

# Teleconference to Pakistan

DECEMBER 12, 2007

## Participating Pakistani Attorneys

**ZAHID F. EBRAHIM**

Supreme Court of Pakistan Advocate  
Partner, Ebrahim Hosain

**KHWAJA AHMAD HOSAIN**

Barrister at Law  
Partner, Ebrahim Hosain

**SALAHUDDIN AHMED**

Barrister at Law  
Partner, Malik, Chaudhry, Ahmed and Siddiqi

## Moderated by

**NANCI CLARENCE**

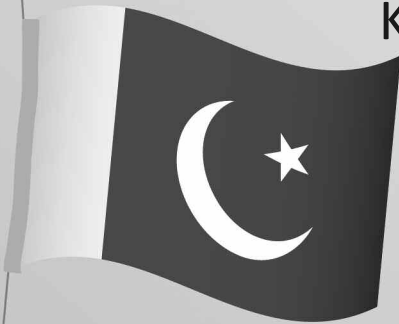
BASF President  
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**NAOMI RUSTOMJEE**

Coblentz, Patch, Duffy & Bass LLP

**KHURSHID KHOJA**

Thelen Reid Brown Raysman & Steiner LLP



THE BAR ASSOCIATION OF  
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“There is no motive which induced me to put my life at hazard through our revolutionary war, that would not now as powerfully operate on me, to put it again in jeopardy in defense of the independence of the judiciary.”

-Alexander Hamilton

# MODERATORS



**NANCI CLARENCE**  
Partner, Clarence & Dyer LLP

Nanci Clarence is the 2007 president of The Bar Association of San Francisco (BASF), a professional organization of over 8,000 attorneys and judges. Under Nanci's leadership this year, BASF has taken a leadership role statewide in developing programs to defend the Rule of Law as well as the impartiality, fairness and independence of our courts. She was recently named by California Supreme Court Chief Justice Ronald George to the statewide Commission on Impartial Courts, which is developing recommendations for governmental policies and law reform to ensure that our courts continue to protect constitutional rights, mete out justice and promote democratic institutions in our state.

Nanci is a trial lawyer in private practice in San Francisco, and she has tried cases in federal and state court, ranging from complex civil litigation to white-collar crime to murder. She focuses on the defense of white-collar criminal prosecutions, including securities fraud, antitrust and other business crimes, environmental matters as well as civil litigation and internal investigations.

In 2000, Nanci represented a Pakistani citizen charged in federal court in San Francisco, and spent three weeks investigating the charges in Pakistan, traveling to Karachi, Lahore, Peshawar and the Northwest Frontier Provinces.

She is a graduate of U.C. Berkeley, Magna Cum Laude and Phi Beta Kappa and received her JD from the U.C. Hastings College of the Law.

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**NAOMI RUSTOMJEE**  
Partner, Coblenz, Patch, Duffy & Bass LLP

Naomi Rustomjee's general civil litigation practice emphasizes business, complex commercial, and employment disputes. She has significant trial and arbitration experience.

Born in Karachi, and having spent the first 18 years of her life there, Naomi has first-hand knowledge of the political and socio-economic background and dynamics of Pakistan.

She received her undergraduate degree, magna cum laude, in Government, from Harvard University in 1985. Following graduation, she was the Harvard Knox Fellow at The London School of Economics and Political Science, where she received a Master's degree in Economic History. She earned her law degree from Columbia University School of Law in 1989, where she was a Harlan Fiske Stone Scholar.

Naomi has served as a member of the Judiciary Committee of Bay Area Lawyers for Individual Freedom (BALIF), and was an early member of the Indian American Bar Association (the predecessor of the South Asian Bar Association [SABA]). She currently serves as a member of the Resource Board of the National Association of Women Judges (NAWJ).

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**KHURSHID KHOJA**  
Associate, Thelen Reid Brown Raysman & Steiner LLP

Khurshid Khoja's practice focuses on development of renewable energy projects, mergers and acquisitions, as well as general corporate matters. Prior to attending law school at Boalt Hall, Khurshid received a B.A. with High Honors in Political Science from DePaul University, an M.A. from the Committee on International Relations at The University of Chicago and worked as a research associate at the Henry L. Stimson Center in Washington D.C., where he focused on promoting confidence-building and nuclear risk reduction measures between Pakistan and India.

