

The War for Guatemala's Courts



**How political, corporate and
criminal interests seek to
influence Guatemala's justice system**

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Justice and the Creation of a Mafia State in Guatemala

As Guatemala's Congress gears up to select new Supreme Court Justices and appellate court judges, InSight Crime is investigating how organized crime influences the selection process. This story details the interests of one particular political bloc vying for control over the courts and what's at stake: millions of dollars in public money, much of which is siphoned for individual and political use, and the ability to pillage it with impunity.

It took 40 minutes for the interview to officially start, but it never really began. The judge, a veteran of decades in the judicial sector who had held positions in every courthouse except the Supreme Court, spent most of his time with me answering phone calls, signing papers and talking to others coming in and out of his office.

You look like you are in the middle of a political campaign, I noted, half-asking and half-stating a fact.

"I am," he nodded.

That campaign is about justice, Guatemalan style. The country is in the midst of selecting its Supreme Court Justices and appellate court judges for the next five years, a process that culminates at the end of September.

Officially, both processes are controlled by what is known as a "postulation commission," a committee of 34 people that selects the candidates from a long list of applicants, before Congress makes the final selections. Unofficially, it is a free-for-all with various political, economic and criminal interests trying to control who gets to join that commission, so they can better wield power over the court system.

The most powerful of these special interest groups is called the "oficialista," or the "official" bloc. The oficialista bloc gets its name because it consists of many people linked to the current government, specifically to President Otto Perez Molina and Vice President Roxana Baldetti. While these top officials deny trying to influence the postulation commissions, several former commissioners, watchdog groups and the media routinely refer to the oficialista operatives in their public discourse, analyses and in interviews.

You do not get a high court position without campaigning, the judge said.

"The process is politicized," he told me, as if stating the obvious.

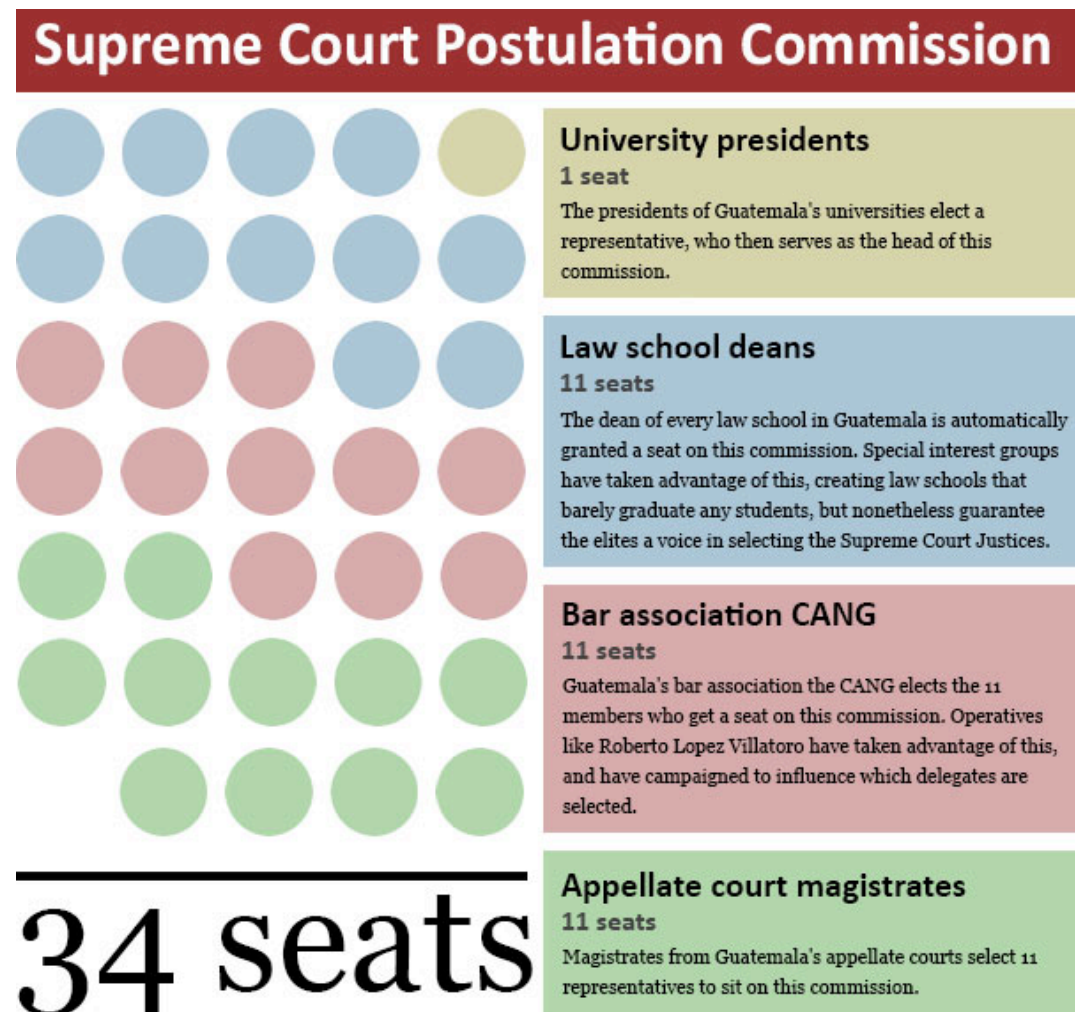
Almost on cue, a younger judge came into the room. He too is seeking a high court position and thinks politicking his elder colleague will get him one step closer.

“No one has total control [of the commissions],” the veteran judge said after the younger judge left the room. “Everyone needs to negotiate.”

The judge then got another call. It was his lunch date: a group of former high-level officials with influence on the commissions. He had to go.

The New Power Bloc in Guatemala: the Oficialistas

On paper, the means by which judges are selected is a very open, democratic process. The selection of the Supreme Court and appellate court judges are controlled by separate commissions. Each commission has 34 members from different parts of the government, academic community and the bar association.

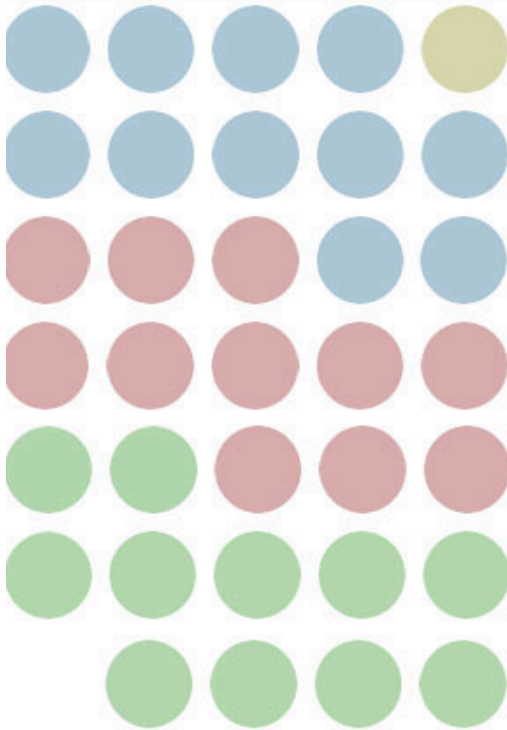


The commissions meet in a public venue -- in this case the campus of the San Carlos National University (USAC) -- and go through the candidates' resumes, checking if they have criminal associations or have been implicated in corruption before deciding on a list of finalists they send to Congress, where the final selection is made.

