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GUATEMALA/HARVARD CRIMINAL JUSTICE PROJECT

FINAL REPORT

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I. Introduction

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The central aims of the Guatemala/Harvard Criminal Justice Project were: (1) to diagnose and analyze the major problems confronting the delivery of criminal justice in Guatemala, (2) to develop potential remedies to these problems in collaboration with Guatemalan policymakers and practitioners, and (3) to experiment with the implementation of promising reforms.

These tasks were carried out from the Project's inception in July, 1987, through its completion in December, 1990. The Project was cosponsored by the Guatemalan Supreme Court and Harvard Law School's Center for Criminal Justice, and was funded by the U.S. Agency for International Development (U.S.A.I.D.). In addition to the four individuals named on the cover page of this report, other project staff members during the course of the effort included: Morris Panner, Marilyn Milian, Jean Solé, Ellen Lawton, Melissa Davy, Michelle McKinley, Darlene Adams and Lisa Iglesias.

Major Court Reforms

The Project studied all facets of the justice system but implemented experimental reforms primarily in court operations and in court cooperation with other justice system agencies. Specific court reforms which were investigated or implemented on an experimental basis included:

- (1) Improving the investigative skills of court personnel and prosecutors,**
- (2) Developing oral proceedings in the criminal justice system,**
- (3) Improving the delivery of justice in rural areas,**
- (4) Improving police - court cooperation,**

(5) Improving prosecutor - court cooperation, and

(6) Reforming criminal defense mechanisms.

This court-reform effort was independently evaluated by a study commissioned by U.S.A.I.D. The findings are presented in a February, 1991 report entitled, "Evaluation of the Pilot Court Experimental Program." A copy is attached. As the report indicates, many of the reforms which were implemented are very promising. The specific needs for court reform are clear, and the process of implementing such reforms is well underway. The continuing commitment of the Supreme Court's leadership is all that is needed to spread these proven reforms nationwide.

Section II of this report presents a discussion of each of the six court reform efforts listed above. For each topic, we summarize the problems facing the justice system, discuss Project efforts at reform, and recommend next steps. The initial page numbers for the various recommendations sections are listed in the table of contents to assist readers in locating them.

Critical Needs for Additional Fundamental Justice System Reforms

Court reforms can influence the functioning of the justice system, but reforms in the courts alone are not enough. Far-reaching, basic reform of police and prosecution operations is absolutely essential. Similarly, the pervasive problems of corruption, intimidation, personnel system inadequacies, and the immunity of perpetrators of political violence must be solved. Section III of this report reviews each of these issues.

Such fundamental reform is clearly a daunting task. The efforts of well-motivated and energetic justice-system leaders -- the Supreme Court President, Attorney General, and Director

of the Police -- will not suffice to achieve such basic reforms. The needs for resources and fundamental changes are so great that only the sustained commitment of the nation's President, legislative leaders, and private-sector leaders will suffice to reform Guatemalan justice.

An examination of the goals of criminal justice systems reveals the court's limited role in the delivery of justice and the critical need for the other components of the system to operate effectively. Criminal justice systems exist in democracies to provide fair, expeditious, and effective justice for criminal offenses, and thereby to restrain private efforts at vengeance for such offenses. The following are three central goals of such systems:

- (1) To convict a significant proportion of criminals without regard to their status or influence,
- (2) To avoid convicting the innocent, and
- (3) To perform these tasks in a decent and lawful manner.

The courts have considerable control over goals two and three. Judges can exercise care in the evaluation of evidence and seek to ensure that the innocent are not convicted. They can also perform their tasks within the constraints of the law and seek to ensure that the evidence provided to them by the police and prosecutors was obtained lawfully and not as the result of illegal searches, brutal interrogations, and the like.

But judges, in isolation, cannot even hope to make significant progress in attaining the first goal -- conviction of a relatively high proportion of those guilty of significant crimes. Judges typically must rely upon the police and prosecutors to collect the basic evidence of guilt and to present this evidence to the court. In theory, the Justices of the Peace and Investigating Judges in Guatemala have an aggressive investigative role; but, in practice, they do not perform this

function. They cannot investigate crimes or interview witnesses in ways necessary to win convictions in cases lacking complainants who know the offender and who are willing to bring the court persuasive evidence of the offender's guilt.

Court personnel deal with their failure to achieve the first goal listed above simply by blaming the failure on the police and prosecutors. Judges assert that they simply cannot convict defendants without adequate evidence. Court personnel derive a sense of satisfaction from their work by focusing upon the achievement of goals two and three. The police and prosecutors point to their lack of personnel, training, and resources, and indicate that they are doing the best that they can.

The combined result of the failings discussed above is that no one in the Guatemalan justice system takes responsibility for the first goal listed above -- conviction of a high proportion of those guilty of crimes.

While the various players in the justice system complain about resources and engage in mutual recriminations, Guatemalan society lacks an effective criminal justice system. In the absence of a functioning justice system, many citizens engage in vigilante justice. Thousands of heavily armed guards have been hired to provide the protection normally expected from the justice system. Such private vigilante justice adds violence to the streets of Guatemala, increases the sense that minimal social order has broken down, and breeds even greater disrespect for government.

In light of these fundamental problems with the Guatemalan criminal justice system, the nation's leaders in all three branches of the government must work together to implement major reforms in the police, courts, and prosecution. The courts alone cannot solve the justice system's

core problems. The court can at least partially achieve goals two and three -- it cannot hope to achieve the first and critical goal of conviction of a substantial proportion of the guilty. A weak but honest court system cannot solve Guatemala's daunting problems of street crime, political violence, vigilantism, and consequent public insecurity. Guatemalans lack confidence in their government in significant measure because of the government's failure to preserve public safety.

Repairing Guatemala's criminal justice system will require sustained, national attention. Section III discusses a strategy for developing a National Commission of respected governmental and private-sector leaders to deal with comprehensive reform of the justice system, and it reviews the six essential areas requiring reform.

The first three areas discussed require further study by the National Commission prior to actual reform. Once the Commission makes recommendations for reform, it will need to generate the political support to see that the recommended reforms are implemented. These areas include:

- (1) **Combatting corruption,**
- (2) **Improving the personnel system for judges and prosecutors, and**
- (3) **Reforming police operations.**

Three other areas have been already studied extensively, and reforms can be implemented immediately through the Commission's efforts. These areas include:

- (4) **Reforming prosecution mechanisms,**
- (5) **Combatting intimidation, and**
- (6) **Eliminating the immunity of perpetrators of political violence.**

The leaders of the executive, judicial, and legislative branches of the Guatemalan

government, along with leaders from the general public and private sector, must make criminal justice reform a national priority. Doing so would greatly strengthen democracy in Guatemala.

II. Reforming the Courts

This section reviews the court-reform measures implemented by the Guatemala/Harvard Criminal Justice Project. For each topic area, we summarize the major problems confronting the Guatemalan criminal justice system, review the efforts of the Guatemala/Harvard Criminal Justice Project to address these problems, and recommend necessary next steps at reform.

The Guatemalan courts owe their citizens accessible, expeditious, and high-quality justice. Many factors hinder the courts in meeting this obligation including the need to: (1) improve the investigative skills of court personnel and the prosecutors who work with them, (2) move from the current written system of justice to a system of oral trial proceedings, (3) improve the delivery of justice in rural areas, (4) improve police/court cooperation, (5) improve prosecutor/court cooperation, and (6) reform criminal defense mechanisms.

The Guatemala/Harvard Criminal Justice Project incorporated these reforms and others in its Pilot Court Project. The aim of the Project was to experiment with essential reforms in a relatively small number of courts, and to identify promising measures worthy of replication throughout the justice system. Sixteen courts in Guatemala spanning the various trial levels (Justice of the Peace, Investigating Court, and Sentencing Court) in both urban and rural areas were designated Pilot Courts; judges there received training, and all but the last courts that received training have already implemented a package of reforms. As part of the Project, efforts were also made to improve cooperation between the courts, the police, and prosecution.

1. Improving the Investigative Skills Of Court Personnel and Prosecutors

a. The Problem

Our investigations during the first year of the Guatemala/Harvard Criminal Justice Project revealed that personnel from the Guatemalan courts and prosecutor's office could not properly investigate and prosecute criminal cases. Accordingly, the conviction rate of the justice system was very low: less than five percent of defendants were convicted.

The system's very poor criminal investigative performance stemmed from a variety of factors including a simple lack of investigative skills, the low self-confidence and sense of professionalism of personnel in handling cases, and the failure of the system to hold anyone specifically accountable for solving crimes.

The training program of the Pilot Courts attempted to address these problems by designing seminars to provide court personnel with: (1) technical training, (2) a sense of confidence in their investigative skills, (3) a sense of responsibility and accountability for solving criminal cases by getting to the truth, and (4) an understanding of the importance of working as a team with other law enforcement officials, such as prosecutors and police, to conduct thorough investigations and prosecutions. The Guatemalan criminal justice system lacks all of these qualities, as many Guatemalans working within the criminal justice system will admit.

It is understandable that neither court personnel nor prosecutors are adequately prepared to fulfill their duties. Traditionally, no one working within the court system had ever been formally trained in investigative skills. The majority of court employees entered the judiciary as law students and simply learned to do their job after they were employed by the court, without any significant amount of supervision or guidance from more experienced personnel, such as

judges or secretarios -- who also have received no training.

Perhaps the only relevant "training" received by justice system personnel prior to working in the system was their experience in handling an indigent criminal defense case in law school. But this work is typically done in a perfunctory manner and with inadequate supervision. No other training takes place. As a result, crime-scene investigations are inadequate, questioning techniques are deficient, case analysis and follow-up on investigative leads are practically non-existent, and there is no sense that the investigation should be coordinated with other components of the justice system.

The lack of professional self-esteem and the lack of motivation to do a job well stems also from the perception of those working both outside and within the system that the judiciary and the prosecutor's office are corrupt and ineffective. Training must be institutionalized and made available to everyone working within the judiciary to improve the criminal justice system's capacity to investigate and prosecute criminal cases.

b. Project Activities

Identifying lack of training, professional self-esteem, and motivation as major causes for a failing justice system, we focused heavily on addressing these shortcomings in the Pilot Court Project.

Investigative Training Seminars

First, training seminars were designed to teach investigative skills including techniques for:
(1) questioning witnesses, victims, and defendants, (2) conducting crime-scene investigations and

thorough searches to gather physical evidence, (3) analyzing different types of evidence and following up on investigative leads, and (4) using forms and checklists to ensure a complete investigation.

Second, in addition to providing technical instruction on how to conduct a criminal investigation, the training seminars were designed to motivate all of the personnel working in the Pilot Courts (including prosecutors) to have confidence in their work and to have them acknowledge that they all share the responsibility (under the direction of the judge) for ensuring that the investigation arrives at the truth. It was important to highlight the role that each of them plays, and the necessity of working as a team -- judge, secretario, oficial, prosecutor (and police) -- to conduct a thorough and competent investigation.

Two different types of training seminars were designed: basic skills and advanced seminars. The format for each was essentially the same. Each seminar included a series of lectures on relevant topics, such as: questioning techniques, crime-scene search, the conduct of a thorough investigation, the investigation of corruption cases, and related topics.

In addition to the lectures, the seminars included practical exercises in which students had the opportunity to "learn by doing" after having heard a lecture on a specific topic. Participants engaged in role-playing exercises in which each student conducted an interview of a specific type of witness in a simulated case. The student's performance was videotaped and then critiqued by an experienced instructor who provided an evaluation of the questioning techniques used. The practical exercises were performed in groups. The feedback given by the instructor and the rest of the group, in combination with the opportunity for students to view themselves on videotape, were crucial learning experiences for participants. Students had the opportunity to see their

strengths and weaknesses in questioning different types of witnesses. The cases used in the practical exercises emphasized the different types of investigations that are likely to arise, and the different types of defenses that might be presented (e.g. identification, self-defense, missing element of the crime, etc.).

Training seminars had two additional major components: (1) a crime-scene demonstration which allowed observation and discussion of the different steps taken during the search of a crime scene; and (2) a plenary discussion of each of the problems used during the practical exercises. These discussions addressed the different ways in which evidence obtained can be interpreted, the importance of following up on investigative leads, and the role that the judge, official, prosecutor and police should play in the investigation. The plenary sessions also addressed the problems of coordinating the investigation with the court, prosecutor, and police.

At the end of each seminar, certificates of accomplishment bearing insignias of the Organismo Judicial and Harvard University were provided to each participant during a closing ceremony. These certificates, bearing the name of each student, were handed out in a public forum, and helped to increase the students' confidence in their professionalism.