Khurshid has authored, co-authored, and co-edited a number of publications on the geopolitics of South Asia including *A Handbook of Confidence-Building Measures for Regional Security*, published by the Stimson Center; *Global Confidence Building: New Tools for Troubled Regions*, published by St. Martin's Press, "Confidence-Building Measures in South Asia: New Dangers, Missed Opportunities, and Future Imperatives," appearing in *Global Confidence-Building*, and "Confidence-Building Between India and Pakistan: Lessons, Opportunities, and Imperatives," appearing in *A Handbook of Confidence-Building Measures for Regional Security*.

Khurshid has served as the Civil Rights Committee and Endorsements Committee Chair for the South Asian Bar Association of Northern California (SABA-NC) and Co-chair of the Asian Law Caucus' Annual Banquet Committee, and recently received the Minority Bar Coalition's 2007 Unity Award for his work on behalf of the Bay Area Association of Muslim Lawyers (BAAML). Khurshid currently serves as a director and Vice President of the SABA-NC Foundation, a director and Member Relations Coordinator of BAAML, and a director of SABA-NC.

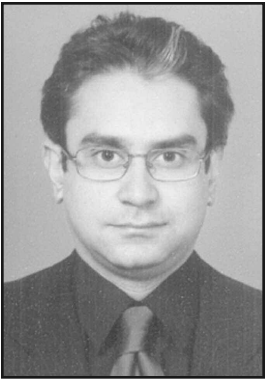


**ZAHID EBRAHIM** was educated at Sindh Muslim Law College, University of Karachi, and has a Masters in Law and Diplomacy from the Fletcher School of Law & Diplomacy, Tufts University. He is an Advocate of the Supreme Court of Pakistan. He has practiced law in Pakistan since 1993, and serves as a lecturer in the interpretation of statutes at Sindh Muslim Law College, University of Karachi.

He is a founding partner of the law firm of Ebrahim Hosain, and is based in Karachi. Mr. Ebrahim was arrested without a warrant in Karachi, along with Mr. Ahmed, on November 5, 2007, during a protest outside the Sindh High Court building, and was released after 15-16 hours in custody.

Mr. Ebrahim has authored an article on the current situation, entitled "One Coup Not Enough For General Musharraf," a copy of which is included with his permission in this handout.

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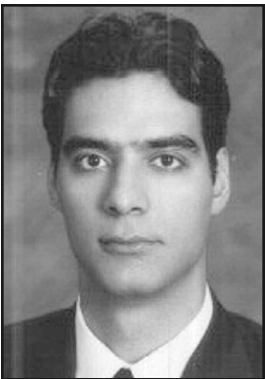


**KHWAJA AHMAD HOSAIN** (or Ahmad Hosain) was educated at Oxford University where he studied Philosophy, Politics and Economics (PPE), and also has a Masters in Arts from London University in Islamic Societies and Cultures.

He is a Barrister at Law and was called to the Bar from Lincoln's Inn in 1991. Since 1994 he has practiced law in Pakistan. He is a founding partner of the law firm of Ebrahim Hosain, and is based in Lahore. Mr. Hosain was arrested without a warrant in Lahore, along with fifty-five other participants attending a private meeting of the Human Rights Commission of Pakistan (HRCP) on private property, on November 3, 2007, and was released after over 50 hours in custody.

Mr. Hosain has authored an article on his and the other HRCP attendees' November 3 arrest, entitled "The HRCP Gang of 55," a copy of which is included with his permission in this handout.

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**SALAHUDDIN AHMED** obtained his law degree from the University of Buckingham, UK in 2000. He was called to the Bar of England & Wales from Lincoln's Inn in 2002. He has been practicing in Karachi since.

He is a partner of the law firm of Malik, Chaudhry, Ahmed & Siddiqi, in Karachi. The senior partner of Mr. Ahmed's law firm is Muneer A. Malik, the President of the Pakistan Supreme Court Bar Association, who was one of the lawyers who represented the recently-deposed Supreme Court Chief Justice Iftikhar Chaudhry when he was initially removed from his position in March 2007 and then successfully reinstated by the Supreme Court in mid-2007.