In an ideal world, each of the commissioners would be independent actors that vote for the candidates based on their record of service, experience, education and other factors clearly outlined by the country's legal code and its constitution.

The laws that establish these commissions were designed precisely to ensure the independence of the majority of the commissioners. That is the reason the commissions include law school deans and bar association members, each of whom have 11 representatives of the 34 total in both commissions for the high courts.

Appellate Court Postulation Commission



Head of university presidents

1 seat

The presidents of Guatemala's universities elect a representative, who then serves as the head of this commission.

Law school deans

11 seats

The dean of every law school in Guatemala is automatically granted a seat on this commission. Special interest groups have taken advantage of this, creating law schools that barely graduate any students, but nonetheless guarantee the elites a voice in selecting the appellate court judges.

Bar association CANG

11 seats

Guatemala's bar association the CANG elects the 11 members who get a seat on this commission. Operatives like Roberto Lopez Villatoro have taken advantage of this, and have campaigned to influence which delegates are selected.

Supreme Court justices

11 seats

The 13 justices that make up Guatemala's Supreme Court hold an internal election in order to select the 11 who have a seat on this commission.

34 seats



But what was meant to distance politics from the process has only politicized the non-governmental institutions. Both the universities and the bar associations have become key battlegrounds where everything on the table is traded, negotiated and bartered, all in the name of justice. Internal elections for these universities and the bar association representatives resemble political campaigns, complete with advertisements, T-shirts, transport services, placards, private parties, backroom meetings and public rallies.

The most powerful political operators -- such as the oficialistas -- spend hundreds of thousands of dollars trying to influence who becomes part of these postulation commissions. The investment is worth millions of dollars in contracts, jobs, procurements and other booty from mostly state coffers.

“Corruption has become the norm,” Helen Mack, the head of the Myrna Mack Foundation, told InSight Crime.

For a long time, there was but one major political bloc in Guatemala with a say over this process. This bloc was controlled by traditional economic elites such as large exporters, bankers and industrial interests. They wielded power via their control over the bar association, the universities and, in many cases, the judges themselves.

Over time, however, the traditional elites have ceded economic and political space to new, “emerging” elites with economic interests in non-traditional exports and imports, fledgling construction, tourism and mining. Many of these emerging elites’ economic projects depend on government largesse, so it is little surprise that one of the most powerful among those vying for influence over the postulation commissions comes from the heart of the government.

That so-called oficialista bloc tries to control the selection of the judges by exercising its influence over key government posts and many of the government’s most important economic levers. In order to understand how the oficialistas work, we need to explore their links to these levers, specifically Guatemala’s social security agency and the military, as well as how they milk public works contracts.

The Oficialistas and Social Security

One of the main ways the oficialista bloc manipulates the selection of judges is via its ties to one of Guatemala’s largest government agencies, the Social Security Institute (IGSS). The current head of social security is a major political operator for the oficialistas, and a key lobbyist for ensuring that the oficialistas’ picks make it to the commissions that then select Guatemala’s judges. And because the IGSS manages such a huge budget – and is responsible for awarding so many lucrative contracts –

this has invested the agency with additional political influence that goes beyond the selection of judges.

The IGSS has been called the “petty cash” department, i.e., a means to buy favors from other government officials, politicians and judicial authorities. When it comes to the postulation commissions, the IGSS works like oil does for a car. Current IGSS president and former military colonel Juan de Dios Rodriguez is the officialistas’ chief political operator for these commissions. He helps to negotiate who will serve on them and how those commissioners will vote, according to watchdog groups and media accounts.

Given the size of the IGSS, Rodriguez wields plenty of power that goes well beyond the formation of the postulation commissions. At any one time, the IGSS has about \$5 billion under its purview, according to an IGSS financial statement from 2012, more than half of which is in circulation via investments, medicine purchases, contracts with private laboratories and public infrastructure projects. Most of the IGSS money is spent via no-bid contracts. In fact, eighty percent of government purchases were direct during the first quarter of this year, according to an analysis by Prensa Libre. The IGSS and the Health Ministry are the two government entities that do the most no-bid and “exceptional” purchases, the report said.



IGSS head and former colonel Juan de Dios Rodriguez

These contracts make the IGSS an important political tool for whoever controls it. This is, in part, because the medicine lobby is one of the largest political campaign financiers in the country. Gustavo Alejos, whose former company, J.I. Cohen, benefits from millions in government medicine purchases each year, was a key backer of the campaign that elected Alvaro Colom as president in 2008, according to a Southern Pulse report. Alejos later served as Colom’s “private secretary.”

These medicine purveyors are known to play dirty and some have connections to the underworld. In its report, Southern Pulse said Alejos threatened a public official who was moving to end J.I. Cohen’s contract with the Health Ministry. Alejos also reached out to contacts in the Constitutional Court to ensure that legal challenges to the contract’s validity were squashed, Southern Pulse reported.

But proving this undue influence is nearly impossible, analysts say, in part because these political actors control the courts. There are, quite simply, no known investigations against Alejos, Rodriguez or any other current high-level official associated with the IGSS, and the use of the IGSS to buy influence in and around the postulation commissions has never been proven.



“We don’t have the evidence,” Renzo Rosal, a columnist for Plaza Publica who is also affiliated with watchdog group Guatemala Visible, told me about the IGSS “petty cash” assertion. “But the fact these people who are managing this [maneuvering to select high court judges] are from IGSS tells us a lot.”

The one formal investigation into the IGSS, in which personnel orchestrated an inflated deal to build apartments for the elderly that were never built, has resulted in only one incarceration to date. One of those implicated but never arrested in that IGSS case was Gustavo Herrera. Herrera is named as another of the government’s key political operators in arranging the postulation commissions to the oficialistas’ liking.

Herrera went on the run while the IGSS case moved through the judicial system in the mid-2000s. The case is now reportedly “frozen,” as one prosecutor told InSight Crime, and Herrera is back operating in Guatemala City -- allegedly alongside Rodriguez -- meeting with judges, lawyers and politicians alike in an attempt to engineer the courts.

