the enforceability needs to come from authorities that are well equipped and well trained.

And there has been a lack of both in the region. I think we are making progress. We are committed to doing it, and I firmly believe that in terms of the cart and the horse that we need to have that leadership, and that commitment, and that will at the beginning.

Without it, the apple is rotten, and we can't do much. So we have to take that first step, and it is going to take some time to build up police forces and ministries, and for other enforcement of laws and regulations. We work closely with the OAS.

I think the President will bring this up again at the hemispheric leaders conference, in terms of not only U.S. assistance, but national assistance to address these programs, and that investments must be made in social programs, holding out the promise of the

Millennium Challenge Account and other assistance by the United States for those countries that make progress in these areas.

Mr. MEEKS. Let me ask this then, because I am one of those individuals—and I guess it is another way of me trying to figure out what I am going to do, because I know there have been some questions with regards to trade.

And I am one of those that are on the fence with reference to DR-CAFTA. And some of the arguments on one side is talking about the enforceability and corruption, because the corruption undermines investor confidence, and I know in the case of Costa Rica, President Pacheco does not want—he wants CAFTA, but he doesn't want to sign on it because it is trying to make people pay their taxes, and there is a problem with getting them to pay taxes.

And then we are talking about that there is evidence that there is serious deficiencies with the rule of law in Latin America. How can I then—and how can we endorse—how does CAFTA have to help? What assurances do we have that the corruption does not continue if in fact we pass CAFTA first, or other agreements like that, and do not have in place those systems to assure the law of order and enforcement?

Mr. FRANCO. Well, first of all, free trade is not a light switch as you know, and the implementation of the free trade agreement will be over the course of many years, as was the case with NAFTA.

It is a goal to create the right environment for investment. The people at the top, the leadership that we have in Central America right now, understand it, understand the requirements of it, understand that investment, real investment, which they want for their countries, can't come about without addressing corruption and the issues that have allowed it to continue in the past.

So we have that commitment at the top. We now need to have the necessary resources applied to get the job done to make it happen. I would say that we expect that the countries will clean up themselves fully, and we have used those terms before, before we can actually sign a trade agreement.

It is not what we did in Mexico, which is a country that for over 10 years had its own difficulties, and that people not attribute the modernization of that society, and not just in economic terms, but in political terms, to the free trade agreement that we signed as part of NAFTA.

So it will be a process that will create a cycle that people will understand to attract and bring that investment. They need to have transparency and have things functioning and working.

Mr. MEEKS. I know that my time is up, but let me just say this, because this is where my concern lies. Generally when you have that corruption, it is all up here.

Mr. FRANCO. Yes.

Mr. MEEKS. And when you have that kind of corruption, and we put DR-CAFTA in, it is just going to benefit those that are on the top. And it takes away from the tax money, even from some of those who—some good Presidents, who want to do the right thing, so that the money can go and help develop roads, and build schools, and make better health care.

Mr. FRANCO. Right.

Mr. MEEKS. So my concern is that if we don't have it in place, and this is what I talked about in the beginning, and we have not made it so that the people on the bottom can benefit, then we have a threat to democracy, period, because they don't see any benefit to it.

Mr. FRANCO. I think we have the framework in place. I think we have the commitment in place. It will be a process, and I absolutely agree with you in terms of reaching the people that are not at the top. That is part of our efforts on the economic activities, in terms of medium and small enterprises, to make sure that they benefit from it.

And they themselves become champions for this new system and insist on a clean, transparent system that they can participate in. It will be a process. I want to make that very clear to the Committee. As it was in Mexico, the fulfillment of free trade, not just in terms of economic activity, but governments that perform well, and the way that we want them to perform ideally, will be a 10- to 15-year process at best.

Mr. MCCAUL [presiding]. The Chair recognizes Mr. Mack.

Mr. MACK. Thank you, Mr. Chairman. Mr. Franco, if you could for me, as I am kind of new around here, talk to me a little bit about the rule of law programs in Venezuela, and maybe address the issue with the Supreme Court, and in my opinion the stacking of the Supreme Court.

Mr. FRANCO. Well, thank you very much, Mr. Mack, and let me tell you that for a newcomer here, I certainly share your very erudite and very insightful views on Venezuela fully. Sorry that Mr. Meeks didn't hear me say that, but I think—

Mr. DELAHUNT. I did.

Mr. FRANCO. Oh, you did, Mr. Delahunt. I fully share them. First, in terms of our programs in Venezuela, Venezuela is what we refer to as a Non-Presence Country. It has a high per capita income, and it is a country that would not normally be a recipient of United States foreign assistance.

However, because of the polarizing situation in Venezuela, and I think there is—although there might be differences regarding our policies, vis-a-vis Venezuela, I think there is an agreement among Mr. Delahunt, and others, and Mr. Meeks, and former Chairman Ballenger, and others from the Committee, have been very engaged in this issue, and agree that it is a polarized situation where we need to be engaged.

As a consequence of that engagement, part of it being Congressional to the Boston Group, and part of it being through the Executive Branch, and we have been supportive of those efforts. We do not have a full-fledged mission, but there are activities that are operated through our Office of Transition Initiatives in Caracas.

It is a small presence, and it is a small program, approximately \$5 million, under which we support dialogue and some party building activities. Those of you who have followed Venezuela over the years know that political parties in Venezuela have been either personality-driven or almost non-existent. They have been extremely weak.

So we are looking for the institutions that we hope are looking toward the future, and that will serve the Venezuelan people well.

So our program is modest. It is a country where, again, we would not, because of per capita income, be engaged in for economic activities.

But the political situation there is quite serious. I fully subscribe to the view, as President Bush has said, that a democratically-elected leader needs to rule democratically. Simply winning an election and not ruling democratically doesn't "cut it" to put it in those terms.

And we can go back to some sad instances before World War II in Europe where people actually used the system and became dictators through the democratic system. So that is what we are concerned about. I share your view about the Supreme Court.

We are concerned about the media in Venezuela. We are concerned about the consolidation of power by the Executive in Venezuela. We are concerned about what we view as the free enterprise system in Venezuela being under stress.

And certainly we oppose any form of harassment and not being able to fully participate. We see it as an ominous situation, in terms of democracy and the progress that the rest of the region is making. So we remain fully concerned about it and hope by our efforts to dialogue that we will at least create what I think are legitimate spaces that the Venezuelan people need.

Mr. FARRAR. If I could just add to that. We do have a fairly modest program in Venezuela, about \$3 million a year, and it does include funding some administration of justice programs. We work with the prosecutors' drug task force, for example.

And in light of recent events there, and the withdrawal of the Venezuelan military from counternarcotics cooperation, we are reviewing our programs to make sure that they do make sense under current conditions.

Mr. MCCAUL. The Chair recognizes Mr. Delahunt.

Mr. DELAHUNT. I thank the Chair. Would the Administration consider, if a request was put forward by the Venezuelan Government regarding sending Peace Corps volunteers to assist in Venezuela?

Mr. FRANCO. I don't know the answer to that question, Mr. Delahunt.

Mr. DELAHUNT. Well, would you care to speculate?

Mr. FRANCO. Well, I would say this.

Mr. DELAHUNT. Would you consider that a constructive move in terms of improving the bilateral relationship?

Mr. FRANCO. In terms of what I know about the Peace Corps, again, I would think it would be difficult for a country like Venezuela to qualify for Peace Corps volunteers.

That said and done, my understanding is that we are reengaging the Peace Corps in Mexico and Brazil, and they are similar countries, so that would be a fair comment. I really am not in a position to comment on that, because I would be reluctant to speak for the Peace Corps and its policies. I just am not qualified to answer that question.

Mr. DELAHUNT. Okay. Going on to Haiti for a minute. You talk about the rule of law.

Mr. FRANCO. Yes.

Mr. DELAHUNT. You do not have a justice system there. I mean, that is a fair statement. Would you agree with that?

Mr. FRANCO. Well, we technically have a justice system in Haiti, but we have a very long way to go. That is one of the countries where our priority is a justice program—and just as the rest of the Haitian Government, the existing justice system is extraordinarily weak, and not able to exercise authority throughout the country.

Mr. DELAHUNT. I would like to know if you think they are exercising—you know, if they are just simply administering any justice whatsoever in Haiti today. Can you give me a single example that would be encouraging for me?

Mr. FRANCO. It is a very poor situation, and yes, I agree.

Mr. DELAHUNT. Have you had a chance to review the decision by the Supreme Court annulling the guilty verdicts of those that were responsible for the Raboteau Massacre?

Mr. FRANCO. I was informed of that, yes, Mr. Delahunt.

Mr. DELAHUNT. What is your opinion?

Mr. FRANCO. Well, we are concerned about that.

Mr. DELAHUNT. Concerned?

Mr. FRANCO. I am concerned about that.

Mr. DELAHUNT. Concerned?

Mr. FRANCO. Yes.

Mr. DELAHUNT. Well, I am a little more than concerned. Let me suggest, Mr. Franco, Haiti is a failed State. The government that we support, the so-called interim government, has a Minister of Justice that is using a shell of a justice system as an instrument of political oppression, I would suggest. And I would recommend to the Administration that they do something other than just simply express concern.

Mr. FRANCO. Well, we call Haiti a “Fragile State.” We believe that the current interim government has a very difficult situation, in terms of security, and what it has before it, and in terms of its agenda.

We are supportive of that government. As you know, Mr. Delahunt, there is a government that has pledged just to serve on an interim basis until elections this fall. We are putting in considerable resources.

Mr. DELAHUNT. Reclaiming my time, Mr. Franco. If we don’t do something soon, we won’t have elections in the fall that will have any legitimacy whatsoever.

Mr. FRANCO. Well, noted.

Mr. DELAHUNT. Well, I am not going to go over recent history. In Nicaragua, what is the composition of the National Assembly there? Who is the ruling party?

Mr. FRANCO. The ruling party was a coalition in the Congress.

Mr. DELAHUNT. Are they liberals, conservatives, Sandinistas?

Mr. FRANCO. Liberals and Sandinistas.

Mr. DELAHUNT. The Liberals and Sandinistas are now a coalition?

Mr. FRANCO. A coalition, that is my understanding.

Mr. DELAHUNT. And the dominant party in that coalition is which?

Mr. FRANCO. The Liberal Party.

Mr. DELAHUNT. The Liberal Party?

Mr. FRANCO. Yes.

Mr. DELAHUNT. And so there are fewer Sandinistas?

Mr. FRANCO. That is right.

Mr. DELAHUNT. And the Liberal Party therefore has, if you will, the lion's share of the responsibility for the unraveling of the judicial system? Try to help me, walk me through that.

Mr. FRANCO. Well, I think that the situation in the country is complicated and, as you know, there has been a division between the current President and the former President, Mr. Aleman. And there have been, if you will, deals that have been cut.

Mr. DELAHUNT. So these are not deals that are cut on an ideological basis. These are just—you concluded, or the intelligence, or at least what is available, would suggest that these are deals among individuals who are just self-aggrandizing; is that correct?

Mr. FRANCO. One could make a case for that, yes.

Mr. DELAHUNT. Can I go on to CAFTA with the indulgence of the Chair for a moment? I find it interesting that, actually, as one looks at the hemisphere, there is good news at the macroeconomic level.

And yet there is a total lack, and there would appear to be a decline, in the optimism or the embrace of democracy by people all over Latin America, for failure to pay attention to the basics; to infrastructure, to health, to education.

I will tell you that what concerns me is, what assurances do we have if DR-CAFTA is approved by Congress that the incremental benefits of that trade are going to be reinvested into the social infrastructure of Latin America, so that there is a basis for poverty reduction, and the creation of a middle class?

Mr. FRANCO. What assurances?

Mr. DELAHUNT. Yes.

Mr. FRANCO. I am not so sure that I can be so presumptuous as to give an assurance.

Mr. DELAHUNT. Well, give me just a little bit of hope.

Mr. FRANCO. Okay.

Mr. DELAHUNT. Just a smidgen.

Mr. FRANCO. A smidgen? Okay. We have some empirical data, which I will be happy to send to you, on countries that have liberalized their trade, where the per capita income has increased, and the income distribution has been improved, which would address the issues that you are legitimately concerned about.

And I believe that will be the case for CAFTA. It was the case for Mexico, for NAFTA, when this same debate was held in this Congress more than a decade ago. And I believe the same holds true for Central America.

I do believe in my heart of hearts that we have a liberalized trade regime, and we will have better government, a more responsible government, a more transparent government, that will deliver social services and the other things to the people that you are legitimately concerned about, Mr. Delahunt.

Mr. DELAHUNT. I don't disagree that there will be a benefit, in terms of governance and the rule of law, but the focus there will be on the investor class, both domestically and foreign.

Mr. FRANCO. Yes.

Mr. DELAHUNT. And that is good if you are an investor.

Mr. FRANCO. But the investors are the engine to create jobs.

Mr. DELAHUNT. I understand that they are the engine to create jobs, but when they are creating jobs at wages that don't allow for a living standard that we would find acceptable in a modern society anywhere, the problem that I have is that there continues those social tensions that are reflected in the statistics that Bob Menendez talked about in terms of corruption, and crime, and what have you.

Mr. FRANCO. But I think we have to start somewhere. If one looks back at where the countries of Asia and other places were before they were developed, in terms of the investment class you are talking about, these countries have progressed and jobs have improved, and wages are better.

I am not suggesting that trade is the panacea. My philosophy is that the only way to grow an economy and the only way to have it sustained is through private sector investment.

Now, we have to have the right rules and conditions. I agree with you on that, and I think that will be debated in this Congress regarding social conditions, and environmental conditions, and labor conditions. I subscribe to that, Mr. Delahunt. I agree.

But I believe that private sector investment is a key ingredient for growth. I don't think the public sector is as a rule, and will not grow an economy.

Mr. DELAHUNT. I don't disagree with that. At the same time, if you don't have government investment in the areas that I enumerated, then what you will have is just a more wealthy economic elite.

And when we take a look, Adolfo, at the percentage of GDP that goes to taxes in these countries, it is a joke. Look at Guatemala; 8 percent in Guatemala.

Mr. FRANCO. Yes. Well, we actually have got that a little higher, and we have got it through our consultative group process and the peace accords. We bring it to the Guatemalans' attention. I don't disagree with that. I believe that CAFTA is a tool to address many of those inequities. I really believe it.

Mr. MCCAUL. The Chair thanks the witness for coming forward before the Committee and testifying, and you are now excused.

Mr. FRANCO. Thank you very much, Mr. Chairman.

Mr. DELAHUNT. If I could indulge the Chair for a moment. Mr. Franco, I have asked you a series of questions in the past, and I still have not received the replies.

Mr. FRANCO. On?

