

# A.I.D. EVALUATION SUMMARY PART I

(BEFORE FILLING OUT THIS FORM, READ THE ATTACHED INSTRUCTIONS)

FID-ARH-630  
86104

IDENTIFICATION DATA

<b>A. REPORTING A.I.D. UNIT:</b> <u>USAID/Costa Rica</u> <small>(Mission or AID/W Office)</small>  (ES# <u>93-2</u> )	<b>B. WAS EVALUATION SCHEDULED IN CURRENT FY ANNUAL EVALUATION PLAN?</b> yes <input type="checkbox"/> slipped <input type="checkbox"/> ad hoc <input type="checkbox"/>  Eval. Plan Submission Date: FY <u>92</u> Q <u>2</u> nd	<b>C. EVALUATION TIMING</b> Interim <input checked="" type="checkbox"/> final <input type="checkbox"/> ex post <input type="checkbox"/> other <input type="checkbox"/>			
<b>D. ACTIVITY OR ACTIVITIES EVALUATED</b> (List the following information for project(s) or program(s) evaluated; if not applicable, list title and date of the evaluation report)					
Project #	Project/Program Title <small>(or title &amp; date of evaluation report)</small>	First PROAG or equivalent (FY)	Most recent PACD (mo/yr)	Planned LOP Cost ('000)	Amount Obligated to Date ('000)
515-0244	Justice Sector Improvement	'88	12/92	2.9	2.9

ACTIONS

<b>E. ACTION DECISIONS APPROVED BY MISSION OR AID/W OFFICE DIRECTOR</b>  <p style="text-align: center;"><i>Action(s) Required</i></p> <ol style="list-style-type: none"> <li>1. USAID along with the PIU will assist the Procuraduría in developing a time phased, detailed implementation plan for completion of the loading of data and development of the system. They will also provide, with technical assistance from the regional IRM office, a list and explanation of further equipment proposed for purchase.</li> <li>2. The Procuraduría will include as part of 1 above, mechanisms for connecting the system with the Asamblea and the Court, and will include equipment for these connections as part of its next purchase.</li> <li>3. Any proposal by the Procuraduría for deployment of the System of private users through RACSA will be evaluated for feasibility by appropriate technical consultants.</li> <li>4. Discussion with the GOCR on a follow-on project will focus on strengthening the National Commission and emphasizing court administration as per the evaluation recommendation. Unless a better mechanism can be found (unlikely), the follow-on project will</li> </ol>	Name of officer responsible for Action           PDO/RAJO	Date Action to be Completed           December 1992           January 1993
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(Attach extra sheet if necessary)

APPROVALS

**F. DATE OF MISSION OR AID/W OFFICE REVIEW OF EVALUATION:** mo 6 day 15 yr 92

**G. APPROVALS OF EVALUATION SUMMARY AND ACTION DECISIONS:**

Project/Program Officer	Representative of Borrower/Grantee	Evaluation Officer	Mission or AID/W Office Director
Signature Typed Name P. Kraustover / Jacinta Barboza Date: _____	 _____ Date: _____	_____ Ginger Waddell Date: <u>10/22/92</u>	_____ Ronald F. Venezia Date: <u>10/22/92</u>

**H. EVALUATION ABSTRACT (do not exceed the space provided)**

In general, the Justice Sector Improvement Project has been successful and worthwhile. Many valuable programs have been completed, and uncompleted projects such as the Legislative Reference System (LRS) are well underway.

The Judicial School, in particular, has evolved into a very professional and efficient educational organization. Its programs are well planned and well executed. Its curriculum provides a progressive education in judicial subjects, starting with the basic orientation courses through the advanced and specialized courses for both support personnel and professionals. The National Commission has made good progress in institutional development, and should now be entrusted with greater responsibilities in the area of long-range planning, program development and coordination. The Project Implementation Unit, (PIU) while it has worked well, has become a deterrent to the institutional development of the National Commission due to overlapping responsibilities. The development of the National Commission should take precedence over the development of the PIU. The Legislative Reference System project is an enormous undertaking which has made good progress once its overall plan was solidified. Immediate attention should be given to the problem of interconnectability and access, however, and its progress in these areas should be closely monitored.