Mr. Ahmed is also the son of the recently-deposed Chief Justice of the Sindh High Court, Sabihuddin Ahmed. Mr. Ahmed was arrested without a warrant in Karachi, along with Mr. Ebrahim, on November 5, 2007, during a protest outside the Sindh High Court building, and was released after 15-16 hours in custody.

# One Coup not Enough for General Musharaff

by Zahid F. Ebrahim

According to Reporters without Borders Pakistan was at 157th position on the Worldwide Freedom Index in 2006. Worse than Libya and Syria. Even Robert Mugabe's pariah regime in Zimbabwe fared much better at 140th place on the Index.

But that was 2006—the good old days—when the Pakistani press and media enjoyed a modicum of independence and freedom.

Things are different now.

On 3 November 2007, eight years after seizing power from the elected civilian government, Pakistani President General Pervez Musharaff carried out his second coup d'état. This time his target was not the politicians, but Pakistan's independent judiciary and media. By evening, the majority of the Supreme Court Judges were under house arrest. All Pakistani and international news channels were forced off air. In days following the 3 November coup, the only source of news was the government controlled Pakistan Television.

The Pakistani President, General Musharaff issued a Proclamation of Emergency under which he unilaterally declared the Constitution of Pakistan to be suspended. The purported reason for such a proclamation was the Supreme Court's judicial activism, in particular where the Court actively pursued the cases of "missing persons" – people who had been illegally detained and tortured by government agencies. It may be recalled that in his 2007 autobiography, *In the Line of Fire*, General Musharaff himself claimed to have handed over large numbers of Pakistani citizens to the United States in exchange for millions of dollars as bounty in violation of extradition laws.

The Proclamation of Emergency issued on November 3 is a one liner which reads "I General Pervez Musharaff, Chief of Army Staff, proclaim Emergency...and order that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance." However, the extensive recital to the imperial order read like a long charge sheet against Pakistan's Supreme Court. It alleges: the Judiciary is "working at cross purposes with the executive and legislature in the fight against terrorism and extremism". "Increasing interference by some members of the judiciary in government policy [is] adversely affecting economic growth." "Some hard core militants, extremists, terrorists and suicide bombers, who were arrested and being investigated were ordered to be released. The persons so released have subsequently been involved in heinous terrorist activities."

Harsh indictment of a Court whose praises General Musharaff never lost an opportunity to sing from 1999 to 2007.

Moreover, what is startling is that the Judges of the Supreme Court who actually ordered the release of militants involved in the Lal Masjid (Red Mosque) siege earlier this year, were the first ones to given a new oath of office by General Musharaff and are now leading his new Supreme Court.

The real reason for suspending the Constitution and purging the judiciary was that Pakistani law did not allow General Musharaff to continue in power and his election for another five year term was under challenge in the Supreme Court. The Supreme Court was expected to announce its ruling on November 8, which could have ended his plans for another five year term. General Musharaff was desperate to avert this decision. Therefore, he decided to take the judiciary head on and dismantle it completely.

Only 4 out of 19 Judges of the Supreme Court took the new oath prescribed by General Musharaff. The situation in the provincial High Courts was not much better and the government has been forced to pack the courts with loyalists, whom the majority of Pakistani lawyers now boycott.

In order to curb criticism of the decision to suspend the constitution, the government cracked down hardest on the lawyers. Senior members of the bar association were immediately arrested and peaceful protests by lawyers across the country were brutally put down in the immediate aftermath of the November 3 proclamation of emergency. According to the government's own conservative figures some 5,700 activists, lawyers, and journalists were imprisoned for voicing their opposition.

Independent news channels which refused to bow down to the government's new regulations curbing free expression have been denied to go back on air. In fact, the Pakistani Government even pressurized the government of Dubai to

# One Coup not Enough for General Musharaff continued

forcibly close down the operation of two independent Pakistani channels based in the emirate. Those allowed back on air have been forced to fire leading broadcast journalists and made to sign a code promising that “no content shall be aired which contains anything against basic socio cultural norms....or casting aspersion against the President or security or defense institutions and judiciary of Pakistan.” The draconian Pakistan Electronic Media Regulatory Authority Ordinance 2002 has been further amended whereby the media has been barred from printing and broadcasting “anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organ of the state.”