Mr. DELAHUNT. You know, it has been so long now that I forget, but I will ask my staff to contact the appropriate staffer.

Mr. FRANCO. I will follow up on that immediately.

Mr. DELAHUNT. Thank you.

Mr. MCCAUL. The Chair invites the second panel to come forward and be sworn in.

We are pleased to have former Assistant Secretary Otto Reich with us today. Ambassador Reich is President of Otto Reich Associates. He served as an Assistant Secretary of State for Western Hemisphere Affairs from 2001 to 2002, then went on to become President Bush's Special Envoy for Western Hemisphere Initiatives until June 2004.

From 1986 to 1989, he served as U.S. Ambassador to Venezuela. He appears regularly on United States and Latin American media. It is good to have you with us here today, Ambassador.

Mr. REICH. Thank you, Mr. Chairman.

Mr. McCAUL. Armando Lacasa is Chairman of the Latin American Law Initiative Council of the American Bar Association. Mr. Lacasa received his law degree from the University of St. Tomas de Villanova in Cuba, and attended the Georgetown University Foreign Services School, and the University of Florida. He focuses on international governmental relations, corporate business transactions, development and public, and private finance projects. It is good to have you with us here today.

Jennifer Windsor is the Executive Director of Freedom House in Washington, DC. She also serves as an adjunct professor at Georgetown University. She has served as the Deputy Assistant Administrator and Director for the Center for Democracy in Governments and the Global Bureau at USAID. It is good to have you with us today.

And finally, John Murphy is the Vice President of Western Hemisphere Affairs of the U.S. Chamber of Commerce. He is also Executive Vice President of the Association of American Chambers of Commerce in Latin America. It is good to have you with us here today as well. And if I could ask everybody to stand and please be sworn in.

[The witnesses were sworn.]

Mr. McCAUL. I guess since I am the Chair, I can start off with the first question. And my question—

Mr. MENENDEZ. Mr. Chairman, are you going to let them testify?

Mr. McCAUL. I am sorry, I put the cart before the horse, and let me back up a minute, and let us first hear the testimony from the witnesses. First, we would like to hear from Ambassador Reich. Please proceed.

TESTIMONY OF THE HONORABLE OTTO J. REICH, FORMER ASSISTANT SECRETARY OF STATE FOR WESTERN HEMISPHERE AFFAIRS

Mr. REICH. Well, thank you very much, Mr. Chairman, and Ranking Member Menendez, and Distinguished Members. I have summarized my remarks and so I will not try to follow the text that I submitted for the record.

I appreciate the opportunity to appear at this hearing on a topic which affects our national security and the welfare of our hemisphere, transparency and the rule of law, and the absence of them, which is corruption.

While the United States has instruments to combat corruption, I believe they could be implemented more enthusiastically than they are being at the present time, because corruption is the number one obstacle to socio-economic development in the world.

More importantly, corruption has been recognized by the President of the United States as a threat to democracy and to the very security of our Nation. Corruption not only undermines development directly by diverting resources from the population, but perhaps worse, it undermines confidence in the institutions of democracy.

It is a direct break on growth. For example, what incentive is there to invest in a country where a judge can be bribed to settle a multi-million dollar commercial dispute in favor of the highest bidder?

At another level of society, why should a poor peasant borrow money to plant new crops if a powerful landowner is going to cheat him out of his labor and get away with it because the landowner has the local police or military chief in his pocket?

Corruption is not limited to developing nations, but it is more prevalent there because of the lack of a rule of law and of the institutions of a civil society. But it is not only the lack of resources that enables corruption, it is the existence of a mindset that Latin Americans call impunity: The attitude that one can get away with violating the law by virtue of a relatively superior economic, political, or social position.

Corruption not only creates poverty. Corruption kills. For example, why obey the law, or else pay a fine for dumping toxic waste in a river, when the local government official will look the other way for a simple bribe? So what if the child playing in the water, or the mother washing clothes downstream, dies of cancer as a result.

Corrupt officials working with or enabling organized crime are responsible for a large number of police, judges, journalists, and investigators being murdered while performing their duties.

In many nations, children and adults are literally dying of hunger or disease because corrupt officials have stolen the nation's resources, which would have fed, housed, and educated those citizens. Furthermore, corruption can and is being used to undermine the institutions of democracy and frustrate the popular will.

Today in Latin America, we are witnessing a renewal of this insidious aspect of corruption. Populist demagogues wail against corruption in order to reach power, whether by election or by force. Then when they are in control of the government, they break all previous records of corruption, and secure in their impunity, they change the laws and even the Constitution in order to remain in power indefinitely.

Fidel Castro did this in Cuba. He participated in a popular revolt against a corrupt and violent dictatorship, Batista, only to become a much more brutal ruler who has held power by force for 46 years, and bankrupted a growing economy.

The latest example of this abuse of power is Hugo Chavez in Venezuela. When I was Ambassador to Venezuela in the 1980s, that country had a sad reputation for bribery, but I follow events in Venezuela closely and it is my considered opinion that corruption today is worse than ever.

The nation's wealth is being plundered by the Chavez Government. The oil company, PDVSA, the source of most of the country's wealth, has been staffed with unskilled managers and workers, whose only qualification is loyalty to the Chavez regime, and who are robbing it blind.

The result is that oil production is down about 1 million barrels per day, or 30 percent less than the levels of 5 years ago, while Chavista lawyers and military officers have become multi-millionaires.

Mr. Chairman, there is nothing more critical or immediate that we can do to accelerate global development and to try to stem the tide of corruption. Against some bureaucratic resistance, the State Department's Bureau of Western Hemisphere Affairs promoted the revocation of visas for corrupt individuals starting in 2002.

The President made this a global initiative in 2004 by a proclamation suspending entry into the U.S. of persons engaged in or benefiting from corruption. President Bush determined that it is in the interests of the United States to take action to restrict the travel and to suspend the entry of persons who have participated in or benefitted from corruption, because that has adverse effects on the international activity of U.S. businesses, as we have heard here today; U.S. foreign assistance goals, as we have heard here today; the security of the United States against transnational crime and terrorism; or the stability of democratic institutions and nations.

The Commander-in-Chief is fully aware of the connection between corruption on the one hand, and the security of the United States and the threat to democracy and stability necessary for economic development on the other.

One example, and with this I will conclude, but one example of this nefarious connection is taking place today in Nicaragua, where supporters of former President Arnaldo Aleman, who is serving a sentence for stealing public funds, have allied with Sandinistas in the legislature in order to destabilize the democratic Government of President Bolanos.

In conclusion, it is unrealistic to think that the United States alone can stem the disease of corruption, but we certainly can take steps to prevent the guilty from enjoying their ill-gotten gains in the peace and tranquility of our country.

Those who steal from their compatriots and impoverish their countries should be denied safe haven in developed nations, and should be forced to live in the unstable and dangerous world they helped to create. Thank you, Mr. Chairman.

[The prepared statement of Mr. Reich follows:]

PREPARED STATEMENT OF THE HONORABLE OTTO J. REICH, FORMER ASSISTANT
SECRETARY OF STATE FOR WESTERN HEMISPHERE AFFAIRS

Mr. Chairman and distinguished members, I appreciate the opportunity to appear at this hearing on a topic which affects the national security and the welfare of our hemisphere, but which has not received the attention it deserves: transparency and the rule of law, or the absence of them, which is too prevalent in our hemisphere: corruption. While the US has instruments to combat the scourge of corruption, I believe they could be implemented more enthusiastically than at present. Corruption is the number 1 obstacle to socio-economic development in the world. The World Bank, with far greater perspective than me, has come to that conclusion.

More importantly, corruption has been recognized by the President of the United States as a threat to democracy in the world and to the very security of our nation. In my career as a US Ambassador, as Assistant Administrator of USAID, as Assistant Secretary of State, as the President's Special Envoy for Western Hemisphere Affairs, as a US Army officer and as a private businessman active in this hemisphere for several decades, I have witnessed how corruption robs citizens of their hopes and their confidence in the future.

Corruption not only undermines development directly by diverting precious resources from the population, but perhaps more perniciously it undermines the confidence of all citizens in the institutions of a democracy. It is a direct brake on growth. For example, what incentive is there to invest in a country where a judge can be bribed to settle a multi-million dollar commercial dispute in favor of the highest bidder? At a lower level of society, why should a poor peasant borrow money

to plant new crops if a powerful landowner is going to cheat him of his labor and get away with it because he has the local police or military chief in his pocket?

Corruption is not limited to developing nations, but it is more prevalent there because of the lack of the rule of law and of the institutions of a successful civil society. Poor countries do not have sufficient resources for effective law enforcement, do not have sufficient media and other independent watchdog institutions to fight against the ever-present predatory official or private sector pirate.

But it is not only lack of resources that enables corruption: it is the existence of a mindset that Latin Americans call impunity: the attitude that one can get away with violating the law by virtue of a relatively superior economic, political or social position.

One aspect of corruption which has not received sufficient attention is that corruption is lethal. Corruption kills—directly and indirectly. For example, why obey the law, or else pay a fine of hundreds of dollars for dumping toxic waste in a river when the local governmental official will look the other way for a simple bribe? So what if the child playing in the water, or the mother washing clothes downstream, dies of cancer as a result?

Corruption makes organized crime more efficient and deadly. To the extent law enforcement officials are dishonest and do not do their job, organized crime is able to spread its tentacles into new ventures and affect more people. Corrupt officials working with, or enabling, organized crime are responsible for the large number of police, judges, journalists and investigators who have been murdered while performing their duties.

Crimes of violence are not the only evidence of the corroding effect of bribery. In many nations, children and adults are literally dying of hunger or disease because corrupt officials have stolen the nation's resources which should have been used to spur the economic development which would have fed, housed and educated those citizens. Furthermore, corruption can and is being used to undermine the institutions of democracy and frustrate the popular will.

Today in Latin America we are witnessing a renewal of this insidious aspect of corruption: populist demagogues rail against corruption in order to reach power, whether by election or by force. Then, when they are in control of the government, they break all previous records of corruption and, secure in their impunity, they change the laws and even the Constitution in order to remain in power indefinitely. Fidel Castro did this in Cuba. He participated in a popular revolt against the corrupt and violent dictator Batista only to become a much more brutal ruler who has held power by force for 46 years and in the process defrauded the Cubans by destroying the economy and the dignity of what once was one of the most socially and economically progressive countries in the hemisphere.

The latest but by no means the only example of this abuse of power is Hugo Chavez in Venezuela. When I was Ambassador to Venezuela in the 1980's, that country had a sad reputation as one where bribes were necessary to get business done. But I follow events in Venezuela closely, and it is my considered opinion that corruption today in Venezuela is worse than ever. The nation's wealth is being plundered by the Chavez government. The oil company, PDVSA, the source of most of the country's wealth, has been staffed with unskilled managers whose only qualification is loyalty to the Chavez regime, and who are robbing it blind, giving sweetheart contracts to their friends and comrades. The result is that oil production is down by about one million barrels per day, or 30% less than the levels of five years ago, while Chavista loyalists and military officers have become multi-millionaires by having access to oil export contracts or partaking in all sorts of fraudulent schemes.

The magnitude of the malfeasance is such that PDVSA, which is the source of approximately 50% of that country's tax revenues, and 12% of our country's imported oil, has failed to present audited financial statements since March of 2002. This unprecedented level of mismanagement and corruption has without a doubt contributed to the amazing "revolutionary" feat of increasing the number of Venezuelans living in poverty by 2 million and adding 1 million people to the ranks of the unemployed. All this while the price of a barrel of oil is at historic highs.

Mr. Chairman, there is nothing more critical or rapid we can do to accelerate global development than try to stem the tide of corruption. That is why when I joined the Bush Administration in 2001, I was so pleased to be working for a president who had made the fight against corruption a top priority. President Bush has revolutionized our foreign assistance programs by creating the Millennium Challenge Fund, which requires, among other criteria, that governments implement anti-corruption policies in order to qualify for what will be a \$5 Billion account when fully funded by the Congress.

With the possible exception of humanitarian assistance, I hope all US aid in the future will have the three political, economic and social requirements of the MCA;

that is, that recipient countries be democracies which promote human rights; that they follow economic policies based on individual initiative and free markets; and finally that they invest in their populations' future through efficient programs in health and education.

Following President Bush's lead, the State Department's Bureau of Western Hemisphere Affairs, which I headed, promoted the revocation of visas for corrupt individuals as one of the principal instruments of development and rule of law strategy starting in 2002. The president made this a global initiative on January 12 of 2004, when he signed a proclamation suspending entry into the US of persons engaged in or benefiting from corruption. While brief and bold, the proclamation has received very little attention. I therefore include it in my written testimony but would like to quote a few sentences from it.

This is what President Bush said: "In light of the importance of legitimate and transparent public institutions to world stability, peace, and development, and the serious negative effects that corruption of public institutions has on the United States efforts to promote security and to strengthen democratic institutions and free market systems . . . , I have determined that it is in the interests of the United States to take action to restrict the international travel and to suspend the entry into the United States, as immigrants or nonimmigrant, of certain persons who have committed, participated in, or are beneficiaries of corruption in the performance of public functions where that corruption has serious adverse effects on international activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations."

The proclamation suspends visas for "Public officials or former public officials whose solicitation or acceptance of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of their public functions has or had serious adverse effects on the national interests of the United States. For purposes of this proclamation, "serious adverse effects on the national interests of the United States" means serious adverse effects on the international economic activity of U.S. businesses, U.S. foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.

Clearly, the Commander in Chief is fully aware of the connection between corruption on one hand and the security of the United States, and the threat to democracy and stability necessary for economic development on the other. One example of this nefarious connection is taking place today in Nicaragua, where supporters of disgraced former President Arnoldo Aleman, who is serving a sentence for stealing public funds, have allied with Sandinistas in the legislature in order to undermine the democratic government of President Bolanos. All we have to do is recall the carnage and damage that the Sandinistas inflicted on Central America to be on the alert for a possible success of this kind of terrorist-embezzler alliance.

I mentioned earlier that a new threat to democracy and development comes from populist demagogues who rail against corruption with the sole intention of attaining power and then cling to it by any means necessary. The US must continue to act aggressively against public officials or former public officials, as President Bush has said, whose misappropriation of public funds or interference with the judicial, electoral, or other public processes because of the serious adverse effect this has not solely in their societies but on the national interests of the United States.

In conclusion, let me say that it is unrealistic to think that the United States alone can stem the disease of corruption. But we certainly can take, and have taken, steps to prevent those guilty of it from enjoying their ill-gotten gains in the peace and tranquility of our country. Those who steal from their helpless compatriots and impoverish their countries should be denied safe haven in democratic countries and should be forced to live in the unstable and dangerous world they helped to create. By denying visas for entry into the US, we are attempting to do just that but our government must implement the President's policy more aggressively.