Herrera has direct ties to the underworld, local investigators told InSight Crime. Specifically, in 2004, then-presidential security commissioner Perez Molina tied Herrera to a prominent drug trafficking network whose top leader was later extradited to the US, where he served six years in prison. And when InSight Crime asked now President Perez Molina about Herrera earlier this year, the president reiterated in his written response his belief that Herrera had “a relationship with drug trafficking.”

A Mafia State

Guatemala has long struggled with corruption, and it has long been infested with organized crime. The problem now is that the two seem to be fused together more tightly than ever, and that this new ethos has permeated the state at all levels.

The currency in this system is what they call “quotas of power” in Guatemala. These quotas are numerous and dynamic. They are traded when the state signs a public works contract to build a road; when the social security institute buys medicine; when the police get new bullet-proof vests; and when someone moves contraband, illicit drugs or dirty money.

Quotas of power are also favors, introductions and invitations to parties. They ensure some become rich, and some gain more political power, so later they too can become rich. Most importantly, they contain a near padlock guarantee that anyone who participates will not be prosecuted.

The result is what some insiders like Julio Rivera Claveria call a mafia state.

“This is part of a scheme that is needed so that the country remains in the hands of the mafia,” Rivera Claveria told me.

Rivera Claveria knows better than most. He was a former high-ranking official in the Interior Ministry, who is now part of the Attorney General’s three-person oversight board.

“It has been a process in which the mafias and the criminals have gained more and more space,” Rivera Claveria explained. “If we had a strong judicial system, the country would be in a different place.”

The judicial system, however, is not strong. Its impunity rates are amongst the worst in the hemisphere. Guatemala is one of the five most violent places on the planet not currently at war, according to the United Nations. And it has a chronically impoverished and unprepared group of police and prosecutors who respond more to the political whims of their bosses than their mandates as the protectors of justice and order.

The Oficialistas and Public Works Projects



Arnaldo Medrano

If the IGSS is the oficialistas’ “petty cash” department, public works contracts are its “cash on hand.” More than any other economic activity, public works have become the motor for development of a new class of entrepreneur-politicians in Guatemala, a type best represented by the oficialistas. Some of these are legitimate, legal efforts. But a large number are part of the questionable quotas of power shuttled around the country amongst politicians, public officials, contractors and their criminal beneficiaries.

“If the big business deals with the state are the ‘party,’ the public investment budget is the cake and the contractors the ones who dig in and eat,” writes Ricardo Barrientos, an economist at the Guatemala-based ICEFI think tank, in a forthcoming paper for an American University project on elites in Central America.

One case moving through the courts now typifies how this works. Arnaldo Medrano, the mayor of a small municipality called Chinautla, has been charged with money laundering, illicit association and embezzlement. Investigators claim Medrano and



another mayor illegally moved at least \$45,000 between them for reasons that are not clear.

The mayor says he is innocent, but his record shows a clear penchant for using his quotas of power to benefit himself, his family and his allies. Medrano has formed at least 24 companies and five of what are called “non-governmental organizations,” or NGOs. The NGOs are, in essence, contracting agencies. Numerous relatives and friends work for these companies and NGOs, which have been the beneficiaries of dozens of no-bid contracts. In fact, since 2009, of the 567 contracts given out by the mayor, 490 were no-bid.

Politicians like Medrano gained the space they needed to operate in the late 1990s and early 2000s. As Barrientos outlines in his paper, during this time Guatemala reorganized the institutions controlling public works projects, and gave more power to the municipalities and states to exercise control over these projects.

As it was with the postulation commissions, the law was intended to democratize the process, and in many ways it did. A proliferation of construction companies, both big and small, has followed, as well as a rise in ancillary businesses, all of which can benefit from the public works projects around the country. As Barrientos notes, there are now over 2,000 companies in Guatemala that are registered with the government’s infrastructure management database, compared to just 84 in 1998.

But this proliferation of smaller purveyors came with its own issues and complications. These purveyors realized that their relationships with local politicians gave them a great opportunity for repeat business, so they began to finance local and congressional campaigns in return for more contracts. For their part, the politicians began to collect “commissions” on these contracts. The snowball effect that followed has put some of these companies and politicians in a league with the traditional political and economic powerhouses.

“It turned out to be a way to embezzle funds, manipulate the budget for election purposes, and pay ‘favors’ to the financiers of election campaigns,” Barrientos writes.

The owners of these construction companies and frequent financiers of these campaigns include some of the most notorious names in Guatemalan underworld lore. The legendary Lorenzana clan, whose “Patriarch,” Waldemar Lorenzana, pled guilty to drug trafficking in a US court in August, controlled numerous companies that benefited from public works contracts in their stronghold, the Zacapa province. The daughter of Otoniel Turcios, who is also in the United States facing drug trafficking charges, ran a development program in a central state, channeling money from a national project into infrastructure projects. The man who facilitated those contracts was assassinated in Guatemala City, allegedly by the Zetas criminal organization.

The result of this democratization of public monies is that public works projects have become extremely important quotas of power. In fact, public works projects have done more to create a mafia state in Guatemala than nearly any other single government program. The evidence for this is manifested in the number of cases brought against mayors, congressmen and governors for corruption, embezzlement, and money laundering, few of which end in convictions.

Given what's at stake, it is little surprise that the oficialistas have a congressional operator trying to influence the postulation commissions. Sources told InSight Crime that person was Congressman Baudilio Hichos. They say Hichos is helping to arrange a favorable set of candidates from which Congress can choose its judges, keeping its merry-go-round of public works contracts going.



Baudilio Hichos

Hichos has been in politics since 1990 and in Congress since 1994. In Hichos' stronghold, the border state of Chiquimula, he holds sway. At one point, at least nine members of his family held government posts related to public works and other state projects. His brother ran an agency controlling roads projects in Chiquimula and a nephew worked in what was called the Social Investment Fund; two other brothers worked with a municipal services program and a national development program; his wife ran a government literacy program; and two other relatives worked in the province's education department.

Hichos' contacts may reach into the underworld as well. According to an account in *elPeriodico*, he was close with Giovanni España, an alleged drug trafficker who was killed in the Peten province in 2010 by the Zetas criminal organization. One of España's companies, *elPeriodico* said, held a government contract to pick up the garbage in Chiquimula for the next two decades.



Officialista operators like Hichos are maneuvering to protect this massive and lucrative merry-go-round. Without it, the emerging elite has little access to large influxes of campaign cash that keep their political parties afloat, their campaigns flush and their increasing power intact.

The Politics of Trading Favors

It is erroneous to think of the Guatemalan state as an appendage of the mafia, although parts of it surely are. It is more that different parts of the state act like a mafia. What this means in practice is that Guatemala has networks of current and ex-officials who -- either through their control of key government posts, their ability to control policy, or their economic might -- are sucking the country dry.