The evaluation detected two broad problem areas - a lack of coordination and long-term planning and a low level of overall supervision - both of which it attributed to certain redundancies in the responsibilities and roles assigned to the National Commission and the PIU. While uncertain as to how or whether these problems could be resolved under the current project, the evaluation recommended that any follow-up project resolve them by assigning the PIU's responsibilities directly to a strengthened National Commission. They believe however that responsibilities for financial and administrative management should remain vested in ILANUD.

The principal recommendations for the existing project involved strengthening of the programming of the LRS component and provision of additional technical assistance to the latter. In terms of a follow-on project their recommendations were to focus on court administration, strengthening of the National Commission and continued assistance to the LRS.

ABSTRACT

**I. EVALUATION COSTS**

1. Evaluation Team Name	Affiliation	Contract Number OR TDY Person Days	Contract Cost OR TDY Cost (US\$)	Source of Funds
National Center for State Courts		IQC No. LAC- 0669-Q-00-1041-00	\$64,369	Project No. 515-0244

2. Mission/Office Professional Staff Person-Days (estimate) 7

3. Borrower/Grantee Professional Staff Person-Days (estimate) 10

COSTS

# A.I.D. EVALUATION SUMMARY PART II

## J. SUMMARY OF EVALUATION FINDINGS, CONCLUSIONS AND RECOMMENDATIONS (Try not to exceed the 3 pages provided)

Address the following items:

- Purpose of activity(ies) evaluated
- Purpose of evaluation and Methodology used
- Findings and conclusions (relate to questions)
- Principal recommendations
- Lessons learned

Mission or Office: RAJO

Date this summary prepared: 09/15/92

Title and Date of Full Evaluation Report: Evaluation of the Costa Rica Justice Sector Improvement Project 06/15/92

The Justice Sector Improvement Project (JSIP) had three objectives all directed at improving the Costa Rican administration of system: these were strengthening of the National Commission for the Improvement of the Administration of Justice as a sector wide planning and coordinating body; support to the Judicial School to allow it to develop a broad range of training programs and materials for judicial professionals; and assistance to the Procuraduria (Attorney General's Office) for the development of a computerized data base of all legislation in force. The purpose of the evaluation was to monitor progress in all these areas, detect any problems in meeting project goals, and develop recommendations for a follow-on project. The evaluators based their findings on review of documents, interviews with project personnel, and direct observation of project activities.

### FINDINGS:

#### PIU

1. The Project Implementation Unit has, in general, performed well its required functions under the Implementation Agreement and has developed with ILANUD an adequate system for financial administration of the Project.
2. There is a lack of clarity as to the relative roles assigned to the PIU and the National Commission, with some apparent overlap of responsibilities, particularly in the area of justice sector planning and program development.
3. The ratio of administrative overhead to direct service expenditures could be improved by eliminating the PIU and having ILANUD handle the Project financing directly, since financial management is handled by ILANUD at present.
4. The role of planner and coordinator should properly be that of the National Commission, rather than the PIU.

#### NATIONAL COMMISSION:

1. The National Commission has, in general, sponsored and completed worthwhile programs which will have a lasting beneficial effect.
2. The National Commission has not fulfilled its potential as a global planning body which would coordinate and prioritize programs within an overall plan, and it has not, in fact, formulated any long-range plans.
3. The National Commission has taken effective steps to strengthen its organizational institutional development, but has had little opportunity to develop its potential as a leader of court reform.
4. The participation of the legislative representative on the National Commission is effectively non-existent.

SUMMARY

5. The National Commission could not sustain itself financially at this time, were the financial assistance of AID to be terminated.