I urge other democracies to join this effort; I applaud this committee for shining a light on the devastating impact of corruption; and I commend my former boss, President Bush for taking concrete steps to combat it.

Thank you for the privilege of allowing me to testify.

Mr. McCAUL. Thank you, Mr. Ambassador. Mr. Lacasa is recognized by the Chair for 5 minutes.

TESTIMONY OF MR. ARMANDO E. LACASA, CHAIRMAN, LATIN AMERICAN LAW INITIATIVE COUNCIL, AMERICAN BAR ASSOCIATION

Mr. LACASA. Mr. Chairman and Members of the Subcommittee, my name is Armando Lacasa, and I am pleased to appear before the Subcommittee in my capacity as Chair of the American Bar Association's Latin America and Caribbean Law Initiative, ABA/LALIC, for the sake of abbreviation.

On behalf of our council members, I would like to express our appreciation for the opportunity to testify on the issue of the rule of law in the Americas. And I would also like to take the opportunity to recognize Mr. Armando Lasa-Ferrer, the ABA Secretary-Elect, who has joined us today, and reaffirm the commitment of our association to the implementation of the rule of law in the Americas.

The American Bar Association continues to promote the rule of law internationally and is one of the most important functions of the association. We believe that society should be ruled by law, not by the personal and political agendas of a few.

Transparent government institutions, and legal systems based on the rule of law are fundamental prerequisites to creating vibrant democracies and market-based economies. Recent events have told us that democratic regimes are less likely to engage in terrorist activities and spawn tragic and costly regional conflicts.

With this in mind, I urge this Subcommittee to continue its vigilance regarding programs that support the international rule of law initiative in the Western Hemisphere. Such programs are a sound investment of U.S. dollars that enhance the national security and economic prosperity not only of emerging democracies, but also of our own Nation.

While examples of such worthy programs abound, I would like to describe ABA/LALIC's unique and enlarged capacity in this area. With more than 400,000 members, we are able to call upon the entire American legal community, which possesses a vast array of experience and expertise.

In so doing, our programs look first to the ABA volunteer legal community to provide pro bono legal expertise in support of these projects. By conservative estimates, lawyers, both in international technical assistance and the four existing international councils, have donated more than \$150 million of pro bono legal assistance.

Experts involved in pro bono work in Latin America are usually seasoned lawyers, with tremendous expertise in their field and knowledgeable of Latin American affairs. Let me share a few examples of projects in which we are involved.

In Mexico, ABA/LALIC has enhanced incorporating mediation and trained over 400 mediators, established a strong national network in 22 states, and assisted in the opening of 19 mediation centers.

The center director of OSACA has told us that indigenous strike members are journeying up to 12 hours on horseback to have their disputes resolved there. Mediations have gone from 608 cases mediated in 2003 to nearly 3,000 in 2004.

Many have expressed their deep gratitude and credit the project with the development of the process of mediation in Mexico. In Ecuador, ABA/LALIC is involved in a project to promote a national

movement to eradicate human trafficking. The project recently completed a national assessment to determine whether trafficking was taking place, who the victims were, and who the criminals promoting trafficking were, and what was taking place and where. We are now promoting the enactment of appropriate legislation.

In Paraguay, LALIC, working in cooperation with a team from the Organization of American States, have restructured their procurement laws which dated back to 1909, and afforded very little possibilities to a small Paraguayan businessman to participate in government business opportunities.

Our portfolio of projects in Latin America is too large to describe in a few minutes. But allow me to mention several areas, such as the promotion of judicial reform and integrity, the strengthening of the legal profession, the support of legal education, and the fight against corruption and human trafficking to name a few.

Time does not permit me to describe all of this and other programs in greater detail. More information is included in my written statement. In some Latin American countries, unfortunately, the implementation of the rule of law has been the exception rather than the rule.

Many of those countries have been governed by the rule of man, rather than by the rule of law. The end result is a violation of human rights, non-democratic governments, and lack of economic development.

However, progress has been made over the past 25 years. But much more remains to be done. The ABA has a role to play. We are a neutral source of legal expertise, with over 125 years of experience and with thousands of volunteer attorneys willing to give their time and effort.

We care about the implementation of the rule of law not only in the United States and the most economically-advanced countries, but also in the developing nations. Every one of us is aware that there can be no economic progress in undeveloped countries where the rule of law is not respected.

For these reasons, the ABA urges this Subcommittee to continue and to increase its vigilance regarding programs that promote the rule of law and that are sensitive of local cultures and respect national sovereignty. Your support for programs and funding to promote the rule of law in Latin America is critical to our efforts and to the future of the entire region. Thank you very much for your consideration.

[The prepared statement of Mr. Lacasa follows:]

PREPARED STATEMENT OF MR. ARMANDO E. LACASA, CHAIRMAN, LATIN AMERICAN
LAW INITIATIVE COUNCIL, AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

My name is Armando E. Lacasa and I am pleased to appear before the Subcommittee this morning in my capacity as Chair of the American Bar Association's Latin America and Caribbean Law Initiative (ABA/LALIC) and, on behalf of our Council members, I would like to express our appreciation for the opportunity to testify on the issue of Rule of Law in the Americas.

Transparent government institutions and a legal system based on the rule of law are fundamental prerequisites to creating vibrant democracies and market-based economies. Democratic regimes are less likely to engage in terrorist activity and spawn tragic and costly regional conflict. Programs to promote the rule of law and democratization abroad are a sound investment of U.S. dollars that enhance the na-

tional security and economic prosperity not only of the emerging democracies, but also of our own nation.

ABA/LALIC

ABA/LALIC is one of four regional councils created by the American Bar Association to address the growing need to contribute to democratization through legal development efforts in the region and throughout the world. ABA/LALIC works with governments of the Americas, with highest-level judiciaries, academia and with national bar associations in various countries. Its organizational structure is comprised of a ten-member Council and a 12 member Advisory Council. It has a program and administrative staff, headed by the Council Director, and is partially supported by volunteers and by the membership of the American Bar Association. In Latin America, ABA/LALIC has been recognized as a credible, culturally sensitive advocate for the rule of law.

FOCAL AREAS AND CORE PRINCIPLES

Like all the other International Councils of the ABA, which operate in over 40 countries in Africa, Asia, Central Europe and Eurasia and Latin America, four principles govern the ABA Latin America and Caribbean Law Initiative. Our projects must respond to host country needs; provide neutral, comparative advice; draw on *pro bono* expertise whenever possible; and abide by strict conflict-of-interest guidelines. As the world's largest voluntary professional association, we draw upon more than 400,000 members, leveraging U.S. foreign assistance dollars with tens of millions of dollars of *pro bono* assistance worldwide.

INITIATIVES IN LATIN AMERICA

Conceptually, ABA/LALIC's projects are organized into substantive "focal" areas. These include, Judicial Reform, Anti-Corruption/Public Integrity, Legal Professional Advancement, Legal Education Reform, Conflict Mitigation and Criminal Law Reform/Anti-Trafficking. I will only mention a few of our projects here:

Mexico—Court Annexed Mediation: Over the last two years, ABA/LALIC has worked with Mexican states to introduce and enhance court-annexed mediation services in Mexico. ABA/LALIC was awarded a two million-plus dollar grant over two years by the USAID Mexico Mission to assist three to four states in Mexico in incorporating mediation into their judicial services. Today twenty-two states participate. The project has produced numerous documents that are used throughout Mexico, including basic mediation manuals, design center manuals, administration manuals, train-the-trainer manuals, family mediation manuals and others. It has trained over 400 mediators and assisted in the opening of 19 mediation centers in 13 states. No funds from the project have been used to open or operate any center; instead the project concentrates on providing technical know-how and developing a strong national network. At present four additional states have formally requested to enter the project; the project is working with all four on an informal basis but is unable to accept them as full participants due to funding concerns. It is important to emphasize that, through this two million dollar investment made by the U.S. government, Mexican states jointly have not only matched but also greatly surpassed the initial investment. As to results, in the state of Oaxaca the number of cases opened jumped from 608 in 2003 to 2,887 in 2004. Additionally, members of indigenous tribes are making 12-hour journeys on horse from some of the most remote areas in that state to seek the services of the mediation center there. In the state of Puebla over 5,000 files have been opened since 2003, with over 3,000 cases mediated and 95% reaching agreement. At the last meeting of the committee of assessors for the project, composed of representatives from all twenty-two states, the committee strongly recommended that the Mediation Project be extended beyond September 2005 and that it focus on penal mediation, as Mexico is undergoing a criminal justice reform initiative.

Ecuador—Trafficking in Persons: The U.S. Department of State's Trafficking in Persons Office awarded ABA/LALIC funding for a Trafficking in Persons Project in Ecuador. In January 2005, the Project completed the first wide-ranging assessment of human trafficking in that county. Project staff and internationally recognized experts did the fieldwork to study where trafficking was taking place, who the victims were, who the criminals promoting trafficking were, and what other dimensions of the problem could be ascertained. The assessment was the first step in building a national movement to combat trafficking. Using the assessment as a starting point, an advisory committee of Ecuadorian legislators, presidential executive staff, law enforcement, prosecutors, NGOs, law professors, and leaders in the private sector brought together by the project has begun holding meetings regularly to coordinate

a response to trafficking. The advisory committee has already provided input into a strategy for a national plan to respond to the growing trafficking problem. Among the initiatives mentioned are types of training, awareness campaigns, legislative efforts and a strong network to serve as the foundation from which to organize. The advisory committee meeting had been planned prior to the ousting of the sitting president of Ecuador and took place as scheduled less than two weeks after this event. It was most telling to see current government representatives and other operatives very much committed to working towards a goal to eradicate trafficking despite the significant political turmoil the country was undergoing. Project staff has been working closely with Ecuadorian Congressional representatives from the previous and current administrations to provide technical assistance in the drafting of current anti-trafficking legislation. Congressional representatives view the project and ABA/LALIC as a technical expert sensitive to the needs of the country.

Ecuador-Criminal Procedure Code Implementation: ABA/LALIC is working with the International Narcotics and Law Enforcement Office of the U.S. Embassy in Ecuador to train prosecutors, judges, judicial administrative staff, and universities nationwide on trial advocacy and trial techniques. Ecuador implemented criminal justice reform and opted for a common law-based criminal procedure code. However, implementation of the new law has proven challenging. The ABA, in partnership with the Supreme Court of Puerto Rico, is developing a mock trial in which Ecuadorian and Puerto Rican teams will be assembled. Each Ecuadorian judge, prosecutor, defense lawyer and criminal investigator will be paired up with a counterpart from Puerto Rico to execute the trial demonstration. This project is a skills-based initiative not only to transfer useful trial techniques but also to demonstrate how legal abstractions translate into day-to-day proceedings in a criminal court. Among the areas of special attention are the roles of prosecutors, judges and defense counsels, the role and purpose of expert witnesses, the process for the submission of evidence and the importance of coordination between law enforcement and the prosecutor's office.

Peru-Judicial Independence: After the systematic destruction of democratic institutions under Alberto Fujimori, Peru in recent years has moved to return to the rule of law. ABA/LALIC has been providing technical legal assistance in this process. The Peruvian government has approached ABA/LALIC about providing technical assistance regarding the role of prosecutors in an adversarial system. ABA/LALIC addressed prosecutors from Lambayeque, Peru and did a comparative study of the inquisitorial and adversarial models, along with a presentation of the role of the prosecutor, the submission of evidence and the challenges ahead with some lessons learned. The program was well received and LALIC will continue to provide guidance through trainings and conferences as requested prior to full programmatic rollout in 2006.

Costa Rica-Combating Institutional Corruption: ABA/LALIC conducted a transparency assessment of the Costa Rican Coast Guard and Customs Service. Costa Rica has an existing, but weak, auditing capacity in most government departments. The assessment found that recent high-profile examples of public corruption had increased the likelihood of success for targeted projects to improve auditing in both Coast Guard and Customs Services. The council expects to move forward on a follow-up initiative some time this year.

Paraguay-Procurement Legislation: Working with the Organization of American States, ABA/LALIC contracted a seasoned lawyer volunteer to work with Paraguayan government officials and legal experts to reform Paraguay's Procurement Laws, which date back to 1909. The entire legislation was restructured to meet the needs and the present circumstances of Paraguay.

Regional-Hague Conference on Implementation of the Hague Convention on Civil Aspects of Child Abduction: In partnership with the Hague Conference on Private International Law and with the U.S. Department of State's Office of Children's Issues, ABA/LALIC sponsored a conference last December. Participants included ninety Judges, Central Authority officials and other experts from Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, United States of America, Uruguay, and Venezuela and the following organizations: Organization of American States—Inter-American Children's Institute, International Centre for Missing and Exploited Children, Texas-Mexico Bar Association and the Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey Mexico. Participants discussed how to improve, among the countries represented, the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. As a result additional on-site trainings have been developed for El Salvador and Costa Rica.

THE RULE OF LAW IN THE AMERICAS

In Latin America, unfortunately, the implementation of the Rule of Law has been the exception rather than the rule. Many of those countries have been governed by the rule of man rather than by the rule of law. The end result has been violations of human rights, non-democratic governments, and lack of economic development. Governance through democratic principles is a new concept that is slowly taking root in the region. Most Latin American constitutions are twenty-five years old or less. Compared to thirty years ago, we see much progress in the important steps taken by various Latin American nations to develop democratic principles.

Much work remains to be done. Throughout the Americas one of the greatest challenges in the development sector will be to enable the region's justice systems to effectively maintain order, deter crime, provide due process and equal protection and instill trust and respect for the law.

By collaborating with countries in the Americas to establish effective legal systems, the U.S. contributes to stability in the region, which in turn promotes commercial development, increased security, and eradication of social inequities. We know that the economic development of any nation is tied to the institution of the rule of law. Without it there will be little or no enticement for potential foreign entrepreneurs from more developed countries to risk their investment where they may not be afforded an appropriate legal forum when needed. Countries with more effective and equitable legal systems provide more stable and attractive environments for investment. Chile is a prime example of what can happen in less than one generation.

Increased investment invigorates local economies, promotes economic growth, develops a capable work force and creates a favorable environment for U.S. investors. ABA lawyer members doing business in Latin America often comment on the need for established uniform practices and laws when dealing with countries in Latin America and point to uncertainty and unstable political climates as the main reason for shying away from investing there.

The U.S. in all its forms (government, NGOs, private sector) must work to foster a partnerships with its neighbors to the South. In the context of BancoSur and TeleSur, whose stated purpose is to distance itself from U.S. interests, this work becomes increasingly urgent. The war on terror cannot be won without the confidence that our closest neighbors see us as their allies. Asia, Europe, Eurasia and the Middle East are working hard on Latin American investment and long-term relationship building. For the U.S. to be marginalized in this process is extremely dangerous.