The peaceful protests against the media clampdown has been met with unusual brutality. On 20th November, a demonstration at the Karachi Press Club was viciously baton charged by the police and more than one hundred journalists arrested. Those arrested were released later the same night, but the message to the Pakistani public is loud and clear: Any protest, no matter how peaceful, will be forcibly crushed.

The ousted Chief Justice of the Supreme Court and many senior judges are still under house arrest. At least 14 professors of the Punjab University involved in protests have been charged with sedition. University administrators are being pressurized to ensure that they restrict student demonstrations. Independent television channels are arbitrarily shut down. The lone journalist permitted to enter the Supreme Court, Declan Walsh of the Guardian describes the Court as a “makeshift prison.” Lawyers, journalists and civil activists still pack Pakistani jails.

Western governments have been assuaged by the promise of parliamentary elections and lifting of the emergency in due course. Although the Commonwealth has suspended Pakistan’s membership, critical support from the U.S. and U.K. administrations continues unabated. In an interview with ABC television, President George Bush of the U.S. defended General Musharaff’s actions and described him as the man who has “done more for democracy than any other modern leader.” The vast majority of Pakistanis may have a different opinion. But, General Musharaff appears in no mood to let them have their say.

*(The author is an advocate of the Supreme Court of Pakistan and was one of the many lawyers arrested from within the premises of the High Court of Sindh on 6 November 2007)*

# The HRCP Gang of 55 • Tuesday, November 13, 2007

by Khwaja Ahmad Hosain

On November 3, the constitution of Pakistan was put into abeyance. Nothing seemed very different as I drove down the Main Boulevard in Lahore on a beautiful Sunday afternoon past the incongruous palm trees. The smiling faces of Chief Minister Parvaiz Elahi and General Musharraf adorned the streets. In Garden Town a meeting of the Human Rights Commission of Pakistan (HRCP) had been underway for some time when I entered. The conference room was quite crowded. There was a lively debate in progress. Some of it philosophical, some of it hypothetical, some of it incomprehensible. I am not a member of the HRCP but everyone seemed very nice and willing to listen patiently to complex views and analyses which were articulated with conviction.

As I got up to leave for a lunch appointment, a friend stopped me and told me that the building had been surrounded by the police. On hearing this, the person standing next to the entrance promptly bolted the door. The discussion inside continued. After a few minutes, there was a gentle knock. The people next to the door looked uncertainly at each other. Finally someone said, "Open it, they can't come inside a closed room and stop a discussion". The door was opened. It was an ordinary citizen. He was let in and the door was bolted again. Moments later a louder and more sinister knock was heard. The police were demanding to be let in.

There was a short and raucous debate about what to do next. Everyone was slightly bewildered. What crime had been committed? Was it an offence to hold a discussion on private property? This debate was short lived and the HRCP office-bearers went outside and held discussions with the police. There were some legal submissions made. Where was the warrant to enter the private property? On what grounds were the participants being arrested? These submissions did not impress the officers who provided no explanation apart from asserting that they had orders and these were going to be implemented. The participants were escorted, gently in some cases and not so gently in other cases, into police vans. As we got into the vans we observed that the police outnumbered those being arrested.

We all entered Model Town police station and provided our details. Our mobile phones were confiscated and we were taken, as a concession, to rooms which were normally occupied by thana staff rather than to the cells. Many hours of uncertainty followed. There were rumours we were going to be sent to Mianwali jail for 30 days. This was a distressing prospect. There were other rumours that we were going to be split up and divided among the jails in Lahore. To pass the time, the women enthusiastically, but generally quite tunelessly, sang revolutionary songs.

As Sunday turned to Monday, there were no concrete developments. They would have to move us from the thana since it was clear we were not going to be released immediately. The morale of the group was divided. There were pessimists who managed to decipher some horrible conspiracy in every act. The optimists were convinced that our release was imminent from the moment we were first led into the police vans. Neither group was right. After much negotiation and string pulling at apparently the highest levels, the group was moved to three houses in Gulberg which were designated as sub-jails. There were fifty-five of us. Thirty-one men and 24 women. Just before dawn on Monday (Nov 5) morning as we entered our sub-jail in Gulberg -- it was decided by some of the lawyers that the group should be named the "55-plus group". This was in recognition of the new legal grundnorm which had earlier been characterised by Sheikh Rashid as an "emergency-plus".