In coordinating each seminar, we relied on the assistance of the Sección de Capacitación of the Guatemalan court. This department helped ensure that the seminars ran smoothly. Guatemalan judges and other justice system personnel lectured on selected topics at the seminars, and assisted with the practical exercise groups, which used law students as well as police officers to play the roles of "witnesses" in the exercises. Having the participation of members from the different law enforcement institutions at the seminars also helped to improve communication across the agencies and helped to instill awareness of the need for coordination of the

investigative function.

Overall, the seminars successfully taught judges, secretarios, oficiales, and prosecutors how to investigate cases more effectively, and encouraged a greater sense of responsibility and professionalism. Evaluations from workshop participants as well as the independent evaluation conducted of the Pilot Court Project by U.S.A.I.D. confirmed this.

Although the seminars achieved their goals, we knew that they would not be sufficient to guarantee improvements in court functioning. Follow-up observations in the Pilot Courts by experienced litigators who had participated in the training seminars as instructors ensured that weeks and months after the seminars, skills learned were still being used and investigations were benefitting as a result. These one-on-one evaluations of court personnel in the Pilot Courts also helped to motivate them by providing special attention to them and to their work.

Court Staff Meetings

Finally, staff meetings were held for all members working together in a set of Pilot Courts. These meetings were designed to highlight both problems and successes in past and current investigations. In order to help improve collaboration, prosecutors and police officers assigned to the Pilot Courts were invited to attend, and the meetings emphasized working as a team. Staff meetings were another means to follow up on the progress of the individual Pilot Courts and provided a vehicle to resolve any specific problems that they were encountering.

c. Recommendations for Next Steps

It is clear that the Guatemalan court system needs to create a structured training program which will operate continuously and provide instruction and follow-up attention to court personnel on investigative techniques, management skills, and related topics. What is required is simple and manageable.

The Organismo Judicial already has in place a Sección de Capacitación, training equipment, and a number of talented members of the judiciary who are familiar with training programs through the Guatemala/Harvard Criminal Justice Project. What is needed is a training coordinator within the Sección de Capacitación who is an experienced criminal attorney and is familiar with training programs. The training coordinator would have primary responsibility for implementing different types of seminars and coordinating follow-up activities, as needed.

The Center for Criminal Justice is preparing detailed training manuals and videotapes for use in the training seminars. The manuals will provide training materials for participants in the seminars, and information for instructors on how to train participants. The videotapes include presentations by prominent attorneys on major investigative topics relevant to the training seminars. A staff member of the Center for Criminal Justice is available to assist the Guatemalan judiciary in using the materials and establishing an ongoing training effort, and the President of the Supreme Court has indicated that such assistance would be welcome.

With respect to the training seminars, the Guatemalan court system training coordinator would design the content of each seminar, select instructors, and assist in the determination of which courts require specific types of training, i.e., basic or advanced. Appointing a training coordinator with the sole purpose of structuring an in-house training program would ensure that,

at a minimum, every court employee would receive basic training in investigative techniques.

The most workable and manageable plan of initial action is for the training coordinator, in conjunction with the Sección de Capacitación, to conduct a series of basic training seminars in order to have everyone in the judiciary working on the same practical level as those trained within the Pilot Court Project. Although the seminars would be implemented through the Organismo Judicial, prosecutors should also participate because of the important role they play in investigations.

All court personnel -- judges, secretarios, oficiales, and prosecutors -- must receive instruction that addresses the causes of the deficient criminal justice system: lack of basic technical skills, lack of confidence and sense of professionalism, lack of a sense of responsibility for solving cases and getting to the truth, and an inability to collaborate with others in law enforcement and to work as a team.

The program for this type of seminar has already been designed and executed repeatedly for the Pilot Court Project, and materials are readily available. In fact, the actual program for most of this basic seminar is available on a series of videotapes, which would facilitate the duplication of this program. There are a number of judges and other court personnel who are already familiar with the program and its materials, and who could assist the coordinator in running it.

Evaluations of former seminar participants are available which would indicate the level of their technical skills and those who exhibited exceptional traits. This information would be helpful in selecting instructors and assistants for the seminars. It would be the responsibility of the training coordinator to select a sufficient number of individuals who could be instructors at different times throughout the year. A group of at least eighteen instructors is needed, and

instructors could rotate duties and participate in seminars three months out of the year with six instructors per seminar.

A time frame should be established within which all court personnel working for the Organismo Judicial would be trained. Depending on the number of instructors available, as many as forty people could be trained per seminar. At present, the seminar has a three-day schedule. The seminars should be expanded to four or five days in length if possible. This would allow greater time to cover topics more thoroughly and to conduct more practical exercises which participants found extremely helpful. In order to allow the courts to continue to function during training periods, the training must be structured so that half of the personnel at any specific court receive training, while the others keep the court in operation. If possible, the other court personnel should be trained immediately thereafter. Using this approach, eighty people could receive training in two seminars every month.

If the maximum number of students per seminar is forty, then six instructors would be needed (four to instruct groups of ten students each, and two to evaluate videotaped performances).

All of the administrative tasks would be coordinated by the Sección de Capacitación which has the experience and capability to handle such functions. The training coordinator would need the assistance of at least one or two other people from the Sección de Capacitación to assist in organizing training sessions.

The follow-up supervision that is needed throughout the courts could also be provided through the Sección de Capacitación. Instructors could make individual visits at different times during the year to observe investigative activities and to provide follow-up advice to court

personnel performing their investigative tasks. As seminars were conducted, instructors should note the best students in order to select future instructors and supervisors.

To arrange staff meetings, the Presidencia could require that judges from the Sentencing Courts be responsible for setting up staff meetings every two or three months. The Sección de Capacitación could designate which courts would meet together and keep a record of when and how many times they were meeting.

What is most needed is commitment. The procedures outlined above are straightforward and simple. After the basic training has been provided, different seminars could be coordinated to address other needs within the court system. If the Organismo Judicial and the Attorney General's Office are going to play an effective role in the criminal justice system, then they must commit themselves to taking these essential steps to improve their capacity to investigate and prosecute criminal cases. Only by doing so can they ensure the continuing success of the reforms begun by the Pilot Court experimentation.

2. Oral Proceedings in the Guatemalan Criminal Justice System

a. The Problem

Although the Guatemalan Code of Criminal Procedure provides for limited oral proceedings, in practice, the trial stage primarily entails the reading of a written file by a Sentencing Judge who convicts or acquits behind closed doors. The judge makes a decision without ever having observed witnesses or listened to their testimony, and rarely having viewed the physical evidence. Verdicts are essentially based on evidence obtained by other judges and court personnel. As a result, the judge often cannot impose an appropriate, fair sentence.

The absence of open, public trials in Guatemala also leaves the criminal justice system subject to suspicions, and does not impose the pressure for performance by its crucial parties that public observation would create. Consequently, this almost-exclusively-written system fosters corruption, sloppiness, laziness and most important, lack of public confidence in the system. For those working within the system, it is easy to prosecute, defend or judge a case ineffectively when justice is rendered secretly and no means for public scrutiny exist.

A major obstacle to the implementation of a system of oral trial proceedings is the resistance that many lawyers and law students have to such procedures due to their lack of familiarity with oral proceedings and their greater comfort with the way things have always been done. The additional time and effort it takes to coordinate oral hearings also discourages individuals who have no sense of motivation to implement such a system in the first place. Further, the physical condition of the courts and the lack of necessary equipment also hinder judges' ability to conduct oral proceedings.

The Pilot Court Project set out to improve the court's ability to determine facts in a criminal

case by introducing a system in which evidence was presented to the trial judge in a public, concentrated oral hearing, as allowed by Guatemalan law. Providing an opportunity for the prosecution and defense to present witnesses and exhibits in audiencias concentradas, and to address the court in closing arguments in vistas pública, would not only increase the court's capacity to render more appropriate and accurate verdicts, but would also allow for more effective participation by the Ministerio Público's Office and the defense.

It was also anticipated that the use of oral proceedings would decrease the likelihood of false witnesses. Testimony given in an oral hearing, subject to the public eye, would result in witnesses being more reluctant to make false statements before the entire community. Additionally, oral proceedings allow the parties to view their attorneys during the proceedings and observe whether or not they are performing their duties effectively. The public has an opportunity to view and assess the performance of judges, prosecutors and defense attorneys, and actually see justice at work.

b. Project Activities

Through the Pilot Court Project, three Sentencing Courts began conducting oral hearings open to the public. Under the Guatemalan Code of Criminal Procedure, the courts conducted two types of proceedings: audiencias concentradas para la recepción de prueba (evidentiary hearings for the purpose of hearing testimony and viewing physical evidence), and vistas pública (closing arguments presented by the different adversarial parties). In both types of hearings, all relevant parties and officials were present (judge, prosecutor, private attorney for the victim, defense attorney, victim, defendant, secretario, and oficial). During the evidentiary hearings,

the judge, as well as the attorneys, had the opportunity to ask witnesses additional questions that they deemed necessary. During the closing arguments, the judge could address the lawyers and ask questions regarding any points noted in their presentations.

The Organismo Judicial and the Ministerio Público's Office cooperated to implement oral hearings/proceedings. Those oral proceedings required prosecutors who were specifically assigned to the Pilot Sentencia Court and who were committed to the conduct of oral hearings. Once the Sentencia Judge decides that there is sufficient evidence for trial, he may grant an audiencia concentrada if one of the parties makes a request for it or on his own initiative. A vista pública can only be held if one of the parties asks for it. The Pilot Court Project included an understanding that the Ministerio Público's Office would request oral hearings in certain types of cases such as: assassination; homicide; kidnapping; rape; crimes committed by government officials; or any other types of cases which the judge or prosecutor considered important or of interest to the public.

Even though fewer oral proceedings than expected were held, towards the end of the project, hearings were being held more consistently in both Guatemala City and Totonicapán. Cases selected for oral hearings were considered significant and of interest to the public. Major cases handled by oral proceedings have included: (1) the May, 1988, coup attempt which resulted in the convictions of former military officials, (2) the drug trafficking case against Minera Navas which resulted in an acquittal, but highlighted the possible role of a number of government officials who Navas named as being involved in the drug trade, (3) the highly-publicized homicide case against Pedro Lemuz Jimenez in which the prosecution was seeking the death penalty for the murder of a high-ranking military colonel's wife -- the defense of insanity was

rejected by the court, which found the defendant guilty but did not impose the death penalty; and (4) the homicide case against Thomas Garcia Dias whose conviction depended on the testimony of two reluctant eye-witnesses who had left their residence because of fear and were finally located due to intensive efforts on the part of the prosecutor and police. During the evidentiary hearing, the judge commended the work of the prosecutor and police in locating and bringing forward these two witnesses. These types of cases, even when they did not result in convictions, enabled the public to see the justice system as a living and breathing entity.

The procedures used in these cases were the same as those outlined in the Pilot Sentencia Court proposal (copies of this proposal are available from the Center for Criminal Justice) and can be viewed on videotapes of selected hearings held in Guatemala City and Totonicapán. As the tapes illustrate, and as participants will attest, the proceedings helped the trial judge to determine the truth. Attorneys representing both sides presented witnesses, who were placed under oath by the judge, then questioned in a public forum. The judge, as well as everyone involved in the proceeding, and the public, had an opportunity to hear witnesses giving testimony and to observe their demeanor as they answered questions presented by lawyers and the court. The oral-hearing process helped the court to ascertain the truth, especially by allowing the trial judge to determine the amount of weight to place on various items of evidence. For example, judges could evaluate the testimony of interested witnesses, i.e., relatives, friends, and dependents, whose testimony would ordinarily be given little weight, if any, due to the highly restrictive evidentiary rules in the Guatemalan Code of Criminal Procedure.

In order to encourage the parties to request oral proceedings and to help the attorneys feel more comfortable performing them, the Project held training seminars highlighting techniques

in advocacy skills for both prosecutors and defense attorneys. With the assistance of the Guatemalan Bar Association, the Project also secured a commitment from a group of approximately twenty defense lawyers to provide pro bono defense to cases being adjudicated in the Pilot Courts. To ensure rough parity between prosecutors and defense attorneys, especially in those cases handled by inexperienced law students, the Project and the Bar Association developed a process in which experienced attorneys, in exchange for training in advocacy skills, agreed to provide their services to indigent defendants. Student defense attorneys received help from their school supervisors during oral proceedings at the request of the trial judge.

Due to the publicity given by the media to a number of oral proceedings, especially the vistas pública, the public was able to observe the justice system functioning. Conducting the hearings also improved the morale of court personnel who felt enthusiasm and pride in the work they were doing. Even though it entailed more work, adversarial parties involved felt that the process produced a more just result.

The U.S.A.I.D.'s independent evaluation of the Pilot Court Project noted that: (1) oral evidentiary hearings enhanced trial judges' ability to master difficult cases by allowing them to hear testimony first hand; and (2) oral arguments in open sessions significantly enhanced the credibility and public image of the criminal justice system.

c. Recommendations for Next Steps

All accounts confirm that the implementation of oral proceedings in Guatemala helped strengthen the operation of the criminal justice system. Success was limited however, because only a relatively small number of hearings (approximately 30) were actually held. The effort to

conduct oral proceedings was only a beginning; the Guatemalan courts must expand such proceedings.