We consider the efforts made by this administration to arrive at a regional understanding regarding trade issues a positive step. Whether this is accomplished through the Free Trade Area of the Americas (FTAA), Central American Free Trade Agreement (CAFTA), or some other form of mutual agreement will take additional negotiation and compromise on both sides. This effort is important not only because it sets parameters and allows all trading partners to understand each other's expectations and be able to rely on certain set principles. For investors and lawyers handling the legal aspects of these dealings a uniform set of principles will be extremely valuable.

ABA/LALIC FUTURE INITIATIVES

Before closing, I would like to advise this Subcommittee of two other important initiatives that the ABA and ABA/LALIC are working towards for the fall of 2005 and 2006.

International Rule of Law Symposium November 2005: Over the past decade, governments, development banks, donors, foundations, multi-national corporations, and others have demonstrated a growing commitment, in both word and deed, to strengthen the rule of law, often by responding to the urgent problems posed by countries making the difficult transition to democratic rule. However, today's greater global interdependence requires a more comprehensive and assertive approach to promoting the rule of law. Such an approach requires the mobilization of a diverse group of stakeholders, some of whom have not been actively engaged in rule of law promotion efforts to date. To address these and related challenges, the American Bar Association, working with other organizations committed to promoting the rule of law worldwide, will convene a two-day International Rule of Law Symposium in Washington, D.C. on November 9-10, 2005. Participants from both developing and developed countries will share their insights and experiences at the Symposium. The goal of the Symposium is to build a broad-based movement to promote the rule of law and to devise new strategies for its advancement. Building a movement must begin by presenting a compelling case to a diverse group of stakeholders on the ur-

gency of advancing the rule of law globally. Making this case will require: (1) showing the connection between the rule of law on the one hand and economic development, democratization, security, good governance and poverty reduction on the other; and (2) persuading stakeholders of their common interest in promoting the rule of law.

The Inter-American Center for Trade and the Law: ABA/LALIC is presently engaged, with the support of the Governor of Puerto Rico, the Supreme Court of Puerto Rico and the University of Puerto Rico in the evaluation process of a proposed Center dedicated to the promotion and enrichment of trade-related law that may include areas such as Intellectual Property, Commercial Litigation, Dispute Resolution and others. The primary purpose of this Center is to become the point of contact for information and a meeting of the minds in the actual implementation of trade-related law and issues. The Center will operate as both a think tank and a training institute, with policy developments informing curriculum in practical trainings designed for practicing lawyers. The trainings, in turn, will provide information from the field to enrich discussions and publications on policy.

CONCLUSION

Targeted foreign assistance to establish and strengthen legal systems and institutions grounded in the rule of law is a critical component of U.S. efforts to develop stability among emerging democracies. Advancing the rule of law is vital to ensuring the protection and promotion of U.S. national security and economic interests. Rule of law programs such as those described above are a highly cost-effective mechanism to advance the development of democracy abroad.

It is extremely important, however, that efforts promoting the rule of law be conducted with great sensitivity towards local cultures and respect for national sovereignty. This must be a bilateral effort where both parties learn from one another and respect existing legal systems and traditions.

It is in view of these realities that the ABA has a significant role to play. We are perceived as a neutral source of legal expertise, which cares seriously for the implementation of the rule of law not only in the United States and in the most economically advanced countries, but also in developing nations.

Much progress has been made in Latin America over the past 25 years; but much more remains to be done. For these reasons, the ABA urges the Committee to continue and to increase its vigilance regarding programs that support international rule of law initiatives in the Western Hemisphere. Your support for programs and funding to promote the rule of law in Latin America is critical to our efforts, and to the future of the entire region.

On behalf of ABA/LALIC, I thank the members of the Subcommittee for this opportunity to discuss these important issues. The ABA will be pleased to provide any necessary further information and to respond to any questions that the Subcommittee may have.

Mr. MCCAUL. Thank you, Mr. Lacasa. The Chair recognizes Ms. Windsor for 5 minutes.

TESTIMONY OF MS. JENNIFER WINDSOR, EXECUTIVE DIRECTOR, FREEDOM HOUSE

Ms. WINDSOR. Thank you, Mr. Chairman, for the opportunity to testify today on the critical issue of transparency and rule of law in Latin America. I have a fuller written statement that I ask permission to have included in the record.

Mr. MCCAUL. Without objection, so ordered.

Ms. WINDSOR. As you are aware, a core part of Freedom House's mission is to monitor the state of freedom around the world, and in our last *Freedom in the World* survey, Latin America continues to be one of the regions with the highest levels of freedom.

Unfortunately, we cannot declare a victory for democracy in Latin America and go home. Like most other regions, Latin America has lagged behind in institutionalizing its democratic gains, particularly in the key areas of rule of law and transparency.

In both areas, most countries in the region still score relatively poorly. There has been progress in increasing the professional-

ization of the judiciary and the passage of new legislation in many countries, but there is still serious weaknesses in most rule of law systems, particularly in ensuring that the rule of law is actually implemented, and that it governs the day-to-day lives of citizens, and is applied equally to all.

In the area of corruption, there has been progress in some countries, with more transparency in financial systems, the establishment of supreme audit authorities, and more media exposure of corrupt officials.

But the patronage systems are still alive and well in the region, and they directly impact public confidence in the rule of law system. I have included in my written testimony a number of findings and more detail on rule of law and anti-corruption from our latest survey, called *Countries at a Crossroads*.

I would just like to highlight one country here, that of Venezuela. One of the most serious problems in Venezuela is the increasingly politicized justice sector. Almost 85 percent of judges are provisional, which has a detrimental effect on a citizen's right to proper justice, as well as on the judge's right to stability in their positions as a guarantee of judicial independence and autonomy.

Judges have been removed from office for making decisions from which the Executive Branch has not agreed. In addition, recent reforms have increased the number of Supreme Court Justices and made it easier for the Government of President Chavez to pack the court with supporters.

The overall weakness in the justice sector has contributed to increased impunity within the country. Recent information shows that 90 percent of all investigations into human rights violations did not make it past the preliminary stages of the process.

More broadly across the region, the *Countries at a Crossroads* survey found that while there has been progress in terms of adoption of laws, regulations, and policies that are meant to strengthen the rule of law and reduce corruption, in almost all cases the implementation of these measures is weak or flawed.

We are concerned about the increasing human rights problems, fueled in part by non-state actors and communities that are fed up with rising crime. Most Latin American countries share a common endemic problem of police corruption fueled by low pay, a lack of training, and often, an environment of impunity.

We need more effective efforts to reform Latin America law enforcement institutions charged with preventing and controlling crime, and maintaining the order necessary for the well-being of citizens and the protection of private property.

Community policing programs, such as the USAID program in El Salvador, need to be replicated elsewhere in the region. In addition, in those countries with a substantial indigenous population, a further problem is a judicial system that functions poorly and deprives indigenous peoples of anything approaching full access to justice.

As those populations have become more politically aware, they have been disappointed by the failure of existing legal institutions to address longstanding grievances. This has fueled extrajudicial actions by these groups, which have often had a destabilizing impact on the overall political system and respect for human rights and due process within those societies.

Most of these problems outlined here, of course, are not unique to Latin America, but for countries such as those in the region that face high levels of poverty and inequality, it is a genuine challenge to build legal structures that treat all citizens alike, that rule justly, and whose officials are honest and fair-minded.

We have made progress, but it is not enough. I would like to conclude with just a few recommendations for the United States Government. First, the U.S. must continue to stay engaged in encouraging and supporting continued judicial reform in the region, both through policy dialogue at the bilateral and multilateral level, and also by providing sufficient resources.

We have been concerned about reports that targeted democracy funding was decreasing and that funding for rule of law programs was increasingly dependent on the State INL budget, whose law enforcement mandate does not cover critical issues, such as unequal access and other due process and human rights aspects of the rule of law.

Second, the U.S. should remain focused on human rights, and should increase support for the work of indigenous human rights defenders that monitor and report on abuses within society, as well as the functioning of the justice system.

Third, a critical area which deserves more focus in U.S. transparency efforts is to support and encourage the passage of freedom of information (FOI) legislation, as well as its implementation.

Since Mexico has passed one of the most liberal FOIA laws, and has a host of excellent implementing mechanisms, their expertise should be tapped to share their lessons elsewhere in the region.

Similarly, we strongly endorse the need to continue to strengthen press freedom, which plays an important role in encouraging transparency and building support for institutions in the region. The recent trends in Latin America are alarming according to our last survey of press freedom.

And in particular, libel laws continue to be a major problem for the hemisphere and the United States has a role to play in raising this in our diplomatic dialogues. In short, Latin America has clearly come a long way, but it is not time for anyone to be complacent.

Those in the region and outside the region have to recommit themselves to the issue of deepening democracy in order not to lose, even if ever so slowly, the gains of the last 30 years. And rule of law and transparency are the critical areas that need the focus of both policymakers and activists both inside and outside the region. Thank you.

[The prepared statement of Ms. Windsor follows:]

PREPARED STATEMENT OF MS. JENNIFER WINDSOR, EXECUTIVE DIRECTOR, FREEDOM HOUSE

Mr. Chairman, thank you for the opportunity to testify today on the critical issue of transparency and rule of law in Latin America.

I will focus my remarks today on our analysis of how the issues of transparency and rule of law impact the broader issues of freedom and democratic governance within the region. I will also draw on our experience working in the region with a number of human rights defenders as well in sharing some of our recommendations for U.S. action.

As you aware, a core part of Freedom House's mission is to monitor and analyze information about the state of freedom around the world. To this end, we publish on a regular basis a series of reports and surveys on global freedom, including re-

ports that focus on specific aspects of democracy including press freedom, as well as on democratic governance, rule of law and corruption.

Our best known survey, *Freedom in the World*, was first published over thirty years ago. *Freedom in the World* assesses a broad range of indicators and assigns a numerical rating for the level of political rights and the level of civil liberties in each of the world's 192 countries. Freedom House also gives each country a designation of Free, signifying a respect for democratic norms and an adherence to international human rights standards; Partly Free, signifying an adherence to some democratic standards; and Not Free, signifying the systematic suppression of democratic institutions and a massive violation of human rights.

The state of global freedom was bleak when we launched *Freedom in the World* thirty three years ago. Democracy was restricted to Western Europe, North America, and a few other outposts. At that time, Latin America was moving in precisely the wrong direction. Many societies in the region had experienced takeovers of elected governments by juntas, caudillos, or military dictators, and academics noted the rise of a new style of governance in the hemisphere, that of bureaucratic authoritarianism.

Thus, in 1974, only 8 countries in the Latin American and Caribbean region were scored as Free; 11 were scored Partly Free; and 7 as Not Free. In other words, only 30 percent of Latin American countries enjoyed the benefits of a free society: fair elections, a free press, freedom of expression and assembly, minority rights, the rule of law, freedom from torture and other forms of state repression. Ten years later, in 1984, 19 countries from the region were rated as Free, 11 as Partly Free, and just 3 as Not Free. The region led the so-called "third wave of democracy."

In our last survey, Latin America still is one of the regions with the highest levels of freedom. Today, 24 countries from the region are rated by Freedom House as Free, with 9 as Partly Free and two—Cuba and Haiti—as Not Free.

This is an impressive record in a region where freedom has had a checkered history. It is all the more impressive because the level of freedom has remained high during a period of economic change and, in some societies, political upheaval.

Unfortunately, we cannot declare victory for democracy in Latin America and go home. Like most other regions, Latin America has lagged behind in the institutionalization of democratic gains, particularly in the key areas of rule of law and transparency. A closer analysis of the *Freedom in the World* data for the year 2004 indicates that there are two categories of indicators where even the Free countries in the region score lower than in other areas: rule of law and the transparent and accountable functioning of government.

Under the category of rule of law, our analysts specifically look at the degree of judicial independence, the predominance of the rule of law in criminal and civil matters, civilian control of the police and security forces, protection from torture and unjust imprisonment, and equal treatment of all people under the law.

Under the functioning of government category, we look at the pervasiveness of official corruption, governmental openness and transparency, and the degree to which government policies are determined by freely elected officials.

In both categories, the region still scores relatively poorly in most countries. There has, of course, been remarkable progress in reducing the incidence of torture, in increasing the professionalization of the judiciary, and the passage of new legislation in many countries. But there are still serious weaknesses in most rule of law systems, particularly in ensuring that the rule of law actually governs the day-to-day realities of life in those countries, as well as applying the law equally to all citizens. In many countries, rising crime has put tremendous pressure on rule by law and on law enforcement, as communities are taking matters into their own hands—to the detriment of respect for fundamental human rights.

In the area of corruption, there has been progress in many countries, with more transparency in financial systems, the establishment of supreme audit authorities, and more media exposure of corrupt officials. But the patronage systems are still alive and well in the region, and they directly impact public confidence in the rule of law system.

Because of the importance of issues of corruption and transparency and rule of law, Freedom House has recently designed a new survey, *Countries at the Crossroads*, that examines in more detail these critical aspects of democratic governance. Since it began last year, Freedom House has applied the new methodology to a select group of sixty countries that have been chosen for their strategic significance and, in some cases, weak democratic institutions. Many of these countries had serious problems with rule of law and corruption.

Ecuador, for example, was characterized as suffering from a high degree of corruption, a problem that was exacerbated by the nepotism and favoritism of the now former president. This is the case despite the fact that the country has put in place

a number of laws and institutions specifically designed to prevent corrupt practices and encourage government transparency. The problems of rule of law in Ecuador are unfortunately too well known, as then President Guiterrez recently replaced 27 out of the 31 Supreme Court Justices, after a narrowly unsuccessful impeachment attempt. The subsequent removal of Guiterrez—by questionable methods in terms of Constitutional legitimacy—further undermined rule of law in the country. Ecuadorians—despite the fact that they live in formally democratic systems—are deciding to take to the streets instead of working through their institutions.

In Bolivia, the report noted that the justice system “characterized by underpaid, poorly trained judges and administrative officials who are susceptible to financial and political pressure.” Corruption and politicization are thus embedded in the legal system even though, as in other countries of the regions, laws and policies have been adopted that are designed to professionalize and depoliticize the judiciary.