#### JUDICIAL SCHOOL:

1. A. structured curriculum for both support staff training and professional education has been developed by the Judicial School.
2. No real study of court procedures and administration has been made by the National Commission, the Judicial School, nor the Department of Planning of the Supreme Court.
3. Public Defender training has not been completed by the Judicial School.
4. The audio-visual department of the Judicial School lacks needed equipment to produce quality educational materials.

#### LEGISLATIVE REFERENCE SYSTEM:

1. The Legislative Reference System data base and retrieval programs are operative, but currently available only to the LRS project staff.
2. The users committee, which was to insure coordination and compatibility among and between the three data base programs, has never been formed.
3. The method of deploying the LRS data to other justice sectors and the general public has not been developed.
4. The LRS staff lacks the networking and telecommunicating expertise necessary to develop the aforementioned LANs and to interconnect them into one system.
5. The framework of the LRS data base and basic entry of legislative data will be completed by the end of 1992, but due the volume of statutes, revisions, additions, superseding legislation, court actions, and investigation and analysis required to determine the state of the law, the "purification" process, to determine exactly which laws are in force and which have been superseded or repealed, will not be completed by that time.

#### RECOMMENDATIONS:

1. In order to develop the institutional capacity of the National Commission, programmatic responsibilities for management of the Project should be placed in the Commission rather than an ILANUD office. This would include needs assessment, project planning and development, monitoring project results and evaluation. There should be no separate PIU staff.
2. ILANUD should continue to have responsibility for financial management of the grant, including payroll, purchasing, accounting, monthly and quarterly financial reporting, and dealing with expenditure variances.
3. The Project Monitoring Committee provided for under the bilateral agreement should be formed and activated to provide high-level direction and guidance to the Project.
4. Efforts should be made at the highest level to secure the active participation and cooperation of the Asamblea Legislativa in the work of the National Commission.

**PART I - Section E (continues)**

<b>Name of Officer Responsible for Action</b>	<b>Date Action to be Completed</b>
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be channeled through ILANUD, but the latter will have strengthening of the Commission as one of its project responsibilities and will incorporate any project implementation unit into the Commission itself.

5. The current project will be extended till December 31, 1993 and the procurements and development of the legislative data base will be phased over the amplified period. The Procuraduría, the main beneficiary of this extension will be asked to redirect a small amount of its budget toward maintaining a minimal PIU until PACD.

<b>PDO/RAJO</b>	<b>September 1992</b>
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6. The extension will be used to introduce an amended project, focusing on Court Administration with same assistance to the National Commission and Judicial School. Once the amended project design is completed a further PACD extension and increment of funding will be made to allow implementation until December 31, 1995.

<b>PDO/RAJO</b>	<b>December 1992</b>
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5. The National Commission should establish working committees of high level technical personnel in the Commission member entities to evaluate particular issue areas and recommend solutions to the Commission.
6. Needs of the Audio-Visual Department of the Judicial School should be identified, and equipment necessary for production of comprehensive educational materials should be supplied to it.
7. An additional technical assistant should be added to the audio-visual department of the Judicial School.
8. The on-going efforts of the LRS staff should be supported, with emphasis on the determination of the validity of legislation rather than less important or less urgent matters. Activities should be more closely monitored so as to maintain the original direction of the Project.
9. The Procuraduría should produce a time-phased, detailed plan for completion of the loading of data and deployment of the system. The estimates in this plan should be based upon solid verifiable facts.
10. The purchase of 30 additional microcomputers requested by the Procuraduría should be approved to facilitate and speed up review, proofreading and verification of laws in force, and to, in effect, permit moving the system from the "laboratory" to the "production floor." The LAN formed by these computers and the four existing computers would be an effective test of the system as a working network in addition to its primary functions in the "purification" of the legislative data.
11. The users committee should make contact with the Asamblea to coordinate the LRS system with that of the Asamblea, and to facilitate the on-going entry of legislation into the system at the time it is promulgated.
12. Before the Procuraduría's local area network (LAN) is installed, plans should be developed with the assistance of a telecommunications/network expert and a LAN expert should be added to the staff of the LRS.
13. The problem of interconnectability of the LRS with the data bases being developed by the Supreme Court and the Facultad de Derecho should be immediately addressed. A users technical committee should be formed to provide leadership and coordination of plans for access by other justice sector agencies and by the general public.