A new Criminal Code which would create, among other things, an oral trial stage, was considered by the 1990 session of the Guatemalan legislature, but rejected. It is unclear what new reforms will be considered in the near future. Until new laws are passed converting the primarily written system to oral proceedings, the current Criminal Code should be interpreted as broadly as possible to encourage oral proceedings. Guatemala must motivate those working in the courts to conduct oral hearings to continue the momentum gained through the Pilot Court Project.

There is no question of the commitment of Dr. Edmundo Vásquez, the Supreme Court President, to implementing oral proceedings at the trial stage of a criminal case. What needs to be done, especially in light of the new administration under President Jorge Serrano Elias, is for Dr. Vásquez first to seek the collaboration of the Attorney General to ensure that prosecutors of the Ministerio Público remain in Sentencia Courts and continue to request oral hearings. Since the defense can make the same request, the Guatemalan Bar Association and the law schools must also cooperate. These groups can facilitate the use of oral hearings if they become familiar with them and understand the benefits that oral proceedings can provide for all those involved in criminal cases.

Once the Organismo Judicial makes a real commitment to promote oral hearings, and takes steps to obtain the collaboration of the necessary parties, implementation must follow. Facilities and equipment necessary for recording and transcribing oral proceedings are needed. If oral proceedings are to become more commonplace, it is essential that Sentencia Courts be structured

so that the parties involved as well as the public, can be accommodated in adequate facilities.

At the end of the Guatemala/Harvard Criminal Justice Project, only one court had been renovated to accommodate oral hearings in Guatemala City. Although it may not be feasible to immediately equip all Sentencia Courts and Courts of Primera Instancia handling trials, an effort should be made to renovate at least two or more trial courts in Guatemala City and then those throughout the countryside, as deemed possible. In the capital, the President of the Supreme Court could allow other Sentencia Courts to use the facilities of those Sentencia Courts already equipped.

If recording equipment is too expensive to purchase for each court, then the courts should purchase mobile equipment and make it available to the different Sentencia courts, as needed. Such equipment should be readily available to trial judges so that they are not burdened or discouraged from making the request. Throughout the project, formal procedures that were full of red tape tended to impede judges' ability to obtain necessary equipment and supplies that were crucial to the job they were doing. The procedures must be simplified so that judges will conduct oral proceedings.

Judges who would be responsible for holding audiencias concentradas and vistas pública should be trained in oral procedures. The training would help remove resistance to such proceedings. Judges who have conducted oral hearings throughout the last two years (such as Lic. Napoleón Gutiérrez Vargas and Licda. Yolanda Perez Rufz) could teach their less-experienced colleagues.

The training could provide judges with simple written materials outlining the steps that need to be taken for directing audiencias concentradas and vistas pública. Actual oral proceedings

could be demonstrated using pre-recorded audiencias concentradas and vistas pública. The recorded hearings can encourage new judges to adopt the idea of oral trials. Prosecutors, defense attorneys, law students and their supervisors who have participated in such hearings could explain how the hearings are actually conducted and describe the benefits derived from such proceedings.

The Pilot Court Project's development of oral proceedings was a very positive reform which enhanced citizen confidence in the system. As was stated earlier, it was only the beginning, and it is hoped that the crucial next steps are taken to ensure that this positive reform is expanded and made permanent.

3. Improving the Delivery of Justice in Rural Areas

a. The Problem

The majority of Guatemalans belong to a diverse array of indigenous cultural groups. These indigenous groups evolved over centuries in isolation from Western cultural and legal mechanisms. They have developed their own internal mechanisms for the resolution of disputes.

Policy planners designing means for the delivery of justice in rural Guatemala must account for such indigenous mechanisms. The formal mechanisms and the indigenous mechanisms should be harmonized to the extent possible to provide a system of justice that the local people will accept. Suggestions for such reforms are discussed later in this section.

The key actors in the traditional dispute-resolution mechanisms are the *alcaldes auxiliares*, respected local people elected by the Indian communities for a one-year term without compensation. They receive their authority from being elected and from their consultations with the "principales," local elders who are greatly respected for their experience and age. One of the main roles of the *alcaldes auxiliares* is to resolve community disputes (e.g., intra-family problems, land disputes, assaults, thefts, etc.).

The *alcaldes* typically resolve indigenous disputes by mediation. The disputing parties are brought together to discuss the conflict. The *alcalde auxiliar* may suggest resolutions to the dispute, but cannot compel a settlement. The *alcalde auxiliar's* authority comes from community trust. The community often assists in the dispute resolution process and pushes for a resolution. Settlements often involve the payment of compensation for harms done and occasionally community service provisions for perceived offenders. If the *alcalde auxiliar* in the local *aldea* (village) cannot resolve the matter, he/she may seek help from the *alcalde municipal*. If this step

also fails, the case may be brought to the National Police or the local Justice of the Peace. In such cases the alcalde auxiliar may serve as an intermediary with the official authorities.

In addition to the existence of a parallel indigenous system, the administration of justice in rural areas of Guatemala faces a number of special challenges. These problems include: (1) limited access to justice due to great distances, rough terrain, and poor transportation, (2) limited access to justice due to language and cultural differences, and (3) indigenous distrust of the integrity of the formal justice system. Each issue is reviewed in turn.

(1) **Problems of Distance and Transportation.** Guatemala has very challenging, volcanic terrain throughout much of the nation. The distances to Justices of the Peace and Primera Instancia Courts in Departmental capitals are often great. Public transportation is often erratic or non-existent and in many areas travel is only possible by foot or on horseback. As a result, access to the national justice system is very difficult in much of rural Guatemala.

(2) **Language and Cultural Barriers to Justice.** The rough terrain of Guatemala has contributed to the great cultural and linguistic variation in the nation. Indigenous groups in separate mountain valleys have developed different languages and cultures. Such differences pose major problems to judicial personnel who cannot speak local languages or who do not understand local customs. The scope of the problem is illustrated in the Department of Totonicapán. In that Department, over ninety percent of the population is indigenous and less than half of these citizens have any working knowledge of Spanish.

(3) **The Impact of Corruption on Trust in the Formal Justice System.** Paul Vander Vort conducted research on rural justice for the Guatemala/Harvard Criminal Justice Project in 1990. His findings are reported in two papers: "The Conflict and Interaction of Justice Systems

in Rural Guatemala," and "The Administration of Justice in Rural Guatemala." An additional major barrier to use of the national justice system by rural indigenous citizens is the perception that the system is corrupt. In the past many rural Guatemalans have been charged for services from the formal justice system, and many still expect to be charged. Furthermore, rural Guatemalans have been victimized by some court officials who have had them sign documents that they could not read that were inconsistent with their statements to the courts.

b. Project Activities

The rural Pilot Court experiment used a variety of measures in the Department of Totonicapán to respond to the barriers to justice discussed above. These measures included:

(1) **The Institution of a Circuit Court Approach for Justices of the Peace.** The two Justices of the Peace in the Totonicapán Pilot Court Project each travel one day per week to a remote municipality in their area in order to bring justice closer to the people. The Momostenango judge also serves Santa Maria Chiquimula; the San Francisco el Alto judge also serves San Bartolo Aguas Calientes.

(2) **The Appointment of Alguaciles Judiciales.** A major component of the rural Pilot Court reform is the appointment of judicial assistants, alguaciles judiciales, in rural municipalities. These individuals are local people, elected by their peers, and then appointed by the President of the Supreme Court to assist in the administration of justice. They must be literate and equally fluent in Spanish and the local indigenous language; they need not be attorneys. Four alguaciles were appointed in November, 1989, to provide assistance in the four communities that are served by circuit Justices of the Peace. These alguaciles received training in witness-

questioning and crime-scene search in February, 1990.

The alguaciles provide a wide range of services including: (1) protecting evidence at crime scenes until the judge arrives, (2) identifying and locating relevant victims and witnesses and assisting judges in their investigations, (3) preparing the docket and ensuring that relevant parties appear if a circuit Justice of the Peace serves their municipality on a weekly basis, (4) serving as translators at court sessions involving indigenous people unable to speak Spanish, (5) providing guidance and information to local citizens regarding the national justice system, (6) serving as mediators for some minor local disputes, and (7) in some cases, serving as a link between judges and alcaldes auxiliares, monitoring the efforts of such alcaldes, and receiving unresolved mediation cases on referral from the alcaldes.

Our initial rural Pilot Court plan focused upon the relationship of the alguaciles to judges, and did not deal with their relationship to the alcaldes auxiliares. Nonetheless the alguaciles began to develop close working relationships with the alcaldes auxiliares of local villages. The Justice of the Peace for San Francisco el Alto has also begun to hold regular meetings with local alcaldes auxiliares. This development suggests that a hierarchical system of rural justice flowing from the judges to the alguaciles judiciales and then to the alcaldes auxiliares might encourage the delivery of justice in rural areas. A strategy for developing such a hierarchy of justice delivery is discussed below.

(3) **The Preparation of a Justice System Brochure in Indigenous Languages.** The Guatemala/Harvard Criminal Justice Project has also developed a draft pamphlet on Guatemalan law and the Guatemalan court system for distribution in rural areas. The document should be translated into major indigenous languages. It is designed to be highly accessible to local

community members and is intended to provide a clear and straightforward discussion of legal protection for Guatemalan citizens. The pamphlet can be read at community gatherings to ensure that illiterate persons are still informed of their rights.

c. Recommendations for Next Steps

The various experimental measures implemented in the Totonicapán Pilot Court could work in rural areas throughout the nation. Paul Vander Vort's paper, "The Administration of Justice in Rural Guatemala," summarizes our major recommendations for the respective roles of alcaldes auxiliares, alguaciles judiciales, and judges in rural justice. Copies of this paper are available from the Center for Criminal Justice.

Our recommendations for rural justice reform include:

(1) The Development of a Hierarchy of Justice Delivery from Judges, to Alguaciles Judiciales to Alcaldes Auxiliares. The combination of the alcalde auxiliar, the alguacil judicial, and the judge -- each with their own duties and responsibilities -- could form a judicial chain of command in rural areas. The combination of officials could potentially enhance access to justice in rural Guatemala. Many municipios served by an alguacil have ten or more aldeas (villages) in their area. Problems of distance and access make it necessary for the alguacil and the judge to rely on the alcaldes auxiliares in these local communities for some forms of assistance.

Alcaldes auxiliares are selected in villages throughout rural Guatemala by local communities. Alguaciles judiciales should be appointed in rural areas to assist Justices of the Peace and to work with alcaldes auxiliares. Such officials should be appointed in major municipios served by a Justice of the Peace. Based upon our experience in Totonicapán, it may

not be necessary to have alguaciles appointed in the same juzgado in which the Justice of the Peace routinely sits due to the likely duplication of effort with local court personnel. Where language and cultural differences are large and are not bridged by other court personnel or the judge, the appointment of an alguacil in the judge's home jurisdiction may also be necessary.

The division of responsibilities among the three types of officials should be as follows:

(a) In Cases of Serious Crime:

1. Alcaldes auxiliares would have a very small role because of constitutional restrictions and the need for more professional handling of cases. The alcalde's role would be limited to assisting the investigative judge and alguacil judicial by ensuring that witnesses are accessible, protecting the crime scene until the other officials arrive, and providing information regarding local customs and the history of events leading to the offense under investigation. The alcaldes auxiliares should be taught the essentials of Guatemalan law, how to protect a crime scene, and how to locate relevant witnesses. The alguaciles can provide much of this training to their local alcaldes auxiliares.

2. Alguaciles judiciales are official members of the Organismo Judicial and can play a far more significant role in the handling of serious cases than the alcaldes auxiliares. The basic tasks to be performed by alguaciles were summarized in the preceding section and include securing the crime scene when they arrive, identifying and locating relevant witnesses, taking initial statements, assisting the judge when he or she arrives by translating and performing related tasks, preparing the docket, and assuring that relevant parties to the case are present if the judge visits their municipio on circuit.

3. Judges should assume responsibility for investigations of serious crimes as soon as

possible given problems of notification of the offense and distance.

(b) In Cases of Minor Crimes (including both minor criminal and civil matters):

1. Alcaldes auxiliares should mediate those minor disputes that the parties in their local village are willing to have mediated. Given the traditional trust in alcaldes and their role in dispute resolution, this is a natural role for the alcaldes. Such local mediation efforts free the regional juzgados from having to deal with minor cases and support the preservation of the indigenous legal order which is essential in many areas of the nation where both judges and alguaciles are very distant.

The alcaldes should learn legally accepted mediation practices and know that participation must be voluntary and that punishments cannot be imposed by the alcalde. In cases in which a resolution cannot be achieved, the alcalde should refer the case to the alguacil for possible further mediation.