“It a voracious type of capitalism,” explained a government prosecutor who wished to remain anonymous because of his investigations into government corruption and illicit financing for political campaigns. “It is only for carnivores.”

Trading quotas of power can lead to fraud, illegal enrichment and obstruction of justice, among other legal transgressions. But perhaps it is most aptly expressed in something called “trafico de influencia,” or “influence peddling.” Influence peddling, the law says, is to influence an official or public employee using “hierarchy, position, friendship or any other personal connection to obtain an undeserved benefit.” The penalty is up to six years in prison and banishment from government.

This law, however, is no impediment. Quotas of power are being traded at the highest and the lowest levels. But it remains a very closed system. Gain entry to the system and reap the benefits. Cross the system and pay the consequences.

“There is a democratization of corruption,” a former high-level official, who did not want to be identified because he still has relations with the government, told me.

The official says this is in part motivated by economic concerns and in part motivated by politics. Decentralizing power has increased the number of players vying for a spot at the table. And all of them want something to eat.

The former official used a different metaphor, calling it a “mercantilist” approach. It has permeated the political parties as well, which appear to be more short-lived, economic ventures than long-term ideological movements, he said. He cited recent shifts in party affiliations that changed the balance of power in Congress literally overnight.

“To think that there is a rational state that is making decisions is to misunderstand the way the Guatemalan government works,” the former official explained. “They are all thinking about how to make money.”



The Oficialistas and the Military

The oficialista bloc aims to protect other actors as well, many of whom are former and current Guatemalan military. President Perez Molina -- a former general who headed up military intelligence -- has a cadre of former military officers assisting him. IGSS-head Rodriguez is a former colonel who worked in military intelligence under Perez Molina. Former General Ricardo Bustamante is the head of the powerful Security Council; and former Colonel Mauricio Lopez Bonilla is the Interior Minister. Others are littered throughout government, making up what could be called a Praetorian regime.

The oficialista bloc, through representatives like Rodriguez, is maneuvering to protect sweetheart military contracts and ensure its cadres do not get prosecuted for human right abuses. To be sure, many ex-military officers are facing charges for human rights violations and other crimes committed during the country's brutal civil war that ended in 1996. The reality of what could happen if they do not control the courts became apparent after a former general and the leader of a 1980s coup, Efraim Rios Montt, was convicted of genocide in 2013. Even though the Constitutional Court quickly overturned the decision, it spooked a number of high-level former military officials, including President Perez Molina.

There is also a lot of money at stake. The 1996 peace accords brought an entire restructuring of the security sector. Guatemala's Armed Forces were cut by two-thirds, and the bulk of the security monies shifted to the Interior Ministry, whose budget has ballooned to \$500 million a year. The ministry uses the budget to buy weapons, uniforms, and bullet-proof vests, among other security-related products. Like in the IGSS, many of these purchases are made through no-bid contracts, which often go to security companies controlled by ex-military officers who left service when the military downsized.

The military also still administers the purchase of thousands of weapons and munitions for its remaining forces. Although they are less than they once were, the expenditures are rising again. Between 2004 and 2008, the United Nations registered a more than three-fold increase in munitions imports, and a two-fold increase in imports of pistols and revolvers.

In addition, there is a large underground market for these Guatemalan weapons procured by the military. A Wilson Center report, citing sources from the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), said that an ATF analysis of hand grenades and other military ordinance seized by Guatemalan police between 2006 and 2009 showed that 85 percent could be traced back to the military's own stockpiles. Many of these weapons have also turned up in crime scenes in other countries in Central America and Mexico.



Military procurements are also seemingly triangulated for profit. In a 2009 report, the UN noted that Guatemala was an exporter of weapons, despite the fact that it does not have a domestic weapons industry. More recently, the Military Industry -- the military's own munitions, clothing and boots factory -- sold \$6 million in tennis shoes and balls to the Ministry of Culture. As noted by *elPeriodico*, there were several problems with the deal: there was no open bidding process for the contract; the Military Industry does not produce tennis shoes or balls, so it imported them and resold them at a 3 to 6 percent markup; and the purveyor of the shoes was never revealed.

Undeterred by the critics who say these sweetheart deals include kickbacks on all sides, the government recently opened up direct sales between the Military Industry and the Interior Ministry.

Ensuring Impunity

The officialistas are certainly not the only power bloc bilking the state and fixing the judicial system to ensure they will not be prosecuted. Traditional elite economic interests have long held a stranglehold on government public works contracts and have engineered more than a few elections and judicial selections as a result of this control. They are also wedging into new economic territory such as mining and hydroelectric power, both of which often need the courts to green light massive land grabs and large-scale evictions.

What's more, there are "emerging" elite rivals to the officialistas, the most notable of which is Roberto Lopez Villatoro, a.k.a. "The Tennis Shoe King," a kind of political, entrepreneurial wildcard who made his fortune selling "replica" athletic shoes.

And the judges themselves have their own power. Once in the courts, they can, and often do, take surprising turns. One appellate court judge I spoke to -- on condition of anonymity since he is vying for a spot on the high courts -- offered a more nuanced view than many others in this regard. He said people "overestimate" political influence, quotas of power, and nepotism. He insisted that he was a relative unknown before becoming an appellate court judge, and that he had gained the position on his own merits, not because he had campaigned for it by promising leniency in tough cases. The judge said the differences between the magistrates are more generational than political, and that quotas of power were not evident in the postulation commissions.

"There is not any influence peddling," he told me, referencing the legal code.

Technically, he is correct. There is not one mention of any prosecution of anyone for "trafico de influencia" in the last two years of annual reports of the Attorney General's Office, since the law came into being.



It is, in fact, nearly impossible to prosecute someone for “influence peddling.” The burden of proof is high. More importantly, the incentives are low. Prosecuting someone would require establishing a legal precedent that certain types of interactions amongst officials, contractors, military personnel, companies, criminals and others, are unacceptable practices, when the reality is that trading quotas of power is exactly how the government and the justice system works in Guatemala.

“Criminal networks co-opted the justice system so that they would receive protection, so that they would receive alerts, and so that they wouldn’t be judged,” Rivera Claveria told me.

Despite what some judges might say, that criminal system seems to have a stranglehold on the current postulation commissions and the judges vying for high court posts. The other judges I saw were scrambling from office to office and from one lunch to the next, politicking for their next position. The people they were meeting included men like the IGSS President Juan de Dios Rodriguez and his associate, Gustavo Herrera, as well as other powerful players in this high stakes poker game.

The judges have but one chip to play: access and influence in their decisions. In return, they often get access to their own quotas of power or benefit from them. Numerous judges, for instance, hold multiple government and private posts, as Nomada pointed out in a recent report. Others open private law firms, which administer government contracts or are hired by government agencies.