In Peru, we found that the judiciary enjoys the least amount of public confidence among all governmental institutions, even though the Toledo government has attempted to correct some of the damage done during the Fujimori years. “The judiciary is corrupt, inefficient, and subject to political and economic influence,” the report concludes, a refrain that is depressingly familiar throughout our assessments of a number of Latin American countries. We found conditions in which judges were overworked and underpaid, independent minded prosecutors who were subject to dismissal, and a judicial system that is rife with class based favoritism and which gives unequal treatment to the country’s large indigenous population. The prosecution of corruption is hindered by the absence of anticorruption mechanisms untainted by the Fujimori era judiciary. Other problems include a lack of official anticorruption statutes, the light sentences meted out to those convicted of corruption—usually house arrest or restrictions on foreign travel—and the slow pace of judicial procedures.

Another critical case is that of Venezuela, which is particularly unsettling for those who are ready to declare democracy safely installed in the region. During the 1970s Venezuela was consistently given a rating of Free, and was regarded by Freedom House as one of the region’s most stable democracies. During the 1990s, our analysts began to identify gaps in the country’s democratic performance, a trend that accelerated after the election of President Hugo Chavez. Venezuela is today rated as a Partly Free society in *Freedom in the World*, but its rating for media freedom has been lowered to Not Free in our annual press freedom index.

The situation of the increasingly politicized justice sector in Venezuela is particularly disturbing. Almost 85% of judges are provisional. Such a high percentage of provisional judges has a serious detrimental impact on citizens’ right to proper justice and on the judges’ right to stability in their positions as a guarantee of judicial independence and autonomy. There have been a number of instances where this provisional status has led to judges being removed from office for making decisions with which the executive branch did not agree. In addition, recent reforms have increased the number of Supreme Court Justices and made it easier for the government of Chavez to pack the court with supporters. Overall weakness in the judicial sector has contributed to increased impunity within the country. Recent information shows that 90% of all investigations into human rights violations did not make it past the preliminary stages of the process. Human rights defenders are under political attack from the government and non-state actors who are sympathetic to the government.

Many of these observations are relevant to other countries in the region. In almost every case, these societies are marked by the adoption of laws, regulations, and policies that are meant to strengthen the rule of law and reduce corruption. And in almost all cases, the implementation of these measures is weak or flawed. All too often, we find a judiciary whose officials are poorly compensated and lack professionalism, despite years of training from the US government and others. And human rights violations are continuing, including from non-state actors that are fed up with rising crime.

Likewise, most Latin American countries share in common endemic problems of police corruption, fueled by low pay, a lack of training, and, often, an environment of impunity. An area crying out for greater attention is the lack of effective efforts to reform Latin American law enforcement institutions charged with preventing and controlling crime and maintaining the order necessary for the well-being of citizens and the protection of private property. Community policing programs such as the USAID program in El Salvador need to be replicated elsewhere in the region.

In addition, in those countries with a substantial indigenous population, a further problem is a judicial system that functions poorly and deprives indigenous people of anything approaching full access to justice. As those populations have become more politically aware and active, they have been disappointed by the failure of ex-

isting legal institutions to address long-standing grievances concerning issues such as land rights and natural resources. This has fueled extrajudicial actions by those groups, which often have had a destabilizing impact on the overall political system and respect for human rights and due process within those societies.

The findings of Freedom House surveys are reflected in other assessments as well, including the latest findings from the latest UNDP survey on democracy in Latin America. When asked whether governments actually complied with existing legislation, only three countries (Colombia, Chile, and Uruguay) received an average score higher than 5 (out of a total of 10.) Only 32% of those surveyed had any or a lot of confidence in the judiciary, and 37% in the police force. While a slight improvement from 2003, both of these percentages are lower than in past years. The majority of the respondents felt that people were not being treated equally by the legal system—particularly poor and uneducated people, and that this was part of the reason for their lack of confidence.

In the area of corruption, the survey found that 21% of the population said that they had knowledge of some act of corruption, which was a decrease of 6% in 2002. But in Mexico, Paraguay, Argentina, and Ecuador (all countries that are Free or Partly Free in our survey), over half of the population believes that you can bribe a policeman and a judge.

What these type of attitudes suggest is not only the lack of reform in the key institutions of rule of law or if reform has occurred, the lack of implementation of that reform, but also a popular lack of trust in institutions in the region. Even when there is progress towards reform, citizens do not place greater trust in them. Institutional efforts towards reform need to be coupled with efforts to change popular perceptions and mindsets towards those institutions.

Most of these problems outlined here are not, of course, unique to Latin America. Indeed, our analysis of global trends indicates that a weak rule of law and a failure to stem corruption present key obstacles to the consolidation of democratic institutions throughout the world, especially in the countries of the former Soviet Union. Elections, we are learning, are the easy part. The hard part, especially for countries that face high levels of poverty, is the challenge of building a legal structure that treats all citizens alike, that rules justly, and whose officials are honest and fair minded.

The United States has played, and can continue to play an important role in assisting the governments of Latin America in the reform of flawed and corrupt legal systems. We would like to end with a few recommendations:

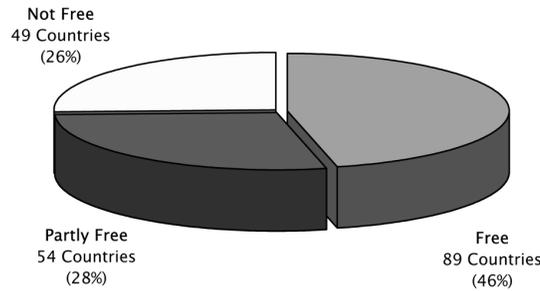
- (1) First, the U.S. must continue to stay engaged in encouraging and supporting continued judicial reform in the region—both through policy dialogue at the bilateral and multilateral level, and by providing sufficient resources. As the Middle East, Iraq and Afghanistan have become important priorities, we are concerned that the Administration has not focused sufficiently on the deterioration of political conditions in Latin America. We are particularly concerned about past reports that USAID was diverting funds that have traditionally supported rule of law reform in Latin America to support their trade agenda, while still categorizing it as democracy assistance. We have heard that the funding for legal programs is increasingly coming from the State INL Bureau budget whose law enforcement mandate does not sufficiently address issues such as unequal access and other critical democracy and human rights aspects of rule of law. We hope that the Administration maintains sufficient levels of long-term development assistance to ensure continuation of these important programs.
- (2) The U.S. should remain focused on human rights—especially as rising crime rates are creating pressures within the region to bypass basic human rights procedures. The U.S. should increase support for the work of indigenous human rights defenders that monitor and report on abuses within societies, as well as the functioning of the justice system, and can provide legal advice and services for citizens in accessing justice and raise public awareness of their rights.
- (3) A critical area which deserves more focus in U.S. transparency efforts is to support and encourage the passage and *implementation* of freedom of information (FOI) legislation. These laws, which would mandate release of government documents to the public, shine light on procurement processes and decisions, particularly in reference to natural resources. As well, they provide a new avenue for human rights organizations to ensure investigations are conducted properly into past and ongoing human rights violations. In Latin America and Caribbean, only 9 countries have FOIA type laws on their books: Belize, Colombia, Dominican Republic, Ecuador, Jamaica, Mex-

ico, Panama, Peru and Trinidad and Tobago. Since Mexico has passed one of the most liberal FOIA laws and has a host of excellent implementing mechanisms, their expertise should be tapped to share their lessons learned elsewhere in the region.

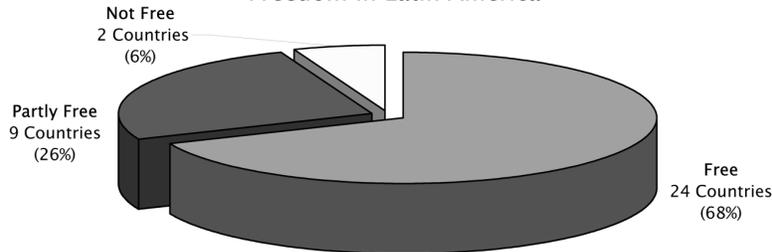
- (4) Similarly, we strongly endorse the need to continue to strengthen press freedom, which plays an important role in encouraging transparency and building support for institutions in the region. The recent trends in Latin America are alarming, according to our last survey of press freedom. In the last two years, Venezuela and Colombia joined the ranks of Cuba and Haiti in having the worst environment for press in the region. We also saw a downturn in press freedom in Argentina, Bolivia, Guatemala, Honduras, Nicaragua, and Peru. Libel laws continue to be a major problem for the hemisphere, and the U.S. has a role to play in raising this in our diplomatic dialogue bilaterally and in appropriate multilateral venues.

In short, Latin America has clearly come a long way. But it is not time for anyone to be complacent. Those in the region and outside the region have to recommit themselves to the issues of deepening democracy in order not to lose—even if ever so slowly—the gains of the last thirty years. And rule of law and transparency are the critical areas that need the focus of policymakers and activists in and outside of the region.

Freedom in the World 2005



Freedom in Latin America



Freedom in Latin America: Thirty-Year Trend

Year Under Review	1974	1984	1994	2004
FREE	8 (31%)	19 (58%)	18 (55%)	24 (68%)
PARTLY FREE	11 (42%)	11 (33%)	14 (42%)	9 (26%)
NOT FREE	7 (27%)	3 (9%)	1 (3%)	2 (6%)
Total	26	33	33	33

Mr. MCCAUL. Thank you, Ms. Windsor. The Chair recognizes Mr. Murphy for 5 minutes.

**TESTIMONY OF MR. JOHN G. MURPHY, VICE PRESIDENT,
WESTERN HEMISPHERE AFFAIRS, U.S. CHAMBER OF COM-
MERCE**

Mr. MURPHY. Mr. Chairman and Congressman Menendez, and Members of the Committee, thank you for the chance to testify at this important hearing. I am here on behalf of the U.S. Chamber of Commerce, which is the world's largest business federation, and AACCLA, the Association of American Chambers of Commerce in Latin America and the Caribbean, which represents 20,000 companies that together manage over 80 percent of all United States investment in the region.

As you have heard today, Latin America's embrace of democratic norms over the past 25 years has been a clear step forward for the region. In some countries, however, poor economic policy, weak political parties, and other factors have recently endangered this progress.

Many speakers today have already called attention to the fact that democratic elections by themselves do not guarantee the rule of law and not of men. While questions of the rule of law in the region may legitimately be addressed in a number of ways, I would like to focus on one practical question: What can the United States do to enhance the progress achieved toward democratic governance and the rule of law in recent years, and to address the great deal of progress that is still wanting?

To our analysis, the negotiation and implementation of high standard free trade agreements would do a great deal to enhance the rule of law and transparent governance in the region, perhaps more than just about any other step that the United States can take.

Such agreements include the recently implemented U.S.-Chile Free Trade Agreement, DR-CAFTA, which is pending before the Congress, and the U.S.-Andean and U.S.-Panama FTAs, which are in the final stages of negotiations.

The commercial benefits of these FTAs are substantial. The U.S.-Chile agreement, for instance, helped generate a 33 percent surge in United States exports to Chile last year, the year of its first implementation. But the benefits of these FTAs go well beyond exports.

As a number of Members of the Committee have commented, these agreements are not a panacea, but they provide useful tools to enhance the rule of law and transparency in government.

Consider an observation offered by one of the Central American trade ministers who led the DR-CAFTA negotiations for his country. He said that this agreement contains 15 years' worth of economic reforms in a single package. He noted that embracing such reforms in the context of a free trade agreement with the United States would allow his country, through a single legislative act, to seize the gains of transparent governance and the rule of law much more rapidly than would otherwise have been possible.

For emerging markets, free trade agreements assist in the creation of transparent and rules-based economic environment, which

is a critical element in the success of democratic institutions and market-based economic policies.

For example, DR-CAFTA will guarantee transparency in government procurement. It will require competitive bidding for government contracts in Central America and the Dominican Republic, with extensive information about these opportunities being posted on the Internet.

By ensuring that these opportunities are not solely open to well-connected insiders, DR-CAFTA will serve as a vaccine against crony capitalism. In addition, DR-CAFTA will open to competition sectoral markets that have until now, again, remained just the province of well-connected insiders and monopolists.

For example, Costa Rica's telecommunications and insurance markets are at present the exclusive domain of state-owned entities. The upshot is that telecomm services in Costa Rica are expensive and service is poor.

DR-CAFTA will open these markets to competition, and provide a level playing field and a regulatory environment for all the DR-CAFTA signatory nations. Another instance where DR-CAFTA will improve the business climate in Central America and the Dominican Republic relates to dealer protection laws.

In some cases these laws provide local dealers and distributors of products, services, and trademarks owned by American enterprises with exaggerated protections, locking these U.S. manufacturers into exclusive dealership arrangements.

At times, U.S. companies have no way to end a relationship with a non-performing dealer. DR-CAFTA deals with this matter effectively, and will do away with laws that allow well-connected insiders to take advantage of the law in an unfair way.

Again, we see that the pattern here is that the agreement will allow smaller and medium-sized companies to have the same access to opportunities that connected insiders currently have in those countries. In addition, DR-CAFTA represents an important opportunity to strengthen legal protections for intellectual property rights in the region, as well as the actual enforcement of these rights. In the 21st century, the dynamism of the U.S. economy is increasingly dependent on the ability of workers and companies to retain control of the intellectual property they create.

Inasmuch as no country has a monopoly on creativity, the same holds true for emerging market countries such as those in DR-CAFTA. In conclusion, it is plain that without adherence to the rule of law, a stable and predictable investment climate will remain elusive in Latin America and the Caribbean.

But by extending these ambitious and comprehensive free trade agreements such as DR-CAFTA, the United States can make a real contribution to democratic governance among our closest neighbors.

Again, I would like to thank the Committee for this opportunity to be here, and I am happy to take any questions. Thank you.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF MR. JOHN G. MURPHY, VICE PRESIDENT, WESTERN
HEMISPHERE AFFAIRS, U.S. CHAMBER OF COMMERCE

On behalf of the U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America (AACCLA), I am pleased to present the

House Committee on International Relations Subcommittee on the Western Hemisphere with this testimony regarding “Transparency and Rule of Law in Latin America.”

The U.S. Chamber is the world’s largest business federation, representing more than three million businesses of every size, sector and region. AACCLA represents 23 American Chambers of Commerce in 21 Latin American and Caribbean nations, and its 20,000 member companies manage over 80% of all U.S. investment in the region.

This is a timely hearing on a key set of issues facing Latin America and the Caribbean. The region’s embrace of democratic norms over the past 25 years has been remarkable. But in some countries, poor economic policy and weak political parties, among other factors, have recently endangered this progress. The sudden change of government in Ecuador earlier this year underscores the fact that democratic elections do not by themselves guarantee “the rule of law and not of men,” in Thomas Jefferson’s phrase.

While questions of the rule of law in the region may legitimately be addressed in a number of ways, this testimony focuses on one practical question: What can the United States do to enhance the progress achieved toward democratic governance and the rule of law in Latin America and the Caribbean during the past two decades?