2. Alguaciles judiciales should oversee the mediation efforts of alcaldes auxiliares and seek to mediate those cases that are not resolved by the alcaldes. Cases that cannot be resolved through mediation should be referred to the court for judicial resolution.

3. Judges should be aware of the mediation efforts of the alguaciles judiciales and alcaldes auxiliares in their jurisdiction to be certain that the practices being used are appropriate, effective, and legally acceptable. Judges must adjudicate those minor cases that cannot be resolved through mediation.

(2) The Use of a Circuit Judge Approach for Rural Justices of the Peace. As discussed above, given the great distances and poor transportation in rural Guatemala, judges should travel to the people rather than having the people to travel to the judges. The circuit judge approach

in Totonicapán works and should be replicated.

(3) An Extensive Training Program and Support for Alguaciles. Alguaciles can play an important role in linking judges to local communities and should be trained to perform this function well. The initial training program developed for alguaciles in Totonicapán provides guidance on how to structure such training. The alguaciles should be compensated for their out-of-pocket expenses for travel and related activities. The court has not provided such compensation thus far and this failure to compensate the alguaciles can pose a serious future problem for the efforts of alguaciles.

4. Measures to Improve Police - Court Cooperation

a. The Problem

All successful justice systems require cooperation between the police and the courts. Such cooperation has been extremely rare in Guatemala and has contributed greatly to the failure of the justice system to convict guilty offenders.

The major barriers to adequate cooperation between the police and the courts include:

(1) **Court Personnel Distrust of Police Investigative Capacity.** The courts (and prosecutors) are well aware of the problems of police staff recruitment, training, corruption, and related shortcomings. These problems are reviewed below in Section III. As a result, they hesitate to rely upon the police for investigative assistance even though they have no alternative. A survey of judges and lawyers conducted by Florida International University indicated that eighty percent of those surveyed were dissatisfied with the assistance that the police provide to the courts. Fifty percent indicated that corruption was high among the police.

(2) **Police Distrust of the Courts.** The police reciprocally distrust the courts. They resent the mistreatment they receive from often arrogant judges, suspect that court personnel are often corrupt, and in many cases feel that the courts are soft on crime.

(3) **The Inadequacy of Administrative Arrangements for Cooperation.** Given the level of distrust between the police and the courts, it is not surprising that the level of cooperation between them has been very poor. The courts have typically not developed means for instructing local police on how to conduct an ongoing investigation of a case, and related problems exist in the gathering of police records, forensic information, and the issuing of warrants.

(4) **Confusion Regarding the Respective Roles of the Courts, Police, and**

Prosecutors in Criminal Case Investigations. Considerable confusion exists regarding the responsibilities of the various agencies in investigative activities including crime-scene investigation, initial investigation, and ongoing investigation. While the three agencies must work together, they need some notion of what is expected of each at each stage.

If the Guatemalan justice system is to have any chance at convicting those guilty of criminal conduct, it must develop new approaches to police-court relations.

b. Project Activities

The Guatemala/Harvard Criminal Justice Project experimented with a number of reforms to improve cooperation between the police and the courts in the investigation of criminal cases. Given the daunting nature of the task, as described above, these reforms succeeded remarkably. The reforms included:

(1) **Development of a Pilot Police Unit.** It is obviously impossible to overcome the wide range of problems confronting the police and police-court cooperation on a nationwide basis without the influx of massive resources and outstanding leadership. The Project decided to experiment with ambitious reforms in specific jurisdictions, however, to point the way toward more broadly-based efforts in the future.

The Project encouraged the National Police to develop a Pilot Police Unit to serve the Pilot Courts in the capital. The Unit served as a laboratory for remedying the many major problems identified above. The Project did not provide training for the Unit, since such training is prohibited under U.S.A.I.D. regulations.

The Pilot Police Unit was comprised of ten investigators from the National Police who had

received training from the International Criminal Investigation Training Assistance Project (I.C.I.T.A.P.). The investigators had experience in handling serious cases including murder, kidnapping, narcotics trafficking, robbery, and assault. All of the investigators in the unit received a supplementary five-day training course from the National Police Academy on critical legal aspects of investigation (e.g., evidence collection, the legality of detention of suspects, etc.). The court had the opportunity to examine the personnel records of those selected for the Pilot Police Unit, and the discretion to reject any candidate. The program was designed to overcome the routine problems of staff quality, training, and integrity common in the National Police.

The Unit was located at the second precinct office in Guatemala City and was allotted necessary vehicles, radios, telephones, tape recorders, and related equipment to eliminate the normal problems with resources noted earlier. Appropriate support staff, including secretaries, a radio operator, and a photographer, was also assigned to the Unit.

The Unit's chief monitored the investigators to ensure that their work was precise, timely, and sufficient for the needs of the courts. Such supervisory mechanisms are insufficiently developed in the National Police and are critical for the improvement of police-court cooperation.

At least two of the ten investigators were scheduled to be on call at all times (including nights and weekends) to travel to crime scenes. These investigators had priority access to forensic resources for such investigations.

(2) **Cooperation Between the Police Unit and the Courts.** The National Police, the courts, and the Ministerio Público together developed a Memorandum of Understanding to establish procedures for cooperation among the three organizations. The President of the

Supreme Court, the Attorney General, the Minister of Government, and the Director of the National Police, signed the Memorandum on May 4, 1990.

The Pilot Police Unit was designed to deal with serious cases including homicides, kidnappings, disappearances, aggravated robbery, and other cases of social significance. The Memorandum of Understanding prescribed the method for police-court cooperation in handling such cases. Specifically, the National Police agreed that investigators in the Pilot Police Unit would meet with judges, oficiales, and prosecutors at the outset of assigned cases to plan the investigation, and then meet periodically thereafter to monitor ongoing investigative needs and fulfill court and prosecution requests for information.

The police would conduct an investigation at the crime scene, locate and interview victims and relevant witnesses, obtain forensic evidence and police records, and conduct any other necessary follow-up investigative steps at the request of the court and prosecutor. The prosecutors would work with the police at the crime scene, monitor evidence produced for its legal admissibility, and request oral proceedings in serious cases.

The Memorandum of Understanding among the agencies provided for developing relevant case-referral forms and forms for requesting specific investigative measures.

The cooperative arrangements set out in the Memorandum of Understanding clarify the respective roles of the courts, prosecutors, and police in criminal-case investigation and provide a valuable model for such arrangements throughout Guatemala.

The independent U.S.A.I.D. evaluation of the Pilot Court Project (attached) found the Pilot Police Unit a worthy innovation. The Unit had significant success in case processing as evidenced by the following finding:

"working closely with the Pilot Courts, [the Pilot Police Unit] achieved a remarkable record of improved performance in closing cases. During the few months in which it was fully operational it achieved an exceptionally high rate of case closure of about 90%. Such outstanding performance must be attributed to the high level of communication and cooperation established between the courts and prosecutors on the one hand, and a group of about a dozen police officers chosen very selectively from among the best trained and most highly motivated."

(3) Joint Meetings of Police, Prosecutors, and Judges. One additional measure carried out by the Project helped to encourage cooperation among the police, prosecutors, and judges - the director of the Project's Guatemala office held periodic meetings attended by personnel from the three agencies. The meetings addressed problems, misunderstandings among the agencies, and related issues. These meetings helped increase understanding among personnel from the three agencies. The Memorandum of Understanding specified that such meetings should be held on a monthly basis to enhance communication and cooperation among the criminal justice agencies.

c. Recommendations for Next Steps

As the U.S.A.I.D. report quoted above suggests, the effort to increase court - police cooperation appears to have been very successful, even though it functioned for only a short period of time. To function successfully, the Guatemalan justice system must foster such cooperation. We have two major recommendations for ongoing and expanded efforts to improve police-court cooperation.

1. Replicate Pilot Police Units in All Urban Areas (including all Department capitals).

The Unit in Guatemala City was successful enough to justify such replication. The Units should

be staffed by I.C.I.T.A.P.-trained investigators, and such training should be increased to ensure that Units can be established nationwide.

2. Continue to Foster Cooperation Among the Police, Prosecutors, and Courts. Periodic meetings among personnel from the three criminal justice agencies in various regions will improve the handling of criminal cases at a low cost. Without such meetings, misunderstandings and mistrust can prevent cooperation.

5. Measures to Improve Prosecutor - Court Cooperation

a. The Problem

The prosecutor should play an important role in the Guatemalan justice system but does not. Section III of this report presents a detailed discussion of needs for prosecutorial reform. The Guatemala/Harvard Criminal Justice Project could not implement fundamental reforms in prosecution since these require substantial resources in addition to a basic reconceptualization of the prosecutor's role. Within the context of the Pilot Court Project, however, we were able to implement techniques for improving prosecutor-court cooperation, and to experiment with a far more vigorous role for the prosecutor in criminal case processing. These efforts are described below.

b. Project Activities

From its beginning, the Guatemala/Harvard Criminal Justice Project perceived the prosecutor as a necessary and integral part of the system. We sought and obtained the participation of the Ministerio Público in a number of seminars that were initially conducted to analyze problems facing the Guatemalan courts. Prosecutors helped design the Pilot Court Project, and helped to create a more aggressive and zealous role in the process for prosecutors. What we failed to obtain, however, was the full-hearted commitment of the Ministerio Público's leadership to implement changes recommended by prosecutors.

When the Pilot Court Project began, prosecutors were assigned to specific courts to work with judges and oficiales during the investigative stage. At first, only two prosecutors were assigned to work with one set of Pilot Courts in Guatemala City. Space was allocated in the

Torre de Tribunales in order to help the prosecutors collaborate more closely with the courts on criminal cases. Prosecutors who were located in the Torre could attend witness- and defendant-questioning, meet with the judge and oficiales to discuss investigative tasks, and enhance their reputation in the eyes of the public, who could now see the Ministerio Público as part of the court process. Since the Project provided that prosecutors continue to handle a case from investigation to trial, prosecutors in the Torre could interview witnesses before presenting them in court. Moving prosecutors to the Torre took a great deal of time because the leadership of the Ministerio did not want to lose control over its prosecutors who would be physically located away from the main office of the Ministerio Público. This delay limited the full participation of prosecutors during the initial stages of the Pilot Court Project.

There were limited successes, however, at the investigative level. Through aggressive interviewing of police witnesses of a well-publicized kidnapping case of a young boy and the murder of his mother, prosecutors showed that the police were lying and that the suspects/defendants were innocent. In another case which involved the brutal murder of a young woman in her home, prosecutors and police officers from the Unidad Policial Plan Piloto located two crucial witnesses who had left their residences because they feared the defendant.

Prosecutors' presence was more notable at the trial level. Prosecutors under the Pilot Court Project were encouraged to request oral hearings in cases which merited them. Members of the press, and the community, attended cases which had audiencias concentradas and vistas pública, and saw prosecutors in an active and involved role. Publicity from these oral proceedings improved the public image of prosecutors. Prosecutors had the opportunity to present witnesses, ask additional questions of all witnesses and the defendant, and argue their position persuasively

to the judge, providing them with a sense of purpose and accomplishment.

Even though prosecutors handled only a few cases because of lack of commitment and low staffing, these small successes helped somewhat to improve the prosecutors' sense of responsibility and professionalism and revealed possibilities for future reforms.

To prepare prosecutors for their increased role the Project trained them as investigators and advocates. First, some prosecutors participated in the basic and advanced training seminars that were given to members of the Organismo Judicial. These prosecutors attended all lectures and demonstrations during the seminars, and participated in the role-playing exercises and the plenary discussions. The practical exercises focused on additional questions prosecutors should ask after a specific type of witness was questioned by the court. The plenary sessions addressed collaboration with other law enforcement agencies.

The Project also conducted seminars that were created specifically for prosecutors, held both at Harvard and in Guatemala. These seminars focused primarily on direct and cross-examination, closing arguments, and case investigation and analysis; experienced American attorneys who were bilingual lectured on each topic.

The prosecutors' training seminars followed a similar format to the Organismo Judicial seminars. In addition, lecturers gave demonstrations on how to employ different advocacy skills. After the lecture series, experienced instructors conducted practical exercises in small groups to allow participants to hone their new skills. The exercises were videotaped.

Each prosecutor was evaluated by the instructor and by participants in the group as well as by a separate instructor who viewed the videotaped performance. This enabled the prosecutors to learn which of their techniques were effective, and to recognize which skills they needed to

improve. The discussion sessions stressed coordination among the law enforcement institutions, self-motivation, accountability and responsibility.

At the end of the seminars, certificates of achievement, bearing insignias of Harvard Law School and the Ministerio Público were handed out to the prosecutors in a formal closing ceremony. These certificates provided the prosecutors with a sense of accomplishment and were given in a public forum to help raise their sense of professionalism.