Who amongst these judges will make the next round depends on this maneuvering. Court watchdogs, such as the organization Pro Justicia, say that the final selections will come from a negotiation between the oficialista bloc, a wing controlled by the aforementioned “Tennis Shoe King” and several commissioners who work closely with traditional economic powers. These blocs, of course, have different motivations but share a common interest in protecting themselves and their allies.

“You have to control the courts, so that once you leave office you have enough juice to protect yourself,” newspaper columnist Renzo Rosal told me.

The results are not in, but the fix is, Rosal and other court watchers say. The high courts, it appears, will be controlled by these blocs who are trading quotas of power via their commissioners to protect their licit and illicit interests. Once the postulation commissions have decided who the candidates are, the process moves to Congress. The judges Congress selects will hold their posts for five years, and the wheels of corruption, crime and impunity will continue to churn in this mafia state.

The ‘Tennis Shoe King’ Who Became Guatemala’s Gentleman Lobbyist

As Guatemala gears up to select new Supreme Court Justices and appellate court judges, InSight Crime is investigating how organized crime influences the selection process. This story explores the role of Roberto Lopez Villatoro, a.k.a. “The King of Tennis Shoes,” a businessman and lawyer who has become one of the most influential figures in these selection processes.



Carlos Castresana

Like him or not, Carlos Castresana is a charismatic person. The Spanish judge has a flair for the dramatic and a showman’s sensibility. In his public presentations, he speaks with an authority that makes everyone around him shrink in fear that he might point at them next and accuse them of some sort of transgression against humanity.

His fearless -- and some say, insolent -- nature led him to take on corruption in the beloved Real Madrid football club; to try to prosecute Augusto Pinochet and former Argentine military officials for human rights violations; and to become the first head of the United Nations Commission Against Impunity in Guatemala.

Known by its Spanish acronym CICIG, the commission was supposed to root out what are known as “parallel” criminal structures. These networks co-opt state agencies, from the customs houses to the police to the courts.

The courts were of particular concern for Castresana and his 120-strong team of mostly foreign prosecutors, who had first arrived in Guatemala in 2007. Specifically, the commission put its substantial resources towards investigating the process by which the country selects its high court judges.

That process is led by what are known as postulation commissions. These commissions are a mix of civilian lawyers, law school deans and high court judges that, in the case of the high court judges, gather every five years to select the final list of candidates from which Congress chooses the country’s judges. The commissions are supposed to be independent, depoliticized bodies that select judges based on experience, age and certain hard-to-define qualities such as honor.

In October 2009, just days after the postulation commissions had finished their work and Congress had selected high court judges, Castresana was ready to present the results of the CICIG’s investigation to the Guatemalan people. And Guatemala was ready to listen. Since arriving two years earlier, Castresana had accumulated a

lot of political capital, even if the CICIG itself had not actually prosecuted that many cases.

Castresana knew how to draw a crowd: with the Spanish judge there was always the strong possibility there would be some good headlines. After a short preamble justifying the commission's interest in the process, he launched into the meat of his presentation.

"There are six people that we don't think should be [in the Supreme Court]," he said, the press feverishly scribbling his every word in their notebooks. As expected, he then named them and shamed them, before turning to the man allegedly behind the whole scandal.

"There is an investigation that is attempting to establish criminal responsibility of at least one person [for this situation]," Castresana added, pausing for effect. "The businessman, Sergio Roberto Lopez Villatoro."

Lopez Villatoro, a.k.a. "The Tennis Shoe King," was the chief operator who had corrupted the selection process for the postulation commissions, Castresana said. He then accused Lopez Villatoro of pulling the necessary puppet strings to ensure that 26 of his picks – out of a total of 54 people – sat on the two commission boards that would select the final judges for Guatemala's highest courts.

"We don't think these are the isolated actions of this person," Castresana added, a PowerPoint presentation glowing behind him. "These actions are coordinated with the interests of parallel structures."

Castresana went on to say these "parallel structures" were illegal adoption rings, drug trafficking interests, military officials connected to human rights abuses and corrupt politicians. Lopez Villatoro, the Spanish judge insinuated, was engineering the courts for these criminal interests.

Selling 'Replicas'



Roberto Lopez Villatoro

Roberto Lopez Villatoro says that he first sold tennis shoes out of the back of his car. He was in college and his girlfriend at the time was pregnant. He needed the money and answered an ad in the newspaper. The shoes were cheap knockoffs, but there were few laws about falsified merchandise or breaking patents back then. He did not ask questions about the origin of the shoes, and when it came up, the owner said he got them from Panama.



It was hardly an issue. In Huehuetenango, Lopez Villatoro's home province along the Mexico border, "contraband" is a way of life. The porous border where Lopez Villatoro grew up is flooded with cheap merchandise that skirts customs. Entire businesses emerge around these goods; legendary criminals often get their start by moving contraband.

Besides, by selling shoes that may or may not have been contraband, Lopez Villatoro says he could pay the bills for his young family. Soon Lopez Villatoro was looking to strike out on his own. With a neighbor who used her house as collateral, he says he took out a \$10,000 loan from a bank. A friend got another \$10,000 as an advance from a cardamom farmer in the Alta Verapaz province, and the two opened up their first shoe store in the province's capital, Coban. Soon after, they opened another store in Huehuetenango.

Along the way, Lopez Villatoro met a shoe distributor who, for security reasons, was trying to leave Guatemala. The two negotiated a deal for the man's remaining merchandise, and Lopez Villatoro began selling wholesale to the shoe stores all over the country. It was just the beginning.

At the time, his foreign provider would sell him shoes for an average of \$12 a pair that he brought from China through Panama. Eventually, he began to import directly from China via a Chinese woman he'd met in California. The difference, he says, was significant. In addition to getting most shoes for an average of \$5 a pair, he could get specialized shoes for significantly less.

One style, which he called "yellow boots," was particularly popular. His old provider used to sell these to him for \$20 a pair. His new provider sold them at \$9.80 a pair, and he sold them to the stores for \$35 each.

"I made \$170,000 in one day," he tells InSight Crime.

Were they legal?

"They weren't 'falsified,'" he explains, a smile crossing his face. "They were 'replicas.'"

Replicas, as the government's ombudsman said in a later investigation into Lopez Villatoro's businesses, meant "old models."

Lopez Villatoro expanded, selling shoes in Nicaragua and the Dominican Republic, among other countries. At the height of his shoe business in 1999, Lopez Villatoro says his various distribution companies sold 10 million shoes.

"We simply had no competition," he tells InSight Crime.

Still, Lopez Villatoro says he mostly kept a low profile in those first few years. Few in Huehuetenango even realized that he had become wealthy, he says.