To our analysis, the promulgation of ambitious and comprehensive free trade agreements (FTAs) would do more to enhance the rule of law and transparent governance in the region than any other possible step the United States could take. Such agreements include the recently implemented U.S.-Chile FTA; the U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which the Congress will likely consider in the weeks ahead; and the U.S.-Andean and U.S.-Panama FTAs, which are in the final stages of negotiation. (Congressional approval of DR-CAFTA is the top international trade priority of 2005 for the U.S. Chamber and AACCLA.)

The commercial benefits of these FTAs are substantial. The U.S.-Chile FTA, for instance, generated a 33.5% surge in U.S. exports to Chile in 2004, the year it was first implemented. But the benefits of these FTAs go beyond opening overseas markets for America’s workers, farmers, and companies.

As a point of departure, consider an observation offered by one of the Central American trade ministers who led the DR-CAFTA negotiations for his country. He commented that the agreement contains 15 years’ worth of economic reforms in a single package. He noted that embracing such reforms in the context of a free trade agreement would allow his country—through a single legislative act—to seize the gains of transparent governance and the rule of law far more rapidly than would otherwise be possible.

In addition to FTAs, the U.S. Chamber and AACCLA are convinced that the adoption of trade facilitation (TF) measures represents an excellent opportunity to secure transparent, rules-based procedures in international commerce. Accordingly, after a discussion of FTAs, this testimony will address TF as well.

How FTAs Enhance Transparent Governance and the Rule of Law

For emerging markets, FTAs assist in the creation of a transparent, rules-based economic environment, which is a critical element in the success of democratic institutions and market-based economic policies. Using DR-CAFTA as the prime example for this statement, it is remarkable to note the degree to which this agreement will guarantee transparency in government procurement. DR-CAFTA will require competitive bidding for government contracts in Central America and the Dominican Republic, with extensive information relating to these opportunities to be posted on the Internet. By ensuring that these opportunities are not open solely to well-connected insiders, DR-CAFTA will serve as a vaccine against crony capitalism.

To pursue the example further, DR-CAFTA will open to competition sectoral markets that have until now remained the province of monopolists and oligopolists. For example, Costa Rica’s telecommunications and insurance markets are at present the exclusive domain of state-owned entities (with a few exceptions for particular services). The upshot is that telecommunications services in Costa Rica are expensive, and service is relatively poor. DR-CAFTA will open these markets to competition and provide a level playing field in the regulatory environment for telecommunications and insurance in all of the DR-CAFTA signatory nations.

Another instance where DR-CAFTA will improve the business climate in Central America and the Dominican Republic relates to dealer protection laws. Such laws represent a significant trade and investment barrier for U.S. companies seeking to do business in the region. In some cases, these laws provide local dealers and distributors of products, services, and trademarks owned by foreign principals with ex-

aggregated protections, locking manufacturers into exclusive dealership arrangements. At times, U.S. companies have no way to discipline a nonperforming dealer. The recently negotiated DR–CAFTA dealt with this matter effectively, and will do away with laws that allow well-connected insiders to take advantage of the law in an unfair way.

In addition, DR–CAFTA represents an important opportunity to strengthen legal protections for intellectual property rights in the region as well as the actual enforcement of these rights. In the 21st century, the dynamism of the U.S. economy is increasingly dependent on the ability of workers and companies to retain control of the intellectual property they create. Inasmuch as no country has a monopoly on creativity, the same holds true in emerging markets such as the DR–CAFTA countries.

How FTAs Assist in the Resolution of Commercial Disputes

In addition, free trade agreements such as DR–CAFTA strengthen the rule of law through the establishment of arbitration mechanisms designed to provide timely recourse to an impartial tribunal. Such “Investor to State Dispute Settlement Procedures” (ISDPs) are included in over 40 bilateral investment treaties (BITs) between the United States and other countries, many of which have been in force for decades, as well as in all U.S. free trade agreements.

ISDPs provide for arbitral panels to resolve disputes under international legal standards that mirror U.S. Constitutional protections against arbitrary government actions and against taking of property without compensation. In developing countries where local judiciaries are at times slow, ineffective, or corrupt, U.S. companies have benefited from recourse to ISDPs. In addition, the mere existence of such provisions appears to serve as an admonition to governments to avoid arbitrary actions in commercial disputes lest the case wind up before such a panel.

The existence of such procedures in a BIT or FTA represents a boon to the investment climate, even though the number of cases tried is typically very small (e.g., a total of just over 30 cases have been brought under NAFTA’s Chapter 11 in all three countries over the past ten years). The value of the investments involved in these cases is small compared to the hundreds of billions of dollars that U.S. companies have invested in countries with which the United States has BITs or FTAs that feature ISDPs.

Trade Facilitation: Transparency and Efficiency in Commerce

In addition to free trade agreements, AACCLA and the U.S. Chamber believe implementation of trade facilitation (TF) measures by Western Hemisphere governments offers the chance to make the procedures of international commerce more transparent and rules-based in the Western Hemisphere. TF consists of measures to make ports (air and sea) and customs more efficient through improvement of their administration and procedures. TF aims to make international trade faster and cheaper through such steps as requiring the electronic transmittal of customs information in a standard format—thus doing away with clumsy forms.

For Latin America and the Caribbean, TF has a special appeal because it allows the region to leverage a key advantage the region has over Asia—namely, its relative proximity to the U.S. marketplace and the faster “speed to market” this can afford. In light of the ongoing global war on terrorism, TF has added appeal for the United States because it can allow customs and border protection officers to focus their attention on shipments deemed to present the highest risks.

While recent free trade agreements negotiated by the United States and some other countries include excellent TF measures (DR–CAFTA is the gold standard in this regard), countries need not conclude international trade agreements to reap the gains of TF. Governments may implement TF measures and see benefits immediately, regardless of whether other nations reciprocate.

AACCLA and the U.S. Chamber are working to raise awareness of the promise of TF as a way to enhance transparency in business while lowering the cost of commerce. To this end, AACCLA President James D. Fendell will participate in the June 5 private-sector forum taking place at the XXXV General Assembly of the Organization of American States in Fort Lauderdale, Florida. Our aim is to place TF on the agenda of the Western Hemisphere’s foreign ministers and, ultimately, the Western Hemisphere heads of state and government, who will meet in Argentina for the IV Summit of the Americas in November.

It is worth noting that the global Doha Development Agenda negotiations include a working group on TF, and an ambitious outcome in these talks is a top priority for the Chamber and AACCLA. Unilateral adoption of TF measures is extremely useful, but a common global approach could yield even greater benefits: a World

Bank study has reported that one-third of the benefits from the Doha Development Agenda negotiations would come from TF.

Conclusion

At a time when the economy is witnessing more international competition than ever before, the ability of the United States and other Western Hemisphere nations to thrive will depend increasingly on whether our governments provide an economic environment based on the principles of transparency and the rule of law. Without adherence to these principles, a stable and predictable investment climate will remain elusive. By extending ambitious and comprehensive free trade agreements such as DR-CAFTA to other Western Hemisphere countries—and by acting as a champion of trade facilitation measures designed to make international commerce faster, cheaper, and more transparent—the United States can make a genuine contribution to democratic governance among our closest neighbors.

Mr. MCCAUL. Thank you, Mr. Murphy. The Chair recognizes himself for 5 minutes. Thank you for your testimony. I think most of you, to some extent, answered my question, but I wanted to throw it out there and get a general comment.

I think for the last 25 years that we have seen greater stability in Latin America until recently. Recently, I believe, we have had some issues arise that indicate that perhaps we have emerging threats. And specifically, if I could focus on the tri-border area, which has become in recent times a more lawless area—it has been sort of a safe haven for terrorists, if you will. In my prior job, I worked counterterrorism in the Justice Department, and we spent a good deal of time focusing on that area.

Obviously that is in our hemisphere. We are fighting a war on terror in the Middle East and overseas, but I am concerned about the threat south of our border as well. And then President Chavez appears on the stage, a man who is now aligning himself with Fidel Castro, with Iran, recently asking for nuclear technology from Iran. There is obviously the Hezbollah presence in Venezuela. All these factors concern me greatly. The threat is coming directly to our hemisphere now, and whereas we are concerned about democracies in the Middle East, we are seeing the potential for failure of democracy in our own hemisphere.

I wanted to get your comment on that in terms of what you could advise the Congress and the Administration as to what we should be doing to address this problem. And I will open it up for general discussion with the panel.

Mr. REICH. Do you want to start in the same order?

Mr. MCCAUL. Yes, Mr. Ambassador.

Mr. REICH. Well, you are absolutely correct to point to the fact that there are new threats to democracy, to stability, to the security of the United States emanating from the region.

There has always been instability in Latin America as a result of inequality of opportunity, injustice, and many, frankly, cultural, political, economic, and social causes. The problem arises when someone comes in and tries to exacerbate these problems or take advantage of them.

And instead of trying to improve the social or economic, or political, et cetera, conditions, they make these worse. This happened not too long ago, staying within your period of 25 years, the recent 25 years, in Central America.

The problems that we went through in Central America, many of us, myself included, were in the government at the time, had to do with the fact that there were insurgencies that were in one as-

pect responding to the injustice and the inequality that existed in some of those countries. But on the other hand, they were being directed by radical elements, Communists, other extremist elements, supported from the outside. It took us, in the Reagan Administration, by the way, several years to convince the mainstream media and some Members of Congress that it was true that there were external factors involved and adding fuel to the fire in Central America.

The problem today, I think, can be traced to the enormous amount of money that Chavez has. He has become the external factor in several of the problems in the region, and the brain power provided by the Castro Government.

Cubans today in Venezuela are practically running many of the institutions, particularly security institutions. There is enormous involvement in the police, in the secret police, and the military, and intelligence, and they are not there frankly to raise the levels of economic development, or to help the country of Venezuela become a better democracy.

So as a result, Venezuela has both become a more unstable country internally, and has contributed, as has been mentioned here today, to instability in the region; Colombia, Bolivia, Ecuador, and several other countries.

Mr. McCAUL. Thank you, Ambassador. I see that my time has expired. We have a series of votes coming up. I believe four votes. The Chair will recognize Mr. Menendez for 5 minutes, and then we will suspend and resume after the votes.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to thank all of our panelists for their testimony. I want to acknowledge my friend, Mr. Lacasa, who is here, the Secretary of the American Bar Association, as well. And I know that he has had a great interest in this, as well, of course, as Mr. Lacasa.

Let me ask a couple of specific quick questions. Ms. Windsor, from your testimony, I raised an earlier question, and having listened to your testimony again, it seems to me that it is a legitimate question.

If we move all of or a significant part of our monies to just trade-related rule of law issues, we still leave a huge vacuum on a whole host of other rule of law issues. Mr. Murphy has in his testimony about these—about the BITS and the dispute settlement procedures, which are great for companies, but there is nothing like that in labor, for example.

So labor rights don't get pursued in that regard, nor does the average citizen in Latin American countries, who aren't parties to a trade agreement, get any benefit in terms of improved rule of law as it relates to their well-being, which is part of what we want for stability in the hemisphere. Am I mistaken here, or is there something that I don't see?

I asked Ms. Windsor, but I would be happy after she answers to have your perspective as well. Let me go to Ms. Windsor first.

Ms. WINDSOR. Okay. Yes, I think it is an area of concern. I am not saying that there aren't rule of law aspects in our trade agenda, but there are clearly areas that need to be improved.

But as an organization that is focused on democracy and human rights issues, I am concerned about those aspects of rule of law

which are still not addressed in the hemisphere's democratic development to date.

And my concern is behind the numbers, if you scratch the surface of the type of programs that are being supported now by USAID, that they have moved away from some of the more critical issues from a human rights perspective to other areas, to the broader trade agenda, before the human rights and other issues have really adequately been addressed.

Mr. MENENDEZ. Mr. Lacasa, do you want to comment on this?

Mr. LACASA. Well, Mr. Menendez, obviously as attorneys, we are partial about the law and about the rule of law. The rule of law is essential. When we talk about human rights, we are talking about the rule of law. When we are talking about economic development, we are talking about the rule of law.

There can be no economic development unless there is rule of law. Attorneys in my section represent a number of multinational corporations from the United States and Europe who are working in Latin America, and what is the major concern? Whether or not the rule of law is applied evenly, and whether or not, when a legal forum is needed in a dispute, we will have a legal forum available to us on a fair basis.

Therefore, I would say that for us the rule of law is an essential component of any economic development of any democratic government. There can be no democracy without the rule of law. The essence of a democracy is the respect of the law.

Therefore, I would say that this is a very important component, and I would say the most important component, because even trade, as important as it is, is only a section of a structured society. There can be no structured society unless there is the respect for the rule of law.

Mr. MENENDEZ. Thank you very much. And finally, Mr. Murphy, I appreciate your advocacy for the Chamber, and I understand it. But I am disappointed, to be honest with you, that you come to a hearing on the rule of law and the whole focus of your testimony is on trade.

That leaves a whole other universe that I think is also important to American companies, and to this country, untouched. And we have 40 bilateral investment treaties. I understand that we have signed several of those with some of the Central American countries already.

So it is not like we need CAFTA in order to achieve those, and to have the dispute settlement procedures that they provide, or at least three I think Central American countries that have signed—El Salvador, Honduras, and Nicaragua.

So I think the Chamber does a disservice to its ultimate global interests when it comes here and it only speaks about trade in a hearing that—and I know that you have been here before in some of our panels as it relates to some of these companies that I have referred to before.

And the reality is that we have a series of issues that go beyond the commercial interests when we talk about rule of law.

Mr. MURPHY. Congressman Menendez, I think it would be appropriate for me to recognize the leadership that you have shown on addressing a number of the investment disputes in Peru and Ecua-

dor, and I was very pleased to have the opportunity to speak to some of those in a hearing perhaps 2 months ago.

In the interest of time, I think focusing specifically on steps that the United States can take right now is an extremely helpful way forward, and with reference to a comment that you made earlier about workers, in fact the dispute settlement mechanisms that are in DR-CAFTA do apply to labor disputes as well.

And this is one of the innovations of the agreement, that it is the same dispute settlement mechanism that applies to those disputes.

Mr. MENENDEZ. It is not labor disputes.

Mr. WELLER [presiding]. Thank you, Mr. Menendez. Mr. Murphy, you were here in the room, I believe, when I raised the issue of the commercial disputes in Belize, and the commercial disputes in Nicaragua, and I just wondered from your perspective, what should the United States Government be doing right now to look at, for the interests of our constituents who have made decisions to invest in these two countries, for example, and others, to help resolve these and ensure as we move forward on the rule of law to advocate for our constituents?