As the Pilot Court Project continued into its second year, an additional prosecutor was assigned to the rural court in Tonicapán, and two others were assigned to work with an additional set of Pilot Courts in Guatemala City. The second set of prosecutors in the city did not actually move into the Torre de Tribunales until months after the second set of courts were initiated, and this hindered them. This essentially occurred because it required much effort to persuade the Attorney General to commit more prosecutors to the Project.

During the life of the Guatemala/Harvard Criminal Justice Project, we worked with three different Attorneys General. These frequent changes in leadership prevented significant involvement of the Ministerio Público in the Project. Although all three supported the Project in various ways, the turnover in leadership hampered collaborative efforts. The Project had to inform each new Attorney General about its work, and had to seek agreements on commitments made by the previous administration. It was not always possible to obtain the same commitments. We experienced similar problems with the National Police, who had a number of different Directors appointed during a short period of time.

Towards the end of the Pilot Court Project, the current Attorney General, Lic. Mario Roberto Illescas, helped implement a number of changes. A new chief of the Fiscalía was

appointed, Lic. Carlos Alvarez, who had received extensive training through the Project, and who was highly regarded by his colleagues. A training unit was established through the U.S.A.I.D. bilateral agreement to instruct personnel working at the Attorney General's Office. A form requiring attorneys to list the cases they were handling and to describe the action they had taken on each case was institutionalized to allow more control over the personnel, especially those working throughout the country and outside of the presence of the Attorney General. Efforts to increase staff and obtain more resources were a primary goal of the new Attorney General, and he was successful in a limited way (prosecutors in Guatemala City have increased from 8 in 1989 to 19 in 1991). A recent independent evaluation entitled, "Evaluation of the Pilot Court Experimental Program," was conducted to determine what resources are needed by the Ministerio Público and can be provided by U.S.A.I.D. through its bilateral funding agreement with the Guatemalan government.

c. Recommendations for Next Steps

Section III provides a detailed discussion of needs for fundamental reforms in prosecution mechanisms in Guatemala. Continued efforts to improve the level of cooperation between the courts and prosecution, as discussed above, are essential as part of these larger efforts to transform the role of prosecutors in the Guatemalan justice system.

6. Reforming Criminal Defense Mechanisms

a. The Problem

Criminal defense services in Guatemala are generally conceded to be inadequate. The Guatemala/Harvard Criminal Justice Project did not make the reform of criminal defense services a high priority of its work, however, for several reasons:

(1) The conviction rate in the Guatemala criminal justice system is very low. As a result, the Project's first priority was to improve investigative and adjudicative mechanisms to enable the system to convict those guilty of crimes. Reform of criminal defense mechanisms is clearly essential, but at present the very structure of the justice system is de facto supportive of the defense.

(2) Numerous political problems confront any effort to reform criminal defense services. Substantial differences of opinion exist among the Guatemalan law schools, bar association, and courts regarding how to reform criminal defense services. These differences make reform in the system very challenging.

Criminal defense services for the indigent in Guatemala are not adequate. Such services are provided by law school students as part of their training. This approach has numerous shortcomings:

(1) Students are often ill-prepared to provide the needed legal assistance. A Venezuelan criminal defense attorney likened the current Guatemalan defense system to a medical system that would allow medical students to do brain surgery. Students are often simply not prepared to handle the issues involved in a case. Even in simple cases, students may be too rushed or disinterested to provide adequate legal representation. In many instances, students

handling cases for course credit are primarily interested in getting the case over with in order to meet other competing demands on their time. Many observers have suggested that students have little incentive to provide a vigorous defense for their client even in those limited situations where they might have the requisite skills.

(2) The current case-referral mechanisms result in even the most diligent and enthusiastic students not becoming involved in cases until the court's investigation is largely complete. By then some of the most important opportunities for defense assistance have been foregone. The defendants go without representation throughout the critical stages of investigation.

Changing the current inadequate system of criminal defense representation will be very difficult. The law schools have a strong interest in maintaining the current system because handling the defense is an established part of the curriculum and they receive fees from the government for student processing of defense cases. The Bar Association also has an interest in the current system because of the possibility that an alternative approach might demand pro bono or low-paying services from members of the bar to handle indigent defense.

Additional major problems may also arise in criminal defense for both indigent and fee-bearing cases if the criminal justice system moves to oral trials. Attorneys in the Guatemalan system are not trained in skills of oral advocacy. Such training will be needed if the system moves to greater use of oral proceedings.

b. Project Activities

The Guatemala/Harvard Criminal Justice Project had two major goals for its work on defense reform: (1) to assess the needs for defense services and develop recommendations for reforming and strengthening the overall defense function in Guatemala, and (2) to train private attorneys who would participate in Pilot Court oral proceedings. Each task is discussed in turn.

(1) **Assessing Needs for Defense Reform.** The Project's initial analysis of Guatemalan criminal defense issues began in August, 1988. Professor Charles Ogletree and Ms. Ana Maria Salazar of Harvard Law School studied needs for defense services and met with relevant Guatemalan court personnel and officials from the law schools and the Bar Association. Professor Richard Wilson of American University continued this assessment work in 1989 and 1990.

In July, 1989, Professor Wilson developed a draft proposal for improving defense services. The recommendations were structured to work within existing legal arrangements and not to require great expense. Professor Wilson particularly recommended improved training for law students: (1) developing a laboratory course taught jointly by Guatemalan law professors and U.S. experts in clinical legal education, (2) providing a skills-training seminar for Guatemalan law professors, and (3) allowing selected professors and students to observe U.S. public-defender programs and law clinics first hand. This effort might provide a stimulus for further reforms in Guatemala. In addition, Professor Wilson recommended that students become involved with criminal cases as early as possible.

In June, 1990, Professor Wilson completed a revised and final proposal for indigent defense service delivery. The report is available from the Center for Criminal Justice. The proposal

suggests four different options for the delivery of defense services in Guatemala.

(a) Defense services provided by private attorneys and funded by the government and members of the Bar. Under this scheme, all attorneys' names would be placed on a roster, and all would be eligible for selection as assigned counsel on indigent defense cases. Attorneys who did not want to participate in the scheme could "buy out" and have their name removed from the roster of potential defense attorneys by payment of an annual fee. This plan was suggested to Professor Wilson by President Edmundo Vásquez of the Guatemalan Supreme Court.

(b) A contract defense services plan. This approach is used in some U.S. jurisdictions. A specific firm or firms would be hired by the government to provide indigent defense services on a contract basis.

(c) Student legal assistance in the defense system. Costa Rica has developed a legal defense system that provides law students with the opportunity to work in a public defender's office during their fifth and final academic year. The students work under the direct supervision of a public defender staff attorney approximately 10 to 15 hours per week for a total of 300 hours. The students conduct client interviews at local prisons, witness investigations, and related tasks. The students are actively involved in cases, but the staff attorneys have the final responsibility for the cases.

Professor Wilson noted that a similar approach could be used in Guatemala even if an assigned counsel system is established. Students could be apprenticed to the attorneys who serve as assigned counsels. As a result, clients would receive the services of an experienced attorney, with student assistance, rather than having their case handled solely by a student.

(d) Assigned counsel - law student panel for defense work. Under this approach,

experienced attorneys would represent those indigent clients accused of serious offenses as assigned counsel, while students would be allowed to represent clients in less serious criminal cases. The law schools are very interested in having students play a major role in cases, and this option would allow them to do so in more minor criminal offenses. The Guatemalan Bar Association could manage the assignment of the approximately thirty attorneys who would handle serious criminal cases.

(2) **Training of Defense Attorneys.** In March, 1990, the Guatemalan Bar Association and the Guatemala/Harvard Criminal Justice Project cosponsored a criminal defense training seminar. The aim of the seminar was to develop a pool of defense attorneys to conduct Pilot Court oral hearings. Over 100 attorneys and 50 law students attended the first day of the two-day training session. The first day provided participants with a general introduction to the Pilot Court Project and lectures on techniques for criminal defense and oral trial skills.

The second day of training was reserved for the 30 attorneys who would participate in the Pilot Courts as defense attorneys. These attorneys participated in role-playing exercises to develop skills for client- and witness-interviewing and for the delivery of oral closing arguments. The participants' performances were videotaped and critiqued by experts. Five bilingual U.S. defense attorneys conducted the training seminars.

In April, 1990, a training session for defense attorneys was conducted in Totonicapán to introduce the Pilot-Court concept to attorneys from rural areas. Twenty attorneys from Totonicapán's lawyers' association participated in the training. As part of the effort, the attorneys observed a vista pública from a murder trial presided over by Judge Yolanda Perez Ruz. Three videotapes from the March defense seminar were also shown to participants.

c. Recommendations for Next Steps

As was noted earlier, a number of groups, including the Guatemalan law schools and the Bar Association, have a strong vested interest in the continuation of the current inadequate system of indigent criminal defense services. The President of the Supreme Court is interested in the implementation of an assigned counsel system of defense representation, but faces serious political opposition from the groups mentioned above.

Given these political problems, it is not possible to recommend a specific defense reform at this point. Instead, what is needed is a process to bring together the various interested parties to design an improved defense system. The need for such improvements was demonstrated clearly by the presentations at a conference on defense and prosecution needs sponsored by the Bar Association and the Ministerio Público in February, 1989. The range of options available for indigent defense is clear, and major alternatives were set out in detail by Professor Wilson in his June, 1990 paper. As part of the discussions on the reform of indigent criminal defense among relevant Guatemalan organizations, it might be useful to have selected representatives of these groups conduct a joint visit to the United States to observe the functioning of the various models of indigent defense.

III. Fundamental Needs for Justice System Reforms

Court reforms, such as those discussed above, cannot, by themselves, remedy the fundamental inadequacies of the Guatemalan criminal justice system. The police and prosecution require fundamental reform, and the system must rid itself of the pervasive problems of corruption, intimidation, personnel-system inadequacies, and the immunity of perpetrators of political violence. Each of these issues is reviewed in this section.

A National Commission composed of the nation's most powerful political figures and representatives from powerful economic sectors is essential to approve and ensure the implementation of the necessary reforms. The Supreme Court President, Attorney General, and Director of the National Police alone cannot achieve such fundamental reforms. The new administration in Guatemala should commit itself to develop a National Commission and to implement the critically needed reforms discussed here. The President of the Republic should invite the appropriate leaders of the Congress and the President of the Supreme Court jointly to convene the National Commission. The Commission would include not only public officials, but also representatives of the bar association, the law schools, and the private non-legal sectors. Their tasks would be to analyze the various critical problems of the Guatemalan criminal justice system and seek the implementation of reforms.

The Guatemala/Harvard Criminal Justice Project analyzed a wide range of problems in the criminal justice system in addition to court reforms. Six areas of problems beyond deficient court processes are particularly critical if the Guatemalan justice system is to meet its obligations to the citizens of the nation. The Project conducted only preliminary analyses of three of the problems and the concomitant needs for reform. These areas require more careful analysis by the National Commission before they can be solved. These areas are: (1) combatting

corruption, (2) remedying shortcomings in the personnel systems for the courts and prosecutors, and (3) reforming the police.

Once it formulates its recommended solutions, the National Commission needs to generate the political support necessary for implementation of the reforms. We have developed some preliminary recommendations for reform in the above three areas, and those suggestions are discussed below in Section IIIA.

In an additional three areas, the necessary reforms are already clear. The National Commission can move immediately to the task of generating political support and enacting reforms in the following three areas: (4) reforming prosecution, (5) combatting intimidation, and (6) eliminating the immunity for perpetrators of political violence. These topics are discussed later in Section IIIB.

A. Areas for National Commission Analysis and Recommendations

A central aim of the Guatemala/Harvard Criminal Justice Project was to diagnose the major problems in the administration of justice in Guatemala and to develop potential remedies for these problems. We found three problem areas to be particularly challenging -- fighting corruption, improving personnel systems, and transforming the police into an effective component of the criminal justice system. The Project conducted preliminary analyses and developed preliminary recommendations for each of these problems. The results of these assessments are presented below. The National Commission needs to conduct further detailed analyses of the needs in these areas, to formulate remedies for them, and then to generate the political support needed to bring about the necessary reforms.

1. Dealing with Corruption

a. The Problem

During the period that the Guatemala/Harvard Criminal Justice Project worked in Guatemala, we attempted to analyze the problems of corruption in the Guatemalan judicial system with the assistance of Mr. Robert Klitgaard, a world-renowned expert on corruption. Guatemalan citizens generally believe that their courts are corrupt. Reinforced by newspaper accounts highlighting the number of unsolved crimes, by the sense of mystery that participants in the system feel as to why their case was disposed of in one way or another, and by regular complaints, made by lawyers, of corruption in the government and in the judicial system, this belief in corruption burdens the system of criminal justice. Criminal justice systems must rely on the cooperation of citizens; but citizens will not cooperate if they believe, as they do in Guatemala, that the system is corrupt.