Lessons learned: While implicit in the conclusions listed above, two are worth emphasizing:

1. Where project design incorporates redundant programming and monitoring responsibilities, it is likely that none rather than all of the entities holding them will assume these roles.
2. Efforts to institutionalize a sector wide view (ie more than the sum of the parts) in a representative body like the National Commission must be more specifically focused than was the case in the present project. In the absence of such a focus, the tactic of giving them funds to program on sector projects is more likely to elicit a distributive as opposed to an integrated approach to sector needs.

**K. ATTACHMENTS** (List attachments submitted with this Evaluation Summary; always attach copy of full evaluation report, even if one was submitted earlier)

ATTACHMENTS

**1. Final Evaluation Report**

**L. COMMENTS BY MISSION, AID/W OFFICE AND BORROWER/GRANTEE**

**Comments by Mission**

This was essentially an excellent evaluation and the Mission is entirely satisfied with its results. We do however, have some reservations about some of the recommendations which are summarized below. We note that we consider such reservations to be normal, and not to reflect on the overall evaluation quality. The evaluation team, no matter how good, cannot be expected to grasp all the nuances of the project in one month's time, and consequently in some cases made recommendations which the Mission regards either as infeasible or somewhat out of touch with political realities.

1. PIU --while agreeing in general with the comments on the PIU, we do not believe that the National Commission in its present form could undertake planning and coordination of the project. The solution, for the second phase project, may be to place a sort of PIU within the National Commission, thereby upgrading the latter's technical capabilities.

2. National Commission: Once again we agree with the conclusions in general, but note that findings 2 and 3 (and especially 3) really exceed the mandate of the Commission as per the project design. Court reform is something the Commission might have looked at, but was not a specific goal of the project.

3. Judicial School: We are unclear as to why a study of court procedures and administration is expected of the School (finding 2). They did collaborate with the Commission in doing one, but this is a fortuitous accident, and was never intended as part of their role. We also have problems with the insistence on more equipment for the audiovisual department (finding 4, recommendation 6), since the department itself says it does not need more.

4. Legislative Reference Service: The Mission is in agreement on the findings and recommendations, although the Procuraduria (Attorney General's Office) has registered some complaints. These are currently under discussion with the latter.

MISSION COMMENTS ON FULL REPORT

## **Responses of Grantee, etc.**

ILANUD itself has made no formal response but various of the implementing agencies have made verbal or written comments. The Judicial School has made no comment, but the PIU has informally communicated that it is in disagreement with its characterization as redundant. The current director stated that in the absence of a planning, programming and supervisory capability in the National Commission, the PIU is still needed to carry out this work. The Procuraduria has likewise unofficially registered some dissatisfaction with the findings and recommendations on the Legislative Reference Service, which are currently under discussion. The National Commission supplied a three page letter in which it expressed agreement with many of the findings of the evaluators but disagreed on several points. Among the most important are the following:

1. Although the Commission does not have personería jurídica it has formed a foundation which is capable of receiving grant funds. (However, AID notes that the foundation has no organizational structure and thus no capacity for managing such funds).
2. In the absence of the Monitoring Committee, the latter's primary function, that of resolving disagreements, has been dealt with by exchanges of notes and meetings among the interested parties, without need of recurring to higher instances.
3. The Commission has been active in the promotion of new legislation aimed at improving sector performance.
4. The Commission relies on AID funding principally to execute projects. Its operating expenses are in large part [but not entirely] supported by counterpart contributions.
5. The Commission disagrees with the recommendation on the formation of internal committees, believing this would create unnecessary bureaucracy.
6. As a coordinating organ for general sector policy, the Commission cannot determine the priorities of individual institutions. Instead it has limited its work to reviewing project proposals presented by the latter in the interest of avoiding duplication of efforts.
7. The Commission has no legal role in the internal workings of the Court, especially as regards "the excessive intervention of the full Court in minor details of court administration."