Mr. MURPHY. I think it is important to point out that these agreements are a part of the solution to what ails the investment climate in Latin America. I pointed to a number of features in DR-CAFTA, for instance, the transparency in government procurement, where instead of well-connected insiders, anybody can come in and bid on the opportunity for government contracts.

And that is a big help, and the kinds of dispute settlement mechanisms, as well, that these free trade agreements include. I am not familiar with the case in Belize, but in Nicaragua, Law 364, I think it is appropriate that you raised it here in this hearing. That is a case where the legal system is applying standards that are holding companies that did business there over 30 years ago guilty before any trial having taken place.

Nicaragua is in a very sensitive place right now, and I think this is a country that needs a helping hand as much as anything, President Bolanos has been a fearless leader and a fighter against corruption. I think that DR-CAFTA will help that country, but there is a great deal more, including to address the problems of Law 364 that needs to come down the pike afterwards.

Mr. WELLER. Okay. I want to thank you, and unfortunately we have a vote on, and we have Members that are planning to return to continue to take advantage of the opportunity to ask questions, and I would ask if the members of the panel, if you could remain, and if your schedule would allow, this Subcommittee will suspend. We have four votes, and we will resume again at 4:30. Thank you.

[Recess.]

Mr. MCCAUL [presiding]. The Chair calls the Committee to order. I thank the witnesses for their patience, and for sticking around until the votes were completed. And now the Chair recognizes Ms. Lee

Ms. LEE. Let me just pass.

Mr. MCCAUL. All right. Mr. Delahunt.

Mr. DELAHUNT. Yes. Thank you, Mr. Chairman. I note that Ambassador Reich is not here. I was going to comment to him, Mr. Chairman, that when he talked about the Cubans in Venezuela,

particularly in terms of the intelligence agency of the Venezuelans, that things really have not changed.

Back in the 1980s, in fact, someone whom he knew, Mr. Posada Carriles, also a Cuban, happened to be the head of the Venezuelan intelligence. So it is rather ironic and interesting that there is a succession of Cubans, different perspectives I would suggest.

And I wanted to ask his opinion on whether he thought that Mr. Posada Carriles, who allegedly is responsible for the bombing of a Cuban airliner, resulting in the death of some 75 civilians, whether he should be extradited to Venezuela. But he is not here.

I might have even asked him if he had those same feelings about Orlando Bosh, who is here, who an Attorney General by the name of Richard Thornburgh, described as an “unreformed terrorist,” whether it was a good idea to recommend that Mr. Orlando Bosh come to the United States in any event. Since he is not here—

Mr. McCAUL. Mr. Delahunt, the Chair recommends—you obviously can submit those questions to the Ambassador in writing.

Mr. DELAHUNT. I am sure, and I know that I will get a very quick response, Mr. Chairman. I will be waiting for them. As they say, the check is in the mail. But I did want to note that his testimony made many assertions about what is transpiring in Venezuela.

Unfortunately, there are no names. Language like “Chavista loyalists and military officers have become multi-millionaires by access to oil export contracts, or partaking in all sorts of fraudulent schemes.” And I think that it is easy to make those kinds of statements.

But I think it is even more important to name names, to identify those people, and that is important. But it is true where he states that the country had a sad reputation, as one where bribes were necessary to get business done.

Well, in any event, let me pose a question to Ms. Windsor. In terms of Freedom House, and I respect the work that you folks do there, you described the situation as it relates to the media in Venezuela as “not being free.” Have there been any journalists arrested in Venezuela?

Ms. WINDSOR. If you would just allow me a moment. I actually happen to have our press freedom survey report on Venezuela, and so I can actually point out cases.

Mr. DELAHUNT. Okay.

Ms. WINDSOR. Beyond the “not free,” “partly free,” and “free” categories, Venezuela has a numerical score of 72 out of 100, 100 being the worst.

The issues there that we focus on are the law on social responsibility in radio and television, which has been used and applied according to the experts as a way of trying to shut down particular journalists and/or news magazines. Of course, one of the issues in the media is the tremendous political polarization.

Mr. DELAHUNT. I would comment to you—and if you would indulge me, Mr. Chairman, I think that this is a nice relaxed format here. But I would have to comment to you that it is my understanding that that statute, which was passed recently, has not been applied at all, okay?

In fact, I travel frequently to Venezuela with my comrade to my right here, and I can assure you that the media in Venezuela—and I applaud it—is extremely aggressive.

Ms. WINDSOR. Yes.

Mr. DELAHUNT. And extremely critical of Hugo Chavez.

Ms. WINDSOR. Right. Well, I was going to continue.

Mr. DELAHUNT. Okay.

Ms. WINDSOR. That the most important thing that affects the media freedom right now in Venezuela is the political polarization that characterizes all of society. So as much as there is a crack-down or a hostile climate toward some media—fostered by the Venezuelan Government—the media that is supportive of the opposition continues to make very, very serious claims about the government which demonstrates continued vibrancy.

Direct assaults against the media declined compared with 2003 and 2004, but journalists still decry government efforts to prevent free reporting. They complain about lack of access impeding their reporting, and they reported 30 complaints of harassment.

In June, government supporters attacked two Caracas media outlets, including a television station and daily newspapers. But as you said, there has been no killing of journalists by the state this year.

Mr. DELAHUNT. And no imprisonment. I mean, earlier too, I think it is important when we talk about the judicial system and its polarization, you are aware that there was a coup in Venezuela?

Ms. WINDSOR. Yes.

Mr. DELAHUNT. And that had the tacit approval of this Government. And that some 400 individuals who were involved in the coup were arrested, and they were imprisoned in Miraflores, which is the Presidential palace, and upon his return, Hugo Chavez inquired as to where the individuals who plotted the coup were.

And when he was informed that they were in detention in the Presidential palace, they were released immediately. I think that we can agree that that would not have happened in Cuba. I think we can agree that that would not have happened in the United States.

Ms. WINDSOR. Of course, to argue back, Chavez of course is not the worst ruler in the hemisphere, and our *Freedom in the World* survey shows that. I think the question is whether the democratic institutions are going to be shored up or eroded under his leadership. That is the issue.

And of course it is positive that he was informed of their detention and he made the decision. But the question is, how much do you want to rely on individuals making those kinds of decisions and how much do you really want to rely on systems in those institutions?

Mr. DELAHUNT. I think that is an excellent point and I agree with you. And I think it is important to support institutions, and we have made this effort in terms of strengthening the legislative body in Venezuela. I think it was Adolfo Franco who alluded to the Boston Group, which is a group of legislators, half of whom are Chavistas, and half of whom are ardent opponents.

And they have visited the Boston area, in fact, my district, on two different occasions, and it is a mechanism for dialogue and con-

versation. I guess what I am concerned about is American policy as it relates to Hugo Chavez. You know, we have spent 47 years demonizing Fidel Castro, and what do we have to show for it?

Ms. WINDSOR. I think it is important to see Hugo Chavez in an institutional context, and he arose of course in a context of a flawed democratic system within Venezuela. If you looked at what had been happening in the 1980s and others, Venezuela used to be one of the freest countries in the hemisphere, but because of the pact between the two major political parties, basically there was not a full democratic transition even then.

So while we declared Venezuela to be free, it was never in our highest ranking of democracies because of the real limits on competition, and because even then there was a problem of corruption. I think we are alarmed now by the direct attacks on the judicial system in the country.

Not to say that the judges before that were perfect, but we also think that some of the attempts—

Mr. DELAHUNT. I deplore attacks on the judiciary whether they occur in Venezuela, or whether they occur in the House of Representatives. I believe in an independent judiciary.

And I will tell you that what I am concerned about, and I would say this as a comment to the three of you, is that when we have a Department of Defense official, Mr. Pardo-Maurer, saying that “we need a strategy to contain Chavez,” that we are going down a road that we very well might regret.

Recently, Secretary Noreiga announced that they were putting forth a mechanism to audit democracy. The rest of Latin America sees it as an effort to isolate Venezuela. Let me suggest that is a huge mistake. Now, he said—

Mr. MCCAUL. Will the gentleman yield for a second? I have been advised that Chairman Hyde is hosting a reception in this very room and your time has expired, but if you could just please wrap it up so the other two Members will have time to ask questions.

Mr. DELAHUNT. Well, I think we want to stay here anyhow and wait for the Chairman and welcome him, but I will. But let me just say this: This has been the response from our allies there. The Chilean foreign minister, Ignacio Walker, said that the rest of Latin America would not go along with trying to isolate the Venezuelan leader. “We tell our friends from the United States that we have to avoid simplistic views,” he added, noting that Venezuela’s political problems predate Chavez, “the Argentine Ambassador to the OAS, Hugo Heal, said that this explanation is going to be impossible to sell to any adult human being.”

My point is—and there are 4 or 5 other comments here from representatives of different governments. It is just a policy that we should rethink, make some sense out of, and start moving in a different direction, one that encourages a constructive engagement, and with that, I will yield.

Mr. MCCAUL. Thank you. And now the Chair recognizes Ms. Lee.

Ms. LEE. Thank you very much, Mr. Chairman. I, too, am sorry that Ambassador Reich is not here, and so I think any of you can answer a couple of my questions. First of all, we are talking about the rule of law, and I would like to follow up just with regard to the Posada case.

And I want to quote from President Bush in August 2003. President Bush said that “if you harbor a terrorist, if you support a terrorist, if you feed a terrorist, you are just as guilty as the terrorist. The national security strategy of the United States, released in 2002, stated that no cause justifies terror. The United States will make no concessions to terrorist demands and strike no deals with them. We make no distinction between terrorists and those who knowingly harbor and provide aid to them.”

Now that is President Bush’s statement, and I am very curious and interested in how this whole situation with Posada is evolving, because in fact, once again, Venezuela enters the picture. We have an extradition treaty with Venezuela, and we have obligations under that extradition treaty.

The rule of law would dictate that the United States of America comply with its treaties, and specifically in this instance with Venezuela. So I want to find out—this man is an alleged terrorist, and how long is it going to take us to first of all be consistent with this policy on terrorism, and extradite him to Venezuela based upon our extradition treaties?

That would be the lawful thing to do, and I am wondering what your take is on that. It would be good to have your ideas on the record.

Mr. LACASA. Well, in the rule of law, the law is the law. We have a 1922 treaty with Venezuela about extradition, and obviously it exists and it should be respected. On the other hand, the Posada Carriles case is being made a cause celebre and there are many aspects to this.

I am in no position to opine, because for a lawyer to have a legal opinion on the case is almost impossible without due research. But I would like to call your attention to this fact, and we can make our own conclusions. Posada Carriles was arrested in Venezuela. I think it was back in 1976 after the bombing of the airplane, the Quantas airplane, where 75 people lost their lives.

He went twice before the courts in Venezuela, and he was acquitted twice. Then what happened was that the prosecutors appealed the case, and for 9 years—9 years—Mr. Posada Carriles was in prison in Venezuela without due process until he escaped. This was not during the Chavez Government. This was well before the Chavez Government, if my memory does not fail me. This must have been during the time of President Carlos Andres Perez.

Ms. LEE. With all due respect, it was not under the Chavez Government, and the Chavez Government has requested extradition. This is the current government.

Mr. LACASA. As I said before, I am in no position to give you an opinion on this, because as a lawyer, I will have to have research on the case, and we are not doing that, and that is not my particular area of practice in law.

So all I know is the facts as they exist. I am not taking any position of whether or not Mr. Posada Carriles should be extradited or not. That is something that should be discussed in the courts of the United States, because as you know, the extradition process requires that the country from which the extradition is requested have due process before making a decision.

And it is in the courts of the United States where the issue should be decided. Having said that, I do believe, as you do believe, that the rule of law should apply.

Ms. LEE. How about Ms. Windsor and Mr. Murphy? Do you have any take on this, in terms of the rule of law?

Ms. WINDSOR. I am sorry, but we don't actually have a position on this and so I can't comment.

Ms. LEE. But in terms of upholding extradition treaties as it relates to upholding the rule of law?

Ms. WINDSOR. We are in favor of the United States upholding all of its treaty obligations in whatever area. We think it is extremely important, particularly as we try to promote democracy and rule of law in other countries, that we make sure that we are following the highest standards ourselves.

Ms. LEE. And Mr. Murphy?

Mr. MURPHY. Well, I would in general echo that, but I have to confess that as a law enforcement matter that it is not something as a business association that we have really looked at.

Ms. LEE. Okay. Finally, let me just ask you, Ms. Windsor, when you define for your purposes a democracy, how do you factor in religion in terms of government, in terms of secular. For instance, we support democratic movements abroad, and we generally acknowledge that the theocracies and the mixing of religion and government is not a good thing, because then democracy is not real in many ways.

Yet, we see in our own Government now very fundamentalists in terms of religious perspectives developing and running public policies and laws, and someone quite frankly said that America is moving toward a theocratic State.

And I am just wondering as you look at countries in the Western Hemisphere, how does religion play into your definition of democracy as it relates to what we think we want to see in Latin America?

Ms. WINDSOR. Well, in *Freedom in the World*, which was our main survey, freedom of expression and belief are fundamental freedoms. They come directly from the Universal Declaration of Human Rights, and we actually have a whole center devoted to the religious freedom issues at Freedom House.

Religious freedom is the ability of individuals feeling free to believe to worship as they see fit, and to convert if they would like, to express their own religion in the fullest way possible.

So we are against any state incursions that would in fact diminish the individual's feeling of or right to actually worship freely. So to the extent that, for instance, countries that have adopted a particular version of Islamic law, which dictates to other Muslims what is the right thing to do as a Muslim, and make it state policy, we think that is an infringement on the right of religious freedom.

Ms. LEE. How about state policy in the United States that has religion as the fundamental basis? Is that comparable to what you are talking about?

Ms. WINDSOR. Again, I am not a U.S. scholar, but my understanding is that while there is a broad statement about religion being part of the U.S. Government, there are very distinct protections of the freedom of worship and religion for all citizens.

I know that it is hotly debated, and part of what we try to look at is, how is the overall society reacting to any attempt by either non-state or state action to infringe on the rights of a freedom of others.

And I think that there is a big debate right now in the United States society as to what this relationship between government and religion is all about. And I think that it is going to continue to be debated in the courts, and in our civil society, and in the media, and in this body, and I think that is part of the strength of the American democratic system.

Mr. McCAUL. The gentlelady's time has expired.

Ms. LEE. Thank you, Mr. Chairman.

Mr. McCAUL. Thank you. And the Chair recognizes Mr. Meeks.

Mr. MEEKS. Thank you. I, too, wish and was prepared, and wanted to talk to former Ambassador Reich, and I am disappointed that he did not return, but I would ask, Mr. Chairman, that you would allow the Members to submit written questions to the Ambassador.