Indeed, suspicion alone can destroy the credibility of the criminal justice system. Besides discouraging the cooperation of witnesses and victims, it seriously affects the reputation of everyone working within the system, and creates a sense of hopelessness in the system. We have talked extensively with judges, prosecutors, court staff, defense attorneys and police about this problem. All of them attest to a substantial amount of corruption in the system. Yet no one has seriously analyzed the problem to identify the stages where corruption is most likely, or to assess, at least roughly, the extent of corruption in the system as a whole.

b. Project Activities

Initially, the Center for Criminal Justice attempted to identify the source and extent of the

problem by interviewing a number of participants in the system. These interviews provided a general idea as to the extent of corruption and some suggestions for dealing with it, but we felt we needed more detailed information. The interviews performed by the Center for Criminal Justice made it increasingly clear that there was no forum in which the major policymakers within the criminal justice system could provide input and suggestions as to how to solve the problems of corruption and intimidation.

In August, 1989, the President of the Supreme Court and the Center for Criminal Justice co-sponsored a workshop for all the judges and secretarios working in the criminal branch in Guatemala City. The extensive interviews we had performed provided a basic background for the workshop during this period. During the second day of the workshop the participants were divided into small working groups in which they discussed the sources of corruption and possible solutions to that problem. At the end of the workshop a list of possible reforms was compiled. A summary of this workshop is available from the Center for Criminal Justice.

Although there was no general consensus regarding possible solutions, a consensus was reached as to the necessity for creating within the Organismo Judicial an Internal Commission on Corruption and Intimidation to identify the most likely occasions of corruption, the reasons for it, and the steps that might be taken to deal with it. The idea was that the Internal Commission would begin with the recommendations provided by the workshop's participants and analyze them further.

In April, 1990, the President of the Supreme Court and the Center for Criminal Justice sponsored a follow-up workshop addressing the problems of corruption and intimidation. This workshop was designed to further analyze the suggestions provided by the first workshop, to

invite judges and secretarios from the rural areas to participate, and to create a work plan for the Organismo Judicial's Internal Commission on Corruption and Intimidation.

This second workshop reaffirmed to the Organismo Judicial the importance of creating an Internal Commission. The workshop developed a tentative work plan and an extensive list of possible solutions to the problem of corruption.

In March, 1990, the President of the Supreme Court and the Organismo Judicial and the Center for Criminal Justice co-sponsored a workshop involving leaders of the public and private sectors in Guatemala. Among those present were the President of the Supreme Court and Organismo Judicial, the Minister of Interior, the Attorney General, the Chief of the National Police, the President of the Bar Association, numerous representatives from the private sector, and representatives from various workers' unions.¹

As a result of this workshop, another proposal to proceed with internal commissions within the Organismo Judicial, the Ministerio de Gobernación and the Ministerio Público emerged. This proposal is available from the Center for Criminal Justice. In short, the workshops for policymakers, judges, and court personnel produced a number of suggested reforms for addressing the problems of corruption and intimidation. Unfortunately these workshops only initially identified where these problems arose and how widespread they had become. Further identification and analysis were necessary, and in turn required a structure to facilitate and

¹ The objectives of this workshop were the following: a) The participants were introduced to a number of cases describing how other countries have attempted to solve their problems of corruption and intimidation. b) Each of the participants with his or her particular perspective on the problem was to identify the sources of corruption and intimidation. c) Finally, the participants would provide a list of possible recommendations that would be the foundation for further reforms addressing the problems of corruption and intimidation.

legitimize this work:

Accordingly, Professor Philip Heymann urged the President of the Supreme Court, the Minister of the Interior, and the Attorney General to follow-up on these workshops in two ways:

(1) Each official was urged to create in his institution an Internal Commission to suggest specific administrative steps to address the problems of corruption and intimidation. These Internal Commissions could also suggest necessary long-term legislative reforms in the institution that would address the problem.

(2) The officials were urged to create a External Commission on Corruption and Intimidation that would be comprised of representatives of the private sector, labor unions, bar association, national media, universities, and Congress. The purpose of this External Commission would be twofold:

a. It would itself analyze the sources of corruption and intimidation within the criminal justice system and continually pressure the institutions within the judicial system to implement reforms that would attack the problems and improve the overall reputation and credibility of the system.

b. It would study all the recommendations issued by the three Internal Commissions and would publish its views of them. When these recommendations required a legislative proposal, the External Commission would seek to have these reforms passed by Congress.

These tasks of the proposed External Commission should become part of the work of the National Commission discussed earlier.

Professor Heymann's recommendations were received with interest and an assured

commitment by the leaders of each of the three institutions. Unfortunately, it appears that the suggested commissions have never been formed, and no follow-up on the workshops has taken place. Unless something is done by the President of the Supreme Court and the new government, all the activities that took place in an attempt to address the problem of corruption and intimidation will have been a wasted effort.

c. Recommendations for Next Steps

The main recommendations for the new Guatemalan government are to follow-up on the work already performed on the issue of corruption; the analysis and proposals that resulted from the seminars should be considered carefully and implementation should begin.

1. Seminar for Government Officials and Policymakers. The new government should cosponsor a seminar on the issues of corruption and intimidation for the new government officials, policymakers, and community leaders. The objective of this workshop would be the same as the workshop of March, 1990.

2. Creation of Internal Commissions. The new government should also consider Professor Heymann's second recommendation -- the creation of an Internal Commission on Corruption and Intimidation in the Ministry of Interior's Office and the Attorney General's Office. The President of the Supreme Court should also reconsider creating an Internal Commission within his institution. Once the members of these Internal Commissions have been appointed, they could immediately study the viability of the suggestions that emerged from the workshops, and suggest other reforms. These reforms would be presented to the National Commission for its analysis and suggestions.

3. Continued Analysis of the Problem. *Despite the steps that have been taken to understand corruption and intimidation in the Guatemalan justice system, there is still not enough information regarding the problem. Without information, reform is impossible. The three Internal Commissions need seriously to evaluate the sources and the extent of corruption and intimidation.*

4. Policy Analysis and Planning on the Problem of Corruption by the National Commission. *Those persons who will be part of the National Commission should participate in the seminar for government officials and policymakers. Representatives of the National Commission should attend meetings of the Internal Commissions. Finally, the National Commission should be asked to review, criticize, and help implement the final proposals of the Internal Commissions and supplement these with its own proposals. The work of the National Commission should end with a frank public report.*

The newly installed Guatemalan government faces a judicial system that the public perceives as corrupt and easily intimidated. As long as this perception exists, the judicial system will lack credibility and legitimacy and the citizens will be unwilling to cooperate and help the system convict criminals. Citizens will find other solutions to their problems; and often those solutions will involve violence. Therefore, the new government should focus on attacking the problem of corruption and intimidation.

2. The Personnel System for Judges and Prosecutors

a. The Problem

Although we regarded the systems for the selection, assignment, and promotion of judicial personnel as outside our mandate and responsibility, it was clear to us that any significant improvement in the criminal justice system of Guatemala depended on addressing these issues. We therefore commissioned a report on these questions. A copy of this report is available from the Center for Criminal Justice.

The Pilot Courts we were seeking to create could be no better than the people who staffed them. If these people were dispirited, untrained, and cynical, the Pilot Courts would not work. U.S.A.I.D. recently commissioned a study of the Ministerio Público in Guatemala. This report, "Analysis of the Public Ministry of Guatemala," provides detailed recommendations for reforms in the personnel system of that agency. The reader is referred to that report for recommendations regarding prosecutorial personnel system reform.

We saw some plain symptoms of serious weaknesses in the system for selecting judges and other court officials. Judges have a very negative image of themselves and their role. They believe, correctly, that the public thinks poorly of them. They have low status and enjoy little respect. Judges and judicial staff often perform their duties mechanically and without energy or a concern for the results. Many were not trained in any significant way for the tasks of investigation and adjudication. Many people believe that corruption, particularly at the level of judicial staff, is relatively widespread.

Some reasons for these symptoms of serious problems in the judicial system are readily apparent.

First, and most important, Guatemala has at least implicitly made a decision that its judges will enjoy relatively low status and respect within the legal profession. This is in sharp contrast to the United States and most Western democracies. The status and respect that judges enjoy in a legal system is determined by how they compare to other lawyers in terms of a package of benefits that includes salary, working conditions, public sense of the importance of the work, and respect for the present and past legal talents of the occupants of the position.

In Guatemala, judicial salaries are relatively low, working conditions are particularly unfavorable, and there is no tradition of recognizing the usefulness of the work. Because of these facts, the best lawyers will not consider judicial careers and so the final piece -- a sense that this is not a professional role for the best lawyers -- falls into place. The result is that the centrally important roles of investigating and judging crime are not highly valued in Guatemala.

Second, despite reforms of the President of the Supreme Court, Dr. Vásquez, there remains a widespread sense that judges, secretarios, and oficiales, are selected, promoted, and assigned on the basis of personal contacts rather than merit. This dampens any incentive to perform well that could come from a desire to advance within the complicated system of careers for judicial staff and judges.

No one doubts that merit is also important, but merit can be hard to demonstrate. Only complaints are likely to come to the attention of the highest levels of the Organismo Judicial. This also encourages mediocre performance because showing strong initiative as a judge or official may lead to complaints.

Two other causes deserve attention. The system is presently arranged so that, for most young lawyers, becoming a judge requires years of unrewarding work in the lower ranks. This

in itself may discourage those who have good options from pursuing a judicial career. The extremely technical nature of the Guatemalan Code and the technicality of the review by the appellate courts also discourage any tendency to show imagination or even to conceive of the central function of the court system as finding the truth.

All agree that there is no effective system for supervision of the work of oficiales and judges. It may be unwise to attempt to evaluate the correctness of judicial decisions, for that could interfere with the independence of the individual judge. But complaints ranging from corruption to scandalous absenteeism against judges or judicial personnel should be vigorously investigated, and neither the judges nor the public believes they are.

There should also be a more systematic effort to evaluate the less sensitive aspects of the judicial role. We had extensive experience with judges who would never appear in the court, delegating all their responsibilities to their staff. Many judges complained to us that this predominated at the appellate level and was very common at the trial level of first instance.

b. Recommendations for Next Steps

Guatemala needs a judiciary which is (1) independent of political influence; (2) incorruptible; (3) trained in developing evidence and evaluating evidence in order to reach conclusions; (4) infused with a sense of responsibility for developing the truth where serious wrongs have occurred; (5) hard-working; and (6) proud. During his term in office, Dr. Vásquez has gone far to deal with the problem of judicial independence from political influence in particular cases and has taken seriously the need for training. But the other needs remain unmet, in large part because they require a national commitment and not merely a managerial decision

by the President of the Supreme Court, whoever that may be.

The President of the Supreme Court and the President of the Republic should instruct the National Commission to investigate the problems of upgrading the prestige of the judicial position, the responsibilities that go with that prestige, and the quality of those chosen to be judges. The National Commission should be asked to deal with the following questions on an urgent basis.

One set of proposals should address directly the question, "How can a judicial career be made as attractive as a career in private practice?" The discussion must start with an effort to explore honestly whether there is widespread agreement that this is a realistic objective. If that is the conclusion, the representatives should consider Dr. Vásquez's proposals on how to improve the combination of salary, working conditions, sense of usefulness of the work, and public respect that will determine who becomes a judge and who goes into other legal careers. Right now, it is understood that the best lawyers do not become judges. That will not change easily. If a decision is made to change the status of judges -- and we think that is essential -- steps must be taken to increase the attractiveness of a judicial career.

The National Commission should also advise on proposals designed to eliminate the still-pervasive feeling that the selection of oficiales and judges and their assignments and promotions depend importantly on their political and economic connections. There is no one in Guatemala better able to consider this crucial question than Dr. Vásquez who has devoted his tenure to the independence of the judiciary. But taking the remaining steps may require an understanding with the executive and legislative powers and frank discussions with powerful economic and political organizations.

The training needs that must be met were discussed in an earlier section. They should build on the considerable effectiveness of the work of Dr. Sandra Ureta, the Director of Training, and her staff. We would add only one point here: as long as Guatemala continues to rely on oficiales for much of the investigation and evaluative work of the courts, training in investigation must include these people, and training for judges should include discussions of the management responsibilities of running the small organization which a Guatemalan court is.

The recommendations of the National Commission should include new proposals for the supervision and evaluation of judges and judicial staff. We urge serious consideration of a more decentralized system. Judges at all levels should be expected to write annual evaluations of their court personnel. Judges of first instance should be asked their opinions of the work of the justices of the peace within their jurisdiction as well as of their own court personnel. These evaluations should be maintained in central files in the Supreme Court for use in deciding about promotions and assignments.