Birth of 'The Tennis Shoe King'

The same year Lopez Villatoro sold 10 million shoes in Central America and the Caribbean, he married Zury Rios. Zury is the daughter of retired General Efraim Rios Montt. Rios Montt is arguably the most famous retired military officer in Guatemala, even including current retired general and now President Otto Perez Molina.

Rios Montt's fame comes largely from a short stint in which he held power between March 1982 and August 1983. It was the height of the war in Guatemala. A loose coalition of leftist guerrillas had grown steadily in the countryside and the cities during the previous years, and Rios Montt took power in a military coup. His job was straightforward: destroy the insurgency.



General Efraim Rios Montt

Interpreting just how Rios Montt achieved this goal remains a divisive subject in Guatemala. For some, he saved the country from communism, even if he killed thousands of innocents and displaced thousands of others during the short time he held power. For others, he committed genocide.

Rios Montt's divisive role extended to politics as well. He ran for president in 1974, and was beaten in what many believe to this day was a fraudulent election. In the late 1980s, he created his own party, the Frente Republicano Guatemalteco (FRG).

Drawing from some of the conservative, war-torn areas that Rios Montt himself had targeted during his time running the government in the 1980s, the FRG had won a majority in Congress by 1999. Rios Montt became the president of Congress and his daughter Zury became a congressional representative.

As the unofficial first son-in-law of Congress, Lopez Villatoro began to move in government circles on a more regular basis. He fraternized with ministers, diplomats, congressmen, judges, prosecutors, and even President Alfonso Portillo.

Inevitably, things changed for Lopez Villatoro. His anonymity was gone, and suddenly he faced a flood of requests from both his home state, Huehuetenango, and

his adopted home, Guatemala City. Some people asked for political favors. Others wanted money. He says he frequently obliged on both counts.

The marriage also opened him up to scrutiny. In 2001, Sylvia Gereda Valenzuela, a journalist and editor for *elPeriodico*, baptized him “El Rey del Tenis,” or “The Tennis Shoe King,” a reference to his skills moving and selling what she said were fake Fila and Vans, among other brand name shoes.

His defenders say Gereda Valenzuela was angry because Lopez Villatoro had beaten her husband in a bid to sell the government masses of cheap rubber boots. But in reality, Gereda Valenzuela’s article had followed a front-page account from *Prensa Libre*, which called into question Lopez Villatoro’s import of tennis shoes and used tires. Both articles were damning accounts and included tabloid-like references to his marriage with Zury Rios.

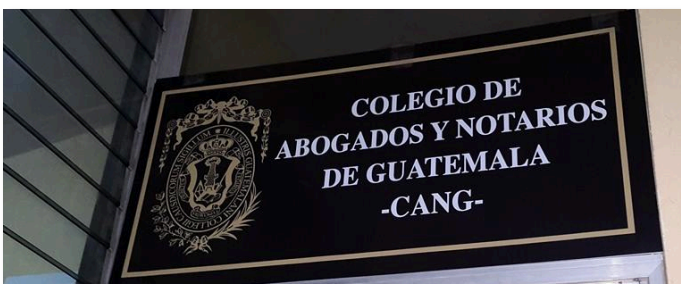
“The Rios Montt family causes a stir once again,” *Prensa Libre* wrote, before delineating what it deemed the “illegal” business dealings of Congress’ first son-in-law.

However, an ombudsman’s report later exonerated Lopez Villatoro and questioned the newspapers’ reporting.

“What Mrs. Gereda Valenzuela said in respect to the falsification of shoe brands is not true,” the report said, before adding that a search of the Lopez Villatoro distribution warehouse “turned up no Fila shoes” at all.

Several judicial inquiries have been launched into Lopez Villatoro since, but Lopez Villatoro has never been charged with any criminal activity.

The Power of the Bar Association



Despite the lack of formal charges, the nickname, and Lopez Villatoro’s reputation as an importer of contraband, stuck. This is perhaps because it was during this time that Lopez Villatoro became the unofficial lobbyist for the FRG in all

matters concerning the judicial system. As he tells it, he fell into this role almost by accident. It began when a small group of lawyers in the Bar Association of Guatemala, known by its acronym CANG, asked him to participate in the association’s internal elections.



The bar association's internal elections are important for plenty of reasons. They're seen as an entry point for lawyers hoping to some day earn posts in high courts and in government ministries. These elections also play a direct role in the postulation commissions that nominate the final candidates for not only the high court judges, but also the Attorney General, the comptroller, and the Supreme Electoral Tribunal.

By law, the CANG has a certain number of representatives on these commissions. That number depends on the position in question. For the selection of appellate and Supreme Court Justices going on now, the CANG has 11 of 34 positions on the commission.

The rise in the CANG's importance forms part of a larger story in Guatemala – a story about how, since the end of the war, the state has steadily become an appendage of special interest groups. In 1993, following a failed “technical coup” by then-President Jorge Serrano, in which the president tried to dissolve Congress and the Supreme Court, the government passed a series of reforms that gave the CANG and the universities more seats in the postulation commissions. What this meant in practice is complicated, but can be boiled down in one phrase: the private sector gained more control over the selection of Guatemala's most important judicial functionaries.

“This gave the lawyers closest to the private sector a hegemony over the Supreme Court, the appellate courts and the Attorney General's Office,” the news website Nomada wrote in its superb overview of these selection processes.

This hegemony was clear to Lopez Villatoro, who also saw that the country's most powerful lawyers represented but a small, Guatemala City-based elite who controlled the elections via the CANG. To be sure, the provincial backgrounds of the lawyers who first approached him asking for favors stirred personal sentiments about the way class plays a role in determining standing in Guatemala.

Lopez Villatoro also pitied these small-town lawyers. Their first push for a seat on the CANG was destroyed by a well-oiled machine: the Guatemala City lawyers who were backed by more traditional elite interests. These “vacas sagradas,” or “sacred cows,” as they were called, had a lock on these CANG posts, Lopez Villatoro noted, as long as CANG held its elections in the capital city.

‘Emerging’ vs. Traditional Elite

Lopez Villatoro's ire reminded him of his childhood in Huehuetenango. He says he was about 10 years old when he realized that he did not like “the rich people.” He was in school, and the wealthier kids -- those whose families owned large coffee farms or flour mills -- picked on him. The teasing turned into fistfights, and Lopez

Villatoro says he eventually switched schools in part because of the tensions with his classmates.

Lopez Villatoro is quick to mention that he was not poor; nor was he particularly rich. He says his father owned the largest store in his small border village, Cuilco. From a young age, Lopez Villatoro worked in the store doing things like packaging the sugar into the one-pound plastic sacks the family sold in Cuilco, especially on the weekends. His father paid for his education, but Lopez Villatoro insists that he and his family were almost always working.