XID-ABH-630

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**WASHINGTON OFFICE  
REGIONAL ADMINISTRATION OF JUSTICE PROJECT**

**EVALUATION OF THE COSTA RICA  
JUSTICE SECTOR IMPROVEMENT  
PROJECT**

Final Report  
15 June 1992

Submitted to:

**USAID/COSTA RICA and LAC/DI  
REGIONAL ADMINISTRATION OF JUSTICE  
CONTRACT FOR LATIN AMERICA AND THE CARIBBEAN**

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**EVALUATION OF THE COSTA RICA JUSTICE SECTOR IMPROVEMENT PROJECT**

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- List of Persons Interviewed
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- Statement of Work

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## **CHAPTER I**

### **EXECUTIVE SUMMARY**

#### **1.1 BACKGROUND**

The present evaluation study is the first such study to be made of the Justice Sector Improvement Project. The evaluation was made during March and April, 1992, as required by Section 4.4 of the bilateral agreement of 1988.

#### **1.2 COSTA RICA JUSTICE SECTOR ASSESSMENT**

In 1986-1987 a Costa Rica Justice Sector Assessment ("the 1986 FIU study") was made by the Center for Administration of Justice of Florida International University, under the auspices of ILANUD (United Nations Latin American Institute for the Prevention of Crime and Treatment of the Offender) and the Regional Administration of Justice Project. Problems identified by the study included, inter alia:

1. Judicial reliance on outmoded court practices and procedures.
2. Lack of coordinated research, planning, and programming in addressing the long-standing needs of the justice system.
3. A critical need for education and training for justice system personnel.
4. Lack of access to current legislation and court decisions.

Other problems involving the police forces and penal system were also identified, but are not within the scope of the project which is the subject of this evaluation.

#### **1.3 JUSTICE SECTOR IMPROVEMENT PROJECT**

On September 14, 1988 the United States of America and the Republic of Costa Rica entered into an agreement for a Justice Sector Improvement Project (JSIP), to assist the Government of Costa Rica (GOCR) in its efforts to remedy the above-mentioned problems identified by the 1986 FIU study.

This has been a unique project, in organizational form and in scope, unlike others funded through the Agency for International Development. Rather than specific, detailed programs identified at the beginning of the Project, programs were developed and proposed as the Project progressed. As one member of the Mission put it, "we shot an arrow into the air..." The purpose of the present inquiry is to determine where the arrow came to rest.

The agreement provided for assistance, through the United States Agency for International Development (AID), to three GOCR Justice Sector entities:

1. The National Commission for the Improvement of the Administration of Justice (the National Commission) whose members include representatives from all three GOCR branches, as well as the Costa Rica unified bar association (the Colegio de Abogados) and the University of Costa Rica Law School (the Facultad de Derecho). Aid to the National Commission was for the broad purpose of justice system planning and coordination.

2. **The Judicial School** (Escuela Judicial) of the Supreme Court, which was founded to provide continuing education to judges, court support staff, and also to prosecutors and public defenders, both of whom are part of the judicial sector in Costa Rica. The aid provided to the Judicial School was to be for technical assistance, equipment, training and salary support to allow the School to develop a broad range of training programs and educational materials.
3. **The Legislative Reference System** (LRS) of the Attorney General's Office (the Procuraduría), which is in the process of establishing a computerized data base of Costa Rican laws currently in force (legislación vigente). The aid provided was to be for purchase of hardware, adaptation and development of software, and training of staff covering the general administration of the LRS program, operation and maintenance of the hardware and development, and modification and maintenance of software, to allow the development of a system which would provide full access by the government agencies and the general public to legislation in force.