The Supervision General's office should be expected to investigate vigorously any complaints against judges of first instance and to attempt on a periodic basis to evaluate the more objective aspects of the work of such judges: their presence in the court, their use of more advanced techniques, the effectiveness of their supervision of their staff, etc. Strong evidence of corruption against a judge or a judicial official should be turned over to the Ministerio Público or a court of the judge's peers for determination as to whether there should be a prosecution. Quiet transfer to a less desirable post without any determination of guilt or innocence is not a desirable alternative.

This list of topics may not be complete. What is essential is that the political, judicial, Bar,

and legal educational leaders of Guatemala come to take seriously the consequences of having a judiciary of low status, little industry, small sense of responsibility, inadequate training, and insecure career structure. The cost of this to Guatemala is immense and no one is addressing seriously the need for fundamental change.

3. Reforming Police Operations

a. The Problem

Reforming and professionalizing the National Police of Guatemala is an enormous task. Historically, the Guatemalan police served as an instrument of social control rather than as a law enforcement agency. The force carried out the political wishes of military governments, suppressed free speech and dissent, and harassed and killed opponents of the regime. Since the inception of the Cerezo government, some efforts have been made to professionalize the force. Substantial foreign assistance has been provided for police reform by Germany, Spain, Venezuela, Mexico, and the United States.

The major failings of the National Police include ineffectiveness in combatting crime and assisting in the conviction of criminals, possible widespread corruption, and possible police brutality against Guatemalan citizenry. The factors that apparently lead to such failings of the National Police have been repeatedly illustrated in internal and foreign studies of the force. All of these problems require attention by the National Commission:

(1) Personnel inadequacies. Police recruits typically are uneducated (the average recruit having third-grade training or less according to a study at the outset of the Cerezo government). The National Police continue to pay very low wages, and, as a result, the force cannot attract highly competent and educated individuals. Staff turnover is high.

(2) Training problems. The National Police Academy historically only trained police recruits in marching, shooting, and cleaning and assembling of weapons. Recently there has been an effort to upgrade training. The overall level of training of police personnel is still very low, however.

(3) Resource limitations. The National Police lack fundamental resources (vehicles, radios, and related equipment). Existing equipment often does not work because of inadequacies in servicing and the lack of availability of spare parts. A study by the Venezuelan government found that in 1986, approximately half of the Guatemalan police department's vehicles were inoperable. Former Minister of Government, Juan Jose Rodil, reported that when he took office in 1986, the National Police had only twenty radio cars in the entire capital. The situation has improved somewhat due to foreign assistance (for example, Spain donated 110 patrol cars and 75 motorcycles; the U.S. donated two forensic laboratory vans, etc.). Shortages in resources still plague the agency, however.

(4) Policing in rural areas. A study by Florida International University found that seventy percent of the roughly 10,000 National Police officers in the force are assigned to the capital. Given the size of the nation, rural areas appear to have very few police available. The National Commission needs to study variations in levels of needs for police services across the nation to determine if police resources are adequately distributed.

(5) Repeated changes in leadership. Directors of the National Police rarely serve for long periods before a new director is appointed. For example, during the past year, the National Police has had three different directors. As a result, it is impossible for the agency's leaders to plan and implement a coherent program of reform for the police (assuming that they had the motivation to carry out such a program). Once a director is acclimated to the position and aware of the agency's needs, a new director is likely to be appointed, and the process of assessment and planning begins afresh.

(6) Corruption of Personnel. Corruption, ranging from corrupt recruitment practices

through corruption in the handling of individual cases, is rampant in the National Police. The very low wages of police personnel encourages corruption. The Office of Professional Responsibility of the National Police has sought with only limited success to combat corruption and related problems; it needs to be strengthened and expanded.

As a result of the numerous fundamental problems listed above, the Guatemalan police contribute little to fighting crime in Guatemala. Cooperation between the police and the courts and prosecutors is totally inadequate. Such cooperation is essential if the police are to help collect the evidence necessary to obtain convictions.

b. Recommendations for Next Steps

As discussed above, the National Police need major improvements. Such improvements must form a central component of any criminal justice reform effort in Guatemala. As noted earlier, police reform will be a very challenging task, but Guatemalan society and Guatemala's democratic government cannot prosper and thrive without a fully-functioning and decently and legally operated police agency. We have not studied the needs for police reform in depth. The National Commission needs to conduct a thorough analysis of the problems facing police reform. Any such analysis must recognize that police reform is only helpful to Guatemalan society if the police operate decently and under the restraints of the rule of law. Otherwise the addition of substantial resources to the police would merely strengthen an apparatus of repression and would be counterproductive to the strengthening of democracy in the nation.

B. Reforms the National Commission Should Seek to Implement Immediately

The Guatemala/Harvard Criminal Justice Project conducted extensive analyses of needs for prosecutorial reform, strategies for combatting intimidation, and techniques for eliminating the immunity of perpetrators of political violence. The U.S.A.I.D has also conducted an extensive study of needs for reform in the Guatemalan Ministerio Público. In each of these areas the needs for reform are clear. The National Commission can move immediately to remedy these problems. The Commission will need to generate sufficient political support to make these reforms a reality.

1. Reforming Prosecution Mechanisms

a. The Problem

Prosecutors in Guatemala continue to be overwhelmingly ineffective. Prosecutors rarely contribute significantly to processing criminal cases. The public, as well as those working within the court system, view the Ministerio Público as an ineffective institution with prosecutors who are passive, indifferent, and corrupt -- with no sense of accountability or responsibility. They are seen as merely contributing "rubber stamps" to court documents that they receive on criminal cases. Prosecutors leave all investigative tasks to the judiciary and prosecutorial representation to private attorneys hired by victims who can afford them.

The fact that the Ministerio Público is severely understaffed and underpaid generates a feeling among the agency's personnel that they cannot accomplish anything, "justifying" almost complete inaction on their part. Low self-esteem and lack of motivation also produce a sense that there is no purpose to their job. Although the Guatemalan Code of Criminal Procedure provides for active participation by the prosecutor from the outset of a case, prosecutors rarely become involved at crime-scene searches, court-questioning of witnesses and defendants, or oral proceedings at the trial stage.

Such negative self-image and widespread bad reputation coupled with the low wages makes the job of prosecutor one that is not sought by highly-qualified and motivated lawyers. There is little in the way of prosecutorial training, and what little there is is inadequate. Lack of supervision and expectation on the part of the leadership has largely undermined initiative.

b. Recommendations for Next Steps

We regard the prosecutor's function as central to criminal justice operation. This view is shared by every modern civil law criminal justice system. In light of the dramatic failure of the present prosecution mechanisms and the poor reputations of many of its personnel, we think that it would be far wiser to create a new organization outside of the Ministerio Público to perform the prosecutorial function. This approach would allow for a fresh start for the prosecution effort, would allow for the appointment of new prosecutors and managers, and would enable the new agency to develop an image of competence and diligence unencumbered by the Fiscalía's tradition of failure. Whether a new office is developed, or whether it is necessary to build an improved prosecution mechanism in the existing office, radical reforms are needed.

It is clear that the prosecutor is playing more of a role in the criminal justice process than previously, even though major steps still need to be taken. A new Code of Criminal Procedure which would transfer the investigative function from the courts to the prosecutor and require that all trials be oral was considered by the legislature during the 1990 session but rejected. Even in the absence of the new Code, some measures are being taken to increase the use of oral proceedings at the trial stage, and as a result, the prosecutor's role will automatically increase.

Prosecutors must play a more active role in case processing. Having prosecutors participate in oral proceedings at the trial stage is an excellent way for them to become more productive and to improve their image, both personally and publicly. It is critical, however, that they have the necessary preparation to be effective advocates. Prosecutors need to receive training to improve their advocacy skills. The Project's training seminar taught such skills, and videotapes of the program are readily available, as are materials used for the practical exercises.

Prosecutors also need to be active at the investigative level of a case. The Chief of the Fiscallá reports that two prosecutors are now assigned to each of the Instruction Courts in the city of Guatemala, and one prosecutor to all other Instancia Courts throughout the country. These prosecutors handle cases from their initiation to trial. This produces greater accountability and responsibility on the part of the prosecutors, who previously did not have to answer to any specific court. Lic. Alvarez stated that prosecutors who were formally assigned to the Pilot Court have been reassigned in order to expose their abilities to other courts, and also to provide other prosecutors with the opportunity to work with existing Pilot Courts. Even though the intention may be a good one, in effect, it is counter-productive: prosecutors are becoming less active because there is no formal structure for them to replicate their activities to other courts.

A number of problems continue to exist in the role of prosecutor in Instruction Courts. The President of the Supreme Court and the Attorney General should meet to design mechanisms for improved collaboration between the Instruction Courts and prosecutors. It is necessary for the courts to notify prosecutors in a timely fashion, to have a free exchange of information between personnel of the two institutions, and to have frequent meetings between personnel to discuss investigative leads and tasks.

According to Lic. Alvarez, the police have been very responsive to requests for assistance by prosecutors, but the recent change in leadership due to Director Julio Caballeros' resignation makes it unclear how cooperative the police will continue to be. Once the new Director is in place, steps must be taken by the Attorney General to establish a more effective working relationship between prosecutors and police.

One recommendation which we have made in the past and now emphasize again, is the need

for a special unit of experienced prosecutors to handle particularly significant and complicated cases. The benefits are immense of having a group of prosecutors who would receive specialized training and focus only on the types of cases that, by their nature, will generate publicity and be of interest to the public. The cases will be more likely to be solved because they will be given more attention by seasoned prosecutors who will only concentrate on these cases. The consequent publicity generated will do much to improve the self-esteem and image of prosecutors. The Ministerio Público should seriously consider the concept as it studies what changes and programs to implement.

The government of Guatemala needs to acknowledge that prosecution of criminal cases is an important and necessary function, and is essential in order for the criminal justice system to work. The government must make a realistic commitment to improve the ability of the Attorney General's Office to operate as a true law enforcement agency. Presently, there are only forty-one prosecutors for the entire country. These prosecutors make only approximately Q1800 per month. This is considered the worst-paid professional position in the justice system. These conditions do nothing to attract competent people to the office, or to encourage maximum work effort on the part of those already there. The government needs to commit practical financial resources so that the office can advance further. Leadership under the new administration needs to be strong and consistent so that continuity can be given to beneficial programs already started within the office, i.e., training, supervision, assignment of prosecutors to all courts, etc.

It is clear that the prosecution function in Guatemala needs to be expanded so that it can play a central role in the criminal justice system. Prosecutors need to continue to improve their image by becoming active and responsible advocates. There have been small successes as a result

of their participation in the Pilot Court Project. What is now needed is a determined effort, under the new administration, to make the Attorney General's Office effective and well-respected throughout the country. A powerful and responsible Attorney General's Office can do much to promote the rule of law in Guatemala.

2. The Problem of Intimidation in the Criminal Justice System

a. The Problem

It is taken for granted that witnesses will be threatened with serious harm if they testify against ordinary criminals or powerful political or governmental groups in Guatemala. It is common for prosecutors and judges to be threatened.

In the spring of 1990, five Guatemalan judges and two prosecutors were working actively in the Pilot Court project to improve the effectiveness and fairness of criminal trials in Guatemala. Four of the judges and one of the prosecutors had received serious and frightening threats. Other courts had similar experiences. On some occasions a judge was reassigned, or had to go into temporary hiding. During 1989, a woman judge was viciously murdered. The problem of intimidation in Guatemala is obviously a very serious one for judges, prosecutors, and police who are prepared to do their duty even when the defendant is dangerous.

The problem is even more serious with regard to witnesses. Everyone in Guatemala seems to know of cases where the perpetrator of a violent act threatened the victim or his family if they testified. This seems to have happened in the prosecution of police officials in Quezaltenango, resulting in a significant and ultimately fatal loss of evidence. It happens in cases every day. In examples we have examined, even ordinary robbers will, if caught in the act, threaten their victims.

Threats are a serious problem in every country, including the United States. The problem can never be solved but the situation can be made much better by taking it seriously. The logic of dealing with intimidation is clear and confirmed by experience in other countries. A description of the concepts for dealing with intimidation which we have developed for the

Guatemala Project is available from the Center for Criminal Justice.

b. Project Activities

We conducted a number of workshops with judges, high-level administration officials, and influential people from the private sector. In this forum, we discussed the problems of intimidation directly and obtained useful suggestions. (For more detailed information on these workshops, refer to the earlier section on judicial corruption.)

Recognizing that the Organismo Judicial, the Ministerio Público, or the Policía Nacional cannot solve this problem of intimidation, we prepared a procedure for intimidation cases delineating responsibilities for each institution should any dangerous cases arise in the Pilot Courts. The Chief of the Fiscalía signed a document which embodied our initial attempt to coordinate these efforts and outline a procedure.

c. Recommendations for Next Steps

The President of the Supreme Court and the President of Guatemala should jointly issue protocols for processing cases involving intimidation. Based on the above mentioned research, the Guatemala/Harvard Criminal Justice Project has drafted protocols for use in such cases of intimidation which the President could consider using in their final versions of the protocols.