Mr. McCAUL. I ask for unanimous consent that all questions for Ambassador Reich be submitted in the record, and without objection, it is so ordered.

Mr. MEEKS. Thank you. It becomes tremendously important to me because I had several questions that I wanted to find out from Mr. Reich. First, I wanted to find out about some of his statements that was in his written testimony.

He, and as I think Mr. Delahunt alluded to it, he talked about that there were sweetheart deals. I wanted to know who these sweetheart deals were with. He said that there were countries and companies, and I need to know which companies, which countries. Were any of them American companies, and how does this differ from the previous Venezuelan Administration when he was there?

I wanted to know from him, and I guess we can submit it in a question, on what was his view of the removal of President Chavez in 2002. Was this a disruption of the democratic rule?

I wanted to know from him about his involvement, going back to the time when he was reporting directly to Lieutenant Colonel Oliver North, and I wanted to find out about his engagement in prohibited and covert propaganda activities. And I understand that he had used taxpayer revenue for illegal public relations and lobbying, and that the office that he was involved in at that time had to be shut down.

I also want to find out about him and Orlando Bosh, who I understand, when we talk about the judicial system when he was the Ambassador there, Mr. Bosh was convicted of being part of that shooting down of the plane.

But it wasn't until Mr. Rank got there and used certain influence, from what I understand, with the Venezuelan justice at that time that Mr. Bosh got out, and there are some declassified reports that are out now showing certain communications between Mr. Rank and Oliver North, and other individuals within the Administration at that particular time.

Whereas, he wanted to get Mr. Bosh out, and he did that, and so I wanted to ask questions in that regard when we talk about an individual who was—when we talk about democracy, and we talk

about freedoms, and all of his involvement in some of this, and whether or not he is just fixated on a particular country.

But let me see if I can ask some questions to the panelists that did return to listen, because the comments—there have been comments by the recent Administration that Venezuela seemed to be steeped in a doctrine—and this Administration steeped in a doctrine of dehumanizing the country.

I have not heard of anybody talking about coming up with initiatives to engage President Chavez in the country, and to deal with what seems to me to be clearly part of his intent, and that is to uplift some of the impoverished segments of the population that have historically, and not just under the Chavez regime, but historically been left out and not a part of, or received any of the benefits of Venezuela's oil, or any other sectors of Venezuela's business community for that matter.

And I also was just wondering, and just coming back from Venezuela, I know that he has a 70-percent approval rating by his people; whereas, we have a President that has a 43-percent approval rating.

And we are not talking about getting rid of a President or anything of that nature, or policies. We have a President here that is also talking about wanting his people in the Judiciary. You know, it is his people. That is what this was all about in the Senate. He is clear about it. I want my people there.

And he is being very forceful in that regard, and we don't think that anything is wrong with that. So my question to you then is, is there any recommendations or suggestions that you have with reference to us engaging, because clearly from some of the statements that Mr. Delahunt indicated, the rest—and we are talking about the move with the OAS, and the rest of the Latin American countries are looking at us and saying we don't agree with you trying to isolate Venezuela.

And that can then hurt us with democracy or our credibility, which was my point early on, with trying to promote democracy in the rest of Latin America. And if we don't begin or begin to take the moral high ground, where we can at least have a moral platform to stand on, how can we—we have become laughing stocks, jokes, because how can we tell someone else that they need to democratize when we are just talking the talk and not walking the walk?

So does anybody have any ideas on how we can engage in a constructive manner, as opposed to the dehumanizing and destructive manner that we are doing with Venezuela, and some other areas of South and Central America?

Mr. LACASA. Well, let me be very frank. I am here today representing the American Bar Association. The reason why we have so much credibility in Latin America and all over the world, as far as our programs, and specifically the implementation and promotion of the rule of law, is because we have always taken a very neutral position, and we have never mingled into politics.

So therefore, I'm here today wearing the hat of the Chairperson of the Latin Council of the American Bar Association. It is very difficult to enter into this discussion. If I were allowed to do it in another forum, or this forum in other circumstances, I could tell you

a thing or two because I happen to work in Venezuela extensively. My firm has a law office in Venezuela, and I go there twice a month.

So I am very familiar with the situation, but today, I hope that you will excuse me, but I cannot comment because I won't be true to my responsibility toward the ABA.

Mr. MEEKS. I thank you for that. And I think there will be another forum. For example, Mr. Delahunt mentioned, and I think Mr. Franco mentioned, the Boston Group. So maybe some of your expertise that you have in another matter, we could elicit.

Because I want to do something constructive. I want to be able to take any experience that anyone has had there, and thinks we can help fix and/or stabilize their institutions, because I think that is what we were talking about. I think that Ms. Windsor talked about that. I am for that.

I think that we do have to make or stabilize institutions. So that no matter who the President is, the institutions are what last, and the institutions are what governs, and it is not just one individual. And I look forward to doing that.

So anybody that has a constructive manner in which we can do that and engage in that, then that is what I am looking to do, as opposed to dehumanizing.

Mr. LACASA. Congressman, all I can say, and I say this very objectively, and from a very neutral position, is that I believe that we, the United States, should engage the countries of the world with respect to their sovereignty, with respect to their rights to determine whichever way they want to go, as long as it does not threaten our security.

Any constructive engagement, we believe, would be welcomed, and I don't believe that the continuous antagonism against anyone for that sake is constructive, because it engages action, reaction, and more reaction, and it comes to a point where there is no going back. And I am not going to comment today on this, but just to say that way back—I come from Cuba, and way back in 1959, and this is academic today, but when President Eisenhower was the President, and Castro came to power in Cuba in 1959, and he was the Robin Hood of the Americas, he came here.

And President Eisenhower had a full agenda and could not see him. He was referred to Vice President Nixon, and they did not understand each other, and the rest is history. We escalated. At that time, I was in Cuba, and I was very happy, because I was anti-Castro, that the United States had taken that position.

And we were welcoming the escalation. Today, 45 years afterwards, and me being 69 versus 24, and so in retrospect I wonder if a more constructive engagement, a more pragmatic approach, would not have been better and the result would have been different.

That is quite frankly a question for the academicians and for history. What I would like to see is a repetition of this discussion. I have a plane to catch and I want to thank you for the opportunity—

Mr. MEEKS. I want to thank you very much. I wish we just had time to get a response from Ms. Windsor.

Mr. McCAUL. And our time has expired, but I do ask for unanimous consent that any additional questions be submitted in the record and without objection. Okay. One final question and let us wrap it up.

Ms. WINDSOR. Freedom House is not in favor always of isolating other countries, and in fact we have supported this new piece of legislation, the Advance Democracy Act, which talks about the very ways that you can try to persuade those that are leading non-democratic countries to change their ways, and not just through isolating them.

I do think that it is unfortunate that the United States Government is in a particular political position with Venezuela which prevents it from even raising legitimate criticisms of the regime.

And I think we need to be very clear that Venezuela has moved backward on some key democratic aspects under President Chavez. And if the U.S. was going to engage in, for instance, legal and other kinds of reform efforts, you would need to make sure that there was some political will to actually make that engagement real.

And then you would have to see that also from President Chavez, I think. So to me, there is a battle going on of egos, which is not very helpful to democratic development in the region, and we need to think about how to break the cycle.

And just from an NGO perspective, I think that thinking of ways to actually use American civil society to engage Venezuela would be something that is worth looking at given the political profile of this Administration. We actually are working to try to professionalize human rights defenders in Venezuela right now on the grounds that everything has become so polarized that the groups are not actually able to do their jobs. Defenders need to not just say their political opinions, but to use strict standards of evidence to support their arguments.

So that is part of the need to try to think about getting institutions of democracy to function in Venezuela, and using American civil society to help to do that.

Mr. McCAUL. Thank you. With that, I would like to thank the witnesses for being here. Your testimony is extremely helpful to the Committee, and the panel is dismissed, and the hearing is adjourned. Thank you.

[Whereupon, at 5:17 p.m., the Subcommittee was adjourned.]

APPENDIX



MATERIAL SUBMITTED FOR THE HEARING RECORD

Democracy Conflict and Humanitarian Assistance
All Spigots
Latin America and Caribbean 2003-2007

	Democracy, Conflict, and Humanitarian Assistance										
	Democracy and governance					Human Rights			Humanitarian Assistance	Conflict Prevention	DCHA Total
	Rule of Law	Political Process	Civil Society	Governance	Victims of War	Victims of Torture	Trafficking in Persons				
2003 Actual	36,342	5,685	16,314	52,373	8,975	1,000	1,000	43,968	6,093	171,750	
2004 Actual	42,392	16,553	36,953	55,316	3,950	2,400	1,850	36,685	6,860	202,959	
2005 Current	44,797	10,384	32,365	72,319	6,400	2,189	1,550	92,287	8,261	270,552	
2006 Control	51,307	7,233	26,973	79,388	6,000	0	1,560	26,500	5,220	204,181	
2007 Request	89,324	10,257	32,030	89,127	7,000	0	1,860	45,000	1,600	276,198	
Total Subtotal	264,162	50,112	144,635	348,523	32,325	5,589	7,820	244,440	28,034	1,125,640	

USAID 9/01/2005

RESPONSES FROM MR. JONATHAN D. FARRAR, DEPUTY ASSISTANT SECRETARY, BUREAU FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEPARTMENT OF STATE, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE MICHAEL McCAUL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Question:

It has been well documented that foreign terrorists, especially members of Islamic terror groups such as Al Qaeda and Hezbollah, have used Latin American countries as bases of operation for criminal enterprise and planning of terrorist attacks. The lawlessness of these regions, with haven of land that the government dares not enter, are filled with black market goods, the profits of which are sent back to the middle east to fund future terrorism. These regions are also used as stopover for terrorists on their way into the United States. This is both an issue that goes to the heart of our neighbor's democratic stability and to the heart of our own national security .

In your opinion, what portion of the organized crime is terrorist sponsored? Can you estimate a dollar amount of money raised for terrorism by these activities?

Response:

In the Western Hemisphere there is a historic link between various terrorist groups and narcotics trafficking. The Shining Path cut a brutal swath through Peru from the 1980's to the mid-1990's—largely funded by taxes on cocaine trafficking. It is well documented that designated foreign terrorist groups in Colombia, such as the Revolutionary Armed Forces of Colombia (FARC), National Liberation Army (ELN) and United Self-Defense forces of Colombia (AUC), all benefit substantially from their deep involvement in drug trafficking. A 2002 report by the Federal Research Division of the Library of Congress estimates that the FARC's income from drug trafficking may be as high as \$1 billion a year. Approximately 300 metric tons of cocaine enters the U.S. annually, with an estimated street value of \$30 billion. It is impossible to say what percentage of that amount funds terrorist organizations.

The Tri-border area of Paraguay, Argentina and Brazil, has long been a source of fundraising for radical Islamic groups. Groups such as Hezbollah and HAMAS raise money from voluntary contributions, extorting businesses in the Arab-Islamic expatriate community, and from illicit activities such as smuggling, document forgery and intellectual property piracy. However the vast majority of these communities have no terrorist ties, and the vast majority of the money from piracy/contraband does not go to terrorist organizations, but to purely criminal organizations seeking monetary profit. IPR piracy and contraband in the Tri-border is handled by many more actors than just potential Lebanese-origin supporters of Hezbollah. There are also thousands of Chinese, Paraguayans and Brazilians involved—none of whom has anything to do directly with the financing of terrorism. While it is impossible to ascertain the amount of money raised in the TBA and directed to terrorist organizations, there are occasional indications of its scope. Recently, Brazilian authorities arrested Saeel Bashir Al Atary, a reputed top HAMAS financier, on suspicion of involvement in credit card fraud, forgery and narcotics trafficking. According to press reports, Brazilian law enforcement speculated that the suspects had funneled in excess of \$10 million to terrorist operations in the Middle East over several years.

In its March 2005 International Narcotics Control Strategy Report (INCSR), the Department reported that because criminals or terrorists cannot now move or acquire funds through formal channels as easily as they did before, they are seeking alternative laundering and financing methods to undermine international efforts and overcome the law enforcement regulatory obstacles placed in their paths. This is evidenced by the increasingly important roles of "alternative remittance systems"—hawalas, the black market peso exchange, various charitable organizations, and trade-based money laundering that facilitates transnational crime and terrorism. In 2004 Alberto Chong, an economist at the InterAmerican Development Bank, estimated that money laundering accounted for 2.5 percent to 6.3 percent of the GDP of the Latin American region.

Even small amounts of money in the hands of terrorists are cause for concern. Terrorist operations require relatively little money (for example the attacks on the World Trade Center and the Pentagon are estimated to have cost approximately \$500,000), so terrorist financiers need to place relatively few funds into the hands of terrorist cells and their members in order to carry out their objectives.

Question:

Do these groups, knowing that democratic rule of law will injure their plans, actively work to disrupt democratic freedom from developing in these countries?

Response:

International terrorist organizations by their very nature seek to undermine democratic institutions and the Rule of Law so as to expand their freedom to operate. Where democratic institutions already are vulnerable, as is the case in some instances in the Andes, terrorist organizations may take advantage of this vulnerability. INL has a variety of successful programs in the region to strengthen these institutions.

Question:

What success, if any, have we had at penetrating and disrupting the activities of these groups? What can we do further to have additional success?

Response:

The Department defers to the intelligence community to comment on the level of USG penetration and disruption of terrorist groups that may be operating in Latin America.

In terms of actions to achieve success against these groups, the Department, through INL, supports a variety of initiatives, such as supporting financial investigative and analysis units in more than 100 countries worldwide with training, equipment and technical expertise. Another initiative involves helping countries to establish Trade Transparency Units (TTU) to counter trade-based money laundering for systems such as hawala, the black market peso exchange in Colombia, and the use of commodities such as gold and diamonds that are not captured by current financial reporting requirements. The TTU initiative partners USG and participating foreign governments (with dedicated enforcement units) to detect discrepancies or anomalies in international trade data which may be indicative of trade-based money laundering or other criminal activities. INL also provides support to international regional organizations, such as the Financial Action Task Force on Money Laundering (FATF), the Caribbean Financial Action Task Force (CFATF), the Grupo de Accion Financiera de Sudamerica Contra el Lavado de Activos (GAFISUD), the Egmont Group, and others. The Department supports the multilateral "3+1" strategy (comprised of the Governments of Argentina, Brazil, and Paraguay, plus the United States) that focuses on practical, preventive steps to combat terrorism by enhancing cooperation among the "3+1" group to curb terrorist financing, strengthen borders, enhance law enforcement capabilities, improve intelligence sharing, and implement anti-terrorism legislation. Since 2002, the "3+1" group has met four times, and the USG has provided funding for counter-terrorism training and technical assistance to the area.