The JSIP agreement provides for implementation of the agreement through a Project Implementation Unit (PIU), or Unidad Ejecutora, established as a separate section of ILANUD. The PIU was to consist of a Project Implementation Director, an Administrative Assistant, a full time secretary, and support equipment. It was to enter into memorandums of agreement (MOA) with each of the component entities, and to work with them in the following areas:

1. Planning, programming and supervising of all Project activities;
2. Preparation of annual work plans to be submitted to AID;
3. Recruitment, organizing and assigning duties to Project staff;
4. Supervision of Project staff;
5. Monitoring the progress toward achievement of Project objectives through appropriate monitoring systems and data bases developed by ILANUD, and submission of quarterly progress reports to AID and to each component of the Project;
6. Financial management, including development of time-phased financial plans; an accounting system; disbursement procedures for foreign exchange and local currency; and submission of quarterly financial reports.

The agreement provides for establishment of a Project Monitoring Committee (PMC) to be the central oversight instrument of the Project. It was to consist of one representative designated by GOCR, one by AID, and one proposed by ILANUD who was acceptable to the parties. This committee was to "actively monitor the progress of the Project and in particular ILANUD's performance..." and was to meet at least monthly, to review project implementation, consider and recommend appropriate changes, and perform such other functions as the parties might assign. This committee was apparently never formed.

#### **1.4 GENERAL RESULTS OF THE PROJECT**

In general, the Justice Sector Improvement Project has been successful and worthwhile. Many valuable programs have been completed, and uncompleted projects such as the Legislative Reference System are well underway.

The Judicial School, in particular, has evolved into a very professional and efficient educational organization. Its programs are well planned and well executed. Its curriculum provides a progressive education in judicial subjects, starting with the basic orientation courses through the

advanced and specialized courses for both support personnel and professionals. The Judicial School lacks the equipment and technical assistance necessary to produce quality audio-visual materials, however, and certain essential programs, such as training for public defenders, have not been completed. The dearth of programs dealing with case management and court administration on the procedural level, appears to be due to some lethargy or reluctance on the part of the magistrates and judges to attack such problems.

The National Commission has made good progress in institutional development, and should now be entrusted with greater responsibilities in the area of long-range planning, program development and coordination.

The Project Implementation Unit, while it has worked well, has become a deterrent to the institutional development of the National Commission due to overlapping responsibilities. The development of the National Commission should take precedence over the development of the PIU.

The Legislative Reference System project is an enormous undertaking which has made good progress once its overall plan was solidified. Immediate attention should be given to the problems of interconnectability and access, however, and its progress in these areas should be closely monitored.

The broad problem areas in the Justice Sector Improvement Project are two:

1. Lack of coordination and long-term planning, and
2. A low level of overall supervision.

#### 1.4.1 Lack of Coordination and Long-Term Planning

Coordination of programs and long-term planning is the principal concern of the National Commission. The Commission has the "clout" necessary to get things done, by reason of the high positions held by its members, but it has not been required to really exercise a global vision of the needs of the justice system. The programs it has sponsored are the result of requests coming in from the entities represented by its members, rather than from the implementation of broad plans originating with the Commission itself.

This difficulty is partially due to the somewhat ambiguous provisions of the bilateral agreement and the project implementation agreement. The planning responsibility is not clearly spelled out, and has therefore not been completely assumed by either the National Commission nor the Project Implementation Unit. As recommended elsewhere in this report, the evaluation team believes that the elimination of the PIU and assumption of planning and coordination duties by the National Commission would aid in the Commission's institutional development and would result in monetary savings.

The members of the National Commission are high-level, busy individuals accustomed to making policy decisions rather than dealing with the nuts-and-bolts aspect of the entities they head. To enable them to fully meet the planning and coordination responsibilities envisioned for them, proper support of technical committees should be inaugurated. The combination of "movers and shakers" with the expertise of hands-on technicians should result in an efficient, productive organization.