These protocols set forth: (1) steps to be taken in all cases of intimidation, (2) steps required when courts, judicial personnel, or prosecutors are threatened, and (3) steps to be taken when victims or witnesses are threatened. The three protocols follow:

(1) STEPS TO BE TAKEN IN ALL CASES OF INTIMIDATION

- 1. The Prosecutor's office should create and use forms to take down all necessary information about a threat. A suggested form is attached at the end of this section. ***
- 2. The Prosecutor's office should create a special unit for handling particularly serious crimes. One of the central responsibilities of this office should be handling cases of intimidation.**
- 3. A special police unit (hereinafter called "The Special Police Unit"), free from possible connections with intimidators, should work in conjunction with the special prosecutor's unit in any intimidation cases.**

* The form is available from the Center for Criminal Justice.

(2) SPECIFIC STEPS TO BE TAKEN IN CASES OF INTIMIDATION OF COURTS, JUDICIAL PERSONNEL, OR PROSECUTORS

In cases regarding intimidation of judicial or prosecution personnel:

- 1. The intimidated courts and prosecutors should record the details of the incident immediately on a specially designed form for the Prosecutor's office.**
- 2. The court before whom the case is pending should promptly notify the President of the Supreme Court immediately.**
- 3. The court or prosecutor should notify the Special Prosecution Unit and the Special Police Unit so that the units can initiate an investigation.**
- 4. Upon discovery of the intimidator, the Prosecutor's office should begin action against that person at once, perhaps under Article 215 of the Criminal Code. By handling these matters informally, the current system only encourages further threats. All authorities should publicize the criminal proceeding against the intimidator as widely as possible.**
- 5. If the identity of the intimidator remains unknown but there is enough information to begin an investigation, the Prosecutor's office should promptly begin an investigation publicizing its actions.**
- 6. If there is not enough information to begin an investigation at once (for example, if the threat is anonymous) the Special Prosecution Unit should notify the superiors of all threatened individuals and seek their concurrence in not pursuing the matter further.**
- 7. If the threat seems serious (and not all threats are):**
 - a. The Prosecutor's office should request the Special Police Unit to appoint bodyguards for the persons in danger including if possible the judges, prosecutors and key witnesses involved.**
 - b. The Prosecutor's office should prevent the oral or written transmission of threats to the judge or prosecutor. With the latter's consent, police officers can screen calls and letters.**

- c. Prosecutors should be appointed to work together on the case. If possible, a prosecutor from the Special Prosecution Unit should be assigned to work with the two court prosecutors. Each document submitted to the court by the prosecutors working on the case should be signed by the Attorney General.
 - d. A second Pilot Court judge from the same level of court should be involved as an auxiliary for the principal judge who has been threatened (for example, another instancia judge for a threatened instancia judge). The auxiliary judge would be informed of the entire process and could be ready to take over in case the principal judge is harmed in any way or is asked to step aside.
 - e. The Special Police Unit should be requested to devote substantial amounts of energy to the investigation of the intimidation incidents and the underlying case.
 - f. In very serious cases, aid from foreign experts should be requested in the investigation of the underlying case and the intimidation attempts.
8. In cases where a judge or prosecutor is killed:
- a. A panel of judges should be appointed to pursue the underlying case.
 - b. A panel of prosecutors should be appointed to continue the prosecution of the underlying case.
 - c. Substantial resources should be allocated to the investigation both of the underlying case and of the murder of the judge or prosecutor; the aid of foreign specialists should be requested.

(3) SPECIFIC STEPS TO BE TAKEN IN CASES OF INTIMIDATION OF VICTIMS OR WITNESSES

In cases of intimidation of victims or witnesses within the Pilot Courts, it should be the duty of every judge, official, prosecutor, or police investigator to inform the Attorney General as promptly as possible regarding the strong suspicion that a witness has been threatened or will be threatened. The Attorney General should refer the notice to the Special Prosecution Unit in the Attorney General's office. Thereafter the following steps should be taken:

- 1. The appropriate judge (Paz, Instruccion, or Sentencia) will be advised of the information. At the same time, the Special Police Unit will be informed.**
- 2. A prosecutor from the Special Prosecution Unit will seek to contact the witness and explain to him or her who the prosecutor is and what the Special Unit has been asked to do. The prosecutor will try to elicit from the witness whether he or she has in fact been threatened, or fears retaliation if the witness gives evidence. If the witness was in fact threatened the intimidation form should be filled out.**
- 3. The prosecutor should ascertain whether the witness will be willing to give evidence in the case. If the witness is frightened but willing to testify, every effort should be made to take a formal statement at the earliest possible date. The prosecutor, after consulting with the Special Police Unit, may decide that it is wise to let it be known that the statement has already been taken in order to deter further threats.**
- 4. If the witness is frightened and it is not clear whether the witness will be willing to testify, efforts should be made to prevent anyone from conveying further threats to the witness. These efforts may include requesting police protection of the witness, offering to assign an officer to answer the telephone or to open what may be written threats, and making public in the neighborhood the police support and protection of the witness.**
- 5. If the witness refuses to give testimony and the prosecutor believes**

this refusal may be based on fear, the prosecutor should offer to speak privately with the witness without transcribing the statement. On this occasion the prosecutor should seek from the witness any leads that may enable the police or the prosecutor to develop independent evidence as to who committed the crime. The witness may be able to make extremely valuable suggestions as to how to prove the guilt of the perpetrator without using the witness's testimony and thus without subjecting the witness to any great risk.

- 6. In every case where a witness may have been threatened, the prosecutor should examine carefully the possibility of developing independent corroborating evidence to support, or replace, the witness's testimony.**
- 7. No case in which the prosecutor believes a witness has been intimidated should be closed without a full and obvious investigation of both the underlying case and the effort at intimidation. This vigorous investigation by the prosecutor and the Special Police Unit should occur without regard to the wishes of the victim or witness who may have been threatened. If it is determined that there is not enough evidence to bring charges under either the underlying case or for making threats, the prosecutor should write a memorandum explaining the efforts that were undertaken and their failure to achieve results. The memorandum should be forwarded to the Attorney General and to the President of the Supreme Court.**
- 8. Any case in which a witness has in fact been harmed should be given the highest priority by the Ministerio Público, the police, and the Organismo Judicial. The unit in charge of intimidations in the Attorney General's Office should prepare, with the assistance of the police, a plan of investigation to be submitted to the Attorney General for his approval.**
- 9. In any case where there is reason to fear that the intimidation directed at the witness may be followed by intimidation of police, prosecutors, judges, or oficiales, the steps outlined for cases in which that type of threat has been made explicitly should be followed.**

3. The Immunity of Perpetrators of Political Violence

a. The Problem

During the term of President Cerezo, there were only two or three known cases of prosecution arising out of the killings of student leaders, labor leaders, peasant organizers, human-rights workers or others on the left of the Guatemalan political spectrum. None of those cases has resulted in a conviction. Yet a large number of such people are killed. The obvious result is that there is a widespread belief that violent crimes committed for political purposes, particularly against those on the Left, will not be punished and that their perpetrators are immune from responsibility in the criminal justice system of Guatemala.

Allowing this impression of immunity to continue imposes great costs on Guatemala. Because there are no investigations and trials, no one knows how much of the violence is attributable to the army (particularly the intelligence units) and the police forces. Some amount of it is plainly the responsibility of the armed forces; a number of cases are well-documented in a report by the Washington Office on Latin America. The effect of having a large number of killings, some plainly attributable to national security forces, and none investigated, is clearly to suggest that security forces are responsible for the great portion of those killings. Believing this, police, prosecutors, and judges are reluctant to investigate any case of political violence where they suspect the security forces may have been involved. This reluctance and fear undermines the credibility with outsiders, and the self-respect, of the major actors in the criminal justice system.

Beyond this, the failure to investigate and prosecute crimes of political violence creates insecurity and danger for leaders of political, labor, and human rights organizations who are

engaging in perfectly lawful conduct essential to the health of Guatemalan society. Political violence against these groups is intended to, and does, discourage their activities. Because this is unacceptable to the Western democracies which support Guatemala, these nations have reduced their support. The decision of Harvard Law School to leave Guatemala is only a small example.

What are the causes of an inability to investigate, prosecute, and try cases of political violence? The most obvious is that judges and prosecutors are afraid to press ahead in these cases. In fact, it is too much to expect judges and prosecutors alone to investigate, file charges, and try cases involving political terrorists who might well be closely connected with the security forces of Guatemala. The cooperation of two other groups is essential. The police must be willing to investigate and to provide some armed protection where there is danger. Investigation also requires the open and express support of the President and the Minister of Defense. That would, of course, bring with it the cooperation of the police. Other steps that would reduce the danger to the participants in the criminal justice system are discussed under the heading "Problems of Intimidation," in section III,B,2 of this Report. A second problem is that these crimes are difficult to investigate and prove because they are frequently carried out professionally.

b. Project Activities

In response to a spate of killings in the Fall of 1989, we developed a list of steps that Western nations had taken when confronted with terrorist killings of the sort that were occurring in Guatemala. We presented them orally to the Minister of Defense. Another version was furnished to the President and the Minister of Government. To the best of our knowledge,

nothing was done in response to these suggestions. The memorandum we prepared on this topic is available from the Center for Criminal Justice.

c. Recommendations for Next Steps

In December, 1989, we made a proposal to President Cerezo which we repeated to the new President a little over a year later. That continues to be our strongest suggestion. Here is the proposal as it was set forth first to President Cerezo.

The investigating authorities, civilian and military, obviously need help in the form of training by the best professionals. That is why you have solicited assistance from Spain, Germany, and the United States. I suggest that you invite the representatives of these countries, which provide assistance to police, prosecutors, or judges (or their military counterparts), to meet and together prepare a list of distinguished Spanish-speaking investigators (police or military or prosecutors or judges) who would be willing, at your invitation, to work with the police or the military when there is a major crime commanding local or international attention. These are often the crimes that create the most suspicion among foreigners about the willingness of Guatemalan authorities to pursue the powerful.

One or two investigators chosen from the list would then be invited by you or the Minister of Government (or, if military personnel were suspected of the crime, the Minister of Defense) to join with the appropriate Guatemalan investigators and provide advice and assistance in the case of major investigations. At the end of the investigation they would automatically be asked to send you a public report on the quality, good faith, and vigor of the investigative efforts. You and the appropriate Minister (Government or Defense) could then take such action as you thought appropriate on the basis of the report, including commendations when the investigation was particularly well-handled.

Investigations often involve personal matters and false accusations. Therefore it might be inappropriate for the public report to you (and, perhaps, either the Minister of Government or the Minister of Defense as well) to reveal particular facts about the case that the outside consultant learned during the investigation. But this would not interfere with a very frank and helpful description, in a public letter to you, of the quality, honesty and intensity of the investigation.

I think the advantages of what I am proposing are very great. The outside consultants would, in the course of helping to resolve the most troubling crimes in Guatemala, provide invaluable training to Guatemalan civilian and military investigators. The ability of the Harvard project to be on the scene and watch the courts at work, making suggestions from time to time, has added a major new dimension of great value to the training of judges and prosecutors. My proposal would provide the same benefit to investigators.

You and I disagreed about whether I was justified in my suspicions that investigators were holding back and not working seriously, perhaps on orders from above, on certain major cases. A byproduct of highly expert assistance in the most important investigations would be that you would learn directly from great experts of unquestioned reputation whether the investigation was in fact skillful, honest, and energetic. Because the letters would be made public, others would be pressed to accept much better evidence than there now is on this question, which is so crucial to Guatemala's reputation for honor.

Proceeding in the way first suggested to President Cerezo would bring about an immediate improvement in the atmosphere of political intimidation poisoning Guatemala's democracy. It would also give new life to the system of criminal justice and make Guatemala a leader in Latin America in dealing with a pervasive problem. We urge President Serrano to act on this proposal now.

IV. Conclusion

No governmental problem is more important to Guatemala than reform of the criminal justice system. Without an effective justice system, street crime will continue to flourish and political violence will remain unpunished. As a result, domestic and international confidence in the Guatemalan government will suffer with concomitant repercussions for economic growth, investment, and tourism. Even more importantly, democracy in Guatemala can never mature and become completely institutionalized in the absence of a fully-functioning system of criminal justice.

The reforms that are required are dramatic. The commitment of Guatemala's political and private-sector leaders to the task of justice system reform is essential. Based upon extensive collaborative work with Guatemalan justice system officials over the past three years, this report provides guidance on how to begin down the path of reform. The path is long, but the rewards at the end are well worth the undertaking. An effective reform effort will have a profound effect on the life of the nation.