The Provisional Constitutional Order (PCO) issued on November 3 is much more than just a mere 'emergency plus'. The constitution together with certain crucial fundamental rights has been suspended. There is no fundamental right to life or liberty (Article 9). There is no right to remain in Pakistan or to travel within Pakistan (Article 15). There is no right to assemble peacefully (Article 16). There is no right to be treated equally and without discrimination (Article 25).

Apart from this, neither the Supreme Court nor the high court can pass any order against the president or the prime minister. All laws shall continue to apply, subject to any orders that the president may make. He can also, most significantly, by a simple order and without any declared parameters, amend the constitution.

The PCO and our current legal system can be summarised in one sentence: "Pakistan will be governed by such laws and rules and in such manner as General Musharraf may decide from time to time and no one can question what he does." This unlimited and unfettered power has been granted by General Musharraf to himself for an unspecified duration.

Neither the proclamation of emergency nor the PCO even hint that there should be some urgency to return to strict constitutional rule. Neither document specifies who will decide if and when to return to strict constitutional rule.

How did all of this impact the "55-plus group"? Notwithstanding the absence of a fundamental right to liberty, the relevant criminal laws continue to apply and an application for bail was to be made on Monday on behalf of all 55 defendants. The bail application was made and the defendants were all produced before the court and lawyers were appointed to represent them. We were quite confident that in light of the nature of the alleged offences which were all bailable, we would be released on bail. This did not happen. Instead we were transferred to Kot Lakhpat Jail on Monday evening. The bail hearing was adjourned to Nov 6. The intention was, apparently, to teach a lesson to these so-called liberal and activist elements that the government really meant business and the good old days of the movement for the restoration of Chief Justice Iftikhar Chaudhry should be forgotten. After 'checking-in' at Kot Lakhpat, and as we were waiting for our accommodation to be prepared (we were not expected), rumours again started to circulate. Heated negotiations and discussions took place and it was eventually decided that all defendants would be moved back to the designated sub-jails until the bail hearing scheduled for the next day. On the hearing, which took place on Nov 6, bail was granted and we were finally released on the evening of that day.

Fifty-five individuals who were having a thoroughly civilised, if often recondite, discussion inside a closed room on a Sunday afternoon were denied their freedom for more than 50 hours by the state. Many more have been denied their freedom for much longer and are going through far more trying ordeals merely on the ground that they were engaging in peaceful demonstrations. Judges of the superior judiciary who have either refused to take oath or have not been invited to take oath under the PCO are being denied fundamental rights of movement. They have effectively with the stroke of a pen been removed from the judiciary. These judges are individuals of ability and integrity. If this judicial purge is not reversed, our judiciary will not recover from this blow for at least another decade. With a compromised, demoralised and subservient bench, no one can feel secure or safe in the long-run.

The vast majority of the legal community and members of civil society see the enormity of what has happened. To all those businessmen, stockbrokers and others who have prospered under General Musharraf's regime and who continue to support him, reflect on this: all your wealth, assets, security and freedom and those of your children can be taken in an instant by a single order if for any reason you develop differences with those in power. If they are, where will you turn? Having lost your 'contacts', you will have to turn to the judiciary to redress any grievance. What type of judges would you like to have hearing your case in those circumstances?

Although nothing seemed very different when I drove to the HRCP meeting last Sunday afternoon, in fact there had been a huge change. In the short term, the PCO and the proclamation of emergency had placed an entire nation at the mercy of the whims of a single individual. In the long term, an entire generation's prospects and security had been compromised by an assault on a critical institution. The PCO and proclamation must be reversed and all the judges who have not taken oath under the PCO must be restored and allowed to resume work. If this does not happen, regardless of the political dispensation prevailing, all of us and our children face a dismal and uncertain future in Pakistan.

*The writer is an Oxford-educated barrister who practises corporate law in Lahore. Email: hosain@cyber.net.pk*

# Acknowledgements

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