As an example, he says that while he was selling his first tennis shoes, one of his older brothers was selling coffee from Huehuetenango in the big cities. That brother, Julio Cesar, has since become a congressman.

Together, the two have become poster boys for what they call the “emerging” elite in Guatemala. These emerging elites have new income streams, often from non-traditional imports and exports, such as tennis shoes. The new elites also often benefit from their relationship to the government. Congressmen, mayors and military officers alike are also frequently classified as “emerging” elites due to their rising commercial interests, land-holdings and businesses they have obtained in recent decades. Some of these emerging elites have used corruption, contraband, and illicit gains to foster their economic growth. They have solidified these holdings by financing political campaigns and eventually, as was the case of Rios Montt,

creating their own political vehicles.



Business association the CACIF

The economic and political power of the emerging elites has caused them to butt heads with the more traditional elites. In the simplest terms, these traditional elites are landowners, bankers, industrial and exporters of things like coffee and cotton.

The core of this group runs the

CACIF, a multi-layered business association that has served as the parallel government of this country for decades. Like the elites it represents, CACIF’s economic portfolio ranges from the traditional agribusiness to the banking sector.

These elites have used all forms of legal and illegal measures at their disposal to maintain this control. In the 1980s, as chronicled by a recent Plaza Publica article, they helped finance the counterinsurgency campaign waged by Rios Montt and



other generals, sometimes loaning their own infrastructure to the military's anti-communist crusade that included razing and massacring entire villages.

Most notably, the CACIF has maintained an iron grip on the government's finances. Guatemala's tax collection, measured in terms of a percentage of GDP, ranks among the lowest in the region. Any effort to alter this tax regime has met with staunch opposition. And while it is not as monolithic as it once was, the CACIF's nucleus of leaders, who are referred to as the G-8, remain highly influential in the government and still have tremendous access to the most powerful politicians and government officials, including the president, congressmen, judges and prosecutors.

The pent-up rancor against these elites helps explain nicknames like "sacred cows" applied to the traditional elites' lawyers in the country's bar association. But by the time Lopez Villatoro was tapped to help the group of provincial lawyers gain more of a footing in the CANG, the sacred cows were beginning to lose their grip on power.

By the early 2000s, President Portillo and president of Congress Rios Montt were directly challenging this traditional elite's economic power base. The two moved to change the tax code, which included increased taxes on alcohol sales. Portillo, meanwhile, liberalized trade rules by presidential decree, opening up the traditional economic powers to more competition in the chicken, cement and beverage sectors.

There was also an attempt at judicial reform. Congress introduced a bill meant to change how the CANG operated, decentralizing the election process and opening it up to more provincial influences. After two years of lobbying, cajoling, and trading favors, Congress passed the "Colegiacion Obligatoria" bill. Portillo signed it into law in 2001. The CACIF's hegemony over the CANG was over, and its tight control over the government's tax and tariff systems was in the balance.

But the battle for control of the judicial system had only just begun.

Blowback

Not everything was going according to plan for Lopez Villatoro in the early 2000s. Congress, at the behest of established economic groups and the United States, introduced a bill to regulate contraband. The bill smacked at the heart of Lopez Villatoro's business. Adding to his dismay, it was backed by his father-in-law's party, the FRG. Fuming, Lopez Villatoro organized a protest with the street sellers who regularly hawked his tennis shoes from their makeshift stalls along Sixth Avenue in Guatemala City. The bill passed anyway.

Lopez Villatoro was also going through some personal turmoil at the time. Just as Rios Montt was leaving Congress, Lopez Villatoro divorced Zury, his wife. The two



remain cordial, he says, and he still has contact with “el viejo,” his former father-in-law.

Rios Montt and Portillo faced their own problems, which stemmed from their inability to control the courts. After the Constitutional Court ruled that Rios Montt could not run for president since he had participated in a coup, non-governmental groups in Guatemala and abroad clamored for the retired general to be prosecuted for human rights violations committed during the war. For his part, Portillo faced embezzlement charges that would eventually land him in a United States prison cell.

Both Rios Montt and Portillo viewed these efforts to prosecute them as part of the class war playing out in Guatemala. The lesson was clear: you can control Congress and even the presidency, but to fight the traditional elites, you need more control of the judicial system.

To obtain that control, they returned to Lopez Villatoro, who was mobilizing his troops inside the CANG. He created a quasi-political coalition, or “planilla” as they are known, called Justicia para el Cambio (Justice for Change). Money, parties, lobbying, and backroom deals followed. In a report in 2009, the UN’s CICIG described the process as a virtual “electoral” campaign.

“These negotiations take place via political lobbying, the hosting of events, lunches, classes and campaigns that bear the tinge of an election, with the intention of winning favors and winning the groups linked to the interests of each sector of the interest groups with the judiciary,” the UN group wrote. “That is how some lawyers, jurists and businessmen have begun to function as intermediaries between the interests of some and the work done by others, within the political realm.”

Justice for Change was not alone. All the special interest groups -- which included traditional and rival “emerging” elites, such as one run by President Colom’s own sister, Gloria Torres -- spent money on these elections, in the hope of influencing the postulation commissions. Lopez Villatoro says his group simply did it better and had a more appealing platform, which is why, by 2009, they controlled 40 percent of the CANG delegates on the commissions.

Lopez Villatoro’s reach did not end there. He also sought to influence the universities, the other major non-governmental presence on the postulation commissions. According to Guatemalan law, all law school deans must have a seat on these selection committees.

This is where the politicking surrounding the commissions is perhaps most evident. To counter the shifting sands with regards to who controlled the commissioners from the bar association, some special interests simply created new law schools. Since 1995, the number of law schools has gone from four to eleven. According to Nomada, three of these law schools currently have less than ten students and two of

them have yet to graduate any students at all. No matter. Like the CANG, law school deans currently represent 11 votes in the postulation commissions for appellate and Supreme Court Justices, or about a third of the votes.

The only interest group to wield more control over this selection process are the judges themselves: the appellate court sends 12 delegates to the commission selecting Supreme Court Justices; the Supreme Court sends 12 delegates for the commission selecting the appellate court judges.

All parties vie for influence with these commissioners, through the bar association, the universities and the political power blocs. As Nomada pointed out in a recent article, numerous judges have multiple “jobs,” some of which do not require the judges to even show up at work.

It was this type of “exchange” that CICIG head Carlos Castresana latched onto when he vilified Lopez Villatoro in October 2009, just days after Congress had selected the high court judges. Specifically, Castresana said Lopez Villatoro bought at least 13 judges and lawyers’ influence by paying for them to do post-graduate studies in Spain prior to the 2009 postulation commissions that selected the high court judges. Of these, three became members of the commissions, Castresana said; others became candidates for high-court posts.

That was part of the way that the “Tennis Shoe King” had been able to control an incredible 26 of the 54 people who eventually selected the Supreme Court and appellate court judges.

Castresana also made references to what he called “Terna X,” a mysterious three-person coalition within the postulation commission for the Supreme Court. This coalition had engineered the voting so as to ensure that four of the six judges considered “unsuitable” had become magistrates for the court.

Castresana said these Supreme Court Justices were “tainted” by conflicts of interest. They had issued questionable decisions regarding criminal and corruption cases, among other professional matters. In the end, he said, they lacked the “honor” that the posts required and that the law demanded.

Even worse, Castresana believed that these decisions were part of a long-time and widespread pattern in Guatemala.

“I don't think that this is a 2009 problem with these postulation commissions,” the Spanish judge said. “I get the feeling that this is a much older problem, and one that greatly affects the Public Ministry, the National Police, the judiciary and even the penitentiary system, but I'm referring to the clandestine security apparatuses.”

Although Castresana offered little proof, the toxic environment that followed his press conference led to an unprecedented political upheaval. And days later, the

government removed at least three judges from their posts, in some cases without any investigative follow-up by judicial authorities or Congress.

For his part, Lopez Villatoro was reeling. His coalition vilified, he went on the offensive, filing a formal complaint to the human rights ombudsman's office and attacking Castresana for being a shill for the traditional elites. He went to the Attorney General's Office and offered to testify in any and all cases against him.

Regarding the courses in Spain, he told the ombudsman that he, and several others, had pooled money to pay for the 13 judges and lawyers because they were having trouble moving money into Euros. When InSight Crime inquired directly about his CANG coalition's connection to criminal interests -- including illegal adoption rings, drug trafficking, human rights abusers, and corrupt politicians -- he said that he had dealings with a lot of people, and that he could not control who his coalition interacted with.

His analysis: the traditional elites used Castresana to vilify him, and they had won. In the end, he says the "unsuitable" judges that were removed were replaced with pro-traditional elite judges.

His enemies, meanwhile, crowed. A headline in elPeriodico of a story written by Gereda Valenzuela read: "The fall of the 'Tennis Shoe King's' empire."

The Making of a Gentleman Lobbyist



Roberto Lopez Villatoro, middle

Following the 2009 process, Lopez Villatoro says he tried to quit politics. He says he was a tired, beaten man and was all but ready to give it up when he started hearing whispers in the CANG about how "the king is dead." Pride, and a good dose of capital from some of his old friends, pushed him back into the game. Only this time, he said he had a different strategy: ensuring that the politicking that surrounded the postulation

commissions happened more openly.

One of his first candidates for the CANG post-2009 was Oscar Cruz, a relative unknown. Despite being about as charismatic as a tree, Cruz went on to win the



CANG's presidency. The Cruz victory was a clear signal that Lopez Villatoro still had a lot of juice in the bar association and caused some to call for Cruz's resignation.

More organizing and back-scratching followed, as did more victories for the "Tennis Shoe King" in the CANG. By 2013, Lopez Villatoro's machine was back in full swing, electing members of the CANG's Board of Directors and helping to elect its president once more.

He also separated himself from his export-import business and founded his own law firm (calling it Lovi, which is pronounced "lobby" in Spanish, but stands for Lopez Villatoro). Ostensibly the firm manages real estate. Off the books, it is a lobbying operation. He re-tooled the political message of his coalition within the CANG and used words like impartiality, dignity and independence. The group has its own platform and a description of "suitable" candidates for the high courts. It is part of a re-branding of the "king" himself.

"What bothers him is inequality," Lopez Villatoro's sister, Clara de Paiz, told me when I met her in Lovi's packed office, just across the street from the US embassy in Guatemala City.

"That's why it looks like this were Mother Teresa's headquarters," she added. "He doesn't know how to say no."

Some might dispute this notion. Lopez Villatoro says he doesn't benefit much from this politicking, but his claims ring hollow. His former import-export business D'Lovi (which his younger brother now runs) has benefitted from state contracts to purchase large bundles of tennis shoes and boots. In 2009, CICIG counted more than \$1.5 million in contracts benefitting Villatoro. (In his complaint to the human rights ombudsman, Lopez Villatoro claimed it was much less but did not specify by how much.)

What's more, Lopez Villatoro's political colleagues clearly gain by having influence and protection in the judicial system. In Guatemalan lingo, this would guarantee the earning of a "commission," a euphemism for a favor, a contract or a cash payment. At first, the primary beneficiary of Lopez Villatoro's efforts was Rios Montt's political party the FRG. But that circle has expanded, accompanying the spread of Lopez Villatoro's influence.

His critics say that Lopez Villatoro's undue influence in the judicial system is evident. After his former father-in-law, Rios Montt, was convicted for genocide, the Constitutional Court overturned the conviction. And when Attorney General Claudia Paz y Paz, who brought the case against Rios Montt, tried to secure another four years as the nation's top prosecutor, Lopez Villatoro's critics say he played a hand in making sure that did not happen. To be sure, her replacement, Thelma Aldana, was one of the magistrates that Castresana had declared "unsuitable" for the Supreme



Court. (Lopez Villatoro said he didn't participate in the process. "There was no room for me," he tells InSight Crime.)

The postulation commission that blocked Paz y Paz was characterized by a new set of alliances. For perhaps the first time, the emerging elites and the traditional elites put aside their differences over tax laws, trade liberalization policies and who should make the most money from government corruption, and came together to fight a common enemy: Paz y Paz.

The meshing of the traditional and emerging elites has made this current process to select Supreme Court and appellate court judges harder to follow. The playing field is more complex and varied, and there is no one with a monopoly over the commissions like the one Castresana said Lopez Villatoro enjoyed in 2009. Lopez Villatoro is said to have about a third of the commissioners in each of the postulation commissions. He neither confirmed nor denied this assertion when InSight Crime inquired.

But his role is more nuanced now. Given some of the alternatives jockeying for position in the commissions, Lopez Villatoro is now seen as one of the good guys. It is a strange turn, especially for a man who was once painted by the ultimate judge as the ultimate villain. He meets with diplomats and members of the press. (He attended the US Embassy's 4th of July celebration this year.) He hosts "open house" parties where politicians hobnob with judges and other members of the judicial system. He negotiates with the various political parties and economic groups, including the CACIF, and he has offered to do the same with the civil society groups who have long vilified him.

"I was given another opportunity. I want to clear my name," he tells InSight Crime.

"I am not what they say I am," he adds. "I am not what Castresana said I am."

Yet he admits that this new image of his has much to do with increasing cynicism in Guatemala, where innocence or guilt is increasingly irrelevant. In Guatemala, only one thing seems to matter.

"I am not a saint," Lopez Villatoro tells InSight Crime. "I have power now because I won."