The lack of coordination is evident in the management of the Legislative Reference System project. Although the project has been in operation for some three years, and while data bases of major importance are being established in the Supreme Court and in the Facultad de Derecho, no real planning of any sort has been done to assure the compatibility and connectability of the three systems.

#### 1.4.2 Supervision of Project Activities

This problem is somewhat related to the other. Because of the ambiguity of the agreements involved, it is nearly impossible to determine "who is minding the store." Fortunately, the past and present AID Project Officers have been individuals of obvious skill and diplomacy whose efforts have kept the project on track.

The individual success of the Project Officers, however, does not obviate the necessity of clear guidelines. Some members of the National Commission feel that the Commission is to exercise more control than it has; the present director of the Project Implementation Unit feels that the PIU should make qualitative as well as quantitative evaluations of programs. Wherever the authority is to lie, it should be clearly stated.

The bilateral agreement provides, as noted above, for a Project Monitoring Committee composed of a representative from AID, one from GOCR, and one from ILANUD acceptable to the other two. This committee has, we are advised, never been formed. While its functions have been substantially met by informal contacts between the parties, the evaluation team believes that a more formal organization is in order. The Project Monitoring Committee should be activated.

#### 1.4.3 Financial Management of Future Projects

The possibility of direct grants to components, without the intervention of any implementation unit, has been mentioned, as has the possibility of assistance being handled directly by the AID from Washington without the intervention of AID/Costa Rica. While not strictly within the purview of the present evaluation, the team believes that either of these arrangements would be a mistake likely to cause substantial problems.

In the first place, none of the components has demonstrated the degree of financial expertise and reporting ability necessary for the handling of direct grants. Each has been assisted by the Project Implementation Unit and/or ILANUD in the preparation of work plans, budgets, and procurement. Lack of competent financial control could easily lead to chaos.

### 1.5 FUTURE JUSTICE SYSTEM IMPROVEMENT PROJECTS

The Justice Sector Improvement Project was initiated to rectify the shortcomings of the system noted in the ILANUD-FIU Sectoral Study of 1986. When the evaluation team asked if the National Commission had any written long-range plan, it was told that the Sectoral Study and the recent update thereof (Appendix 4D) constituted such a plan. The update reveals that most of the problems identified in the original study still exist, to a greater or lesser degree, and that six of the 13 findings regarding the Judiciary (numbers 2, 7, 9, 10, 11, and 12) deal directly or inferentially with shortcomings in the area of court administration.

The Corte Suprema has both a Planning Department and an Office of Administration, and yet neither of these is involved with the problems of speeding up the administration of justice in the areas of case management, scheduling, delegation of minor tasks by the judges and magistrates,

and other similar matters routinely considered and handled by U.S. court administrators. The evaluation team feels that a major focus of any future JSIP should be upon court administration from the lowest to the highest level. Even a casual observation of the courts in Costa Rica reveals that resources are not efficiently used, and that improvements in the system should be made at a basic level before investigating matters such as alternative dispute resolution, etc.

Admittedly, it would be difficult to initiate the studies which would be required by such a program, since assessment of individual performances and procedures would be involved. However, the necessity for reform in this area, as shown by the update of the Sector Study, justifies the risks involved.

Completion of the Legislative Reference System, under a considerably more structured plan, should be considered as part of any new project. The LRS, when completed, would undoubtedly be one of the best in the region and could be a model installation for other similar systems in the smaller countries of Latin America.

Support for the Judicial School's completion of essential programs, such as training of public defenders, investigative programs in the field of court administration, and expansion of the audio-visual department could all be good subjects for inclusion in future programs.

#### **1.6 PRINCIPAL FINDINGS**

1. The Project Implementation Unit has, in general, performed well its required functions under the Implementation Agreement and has developed with ILANUD an adequate system for financial administration of the Project.
2. There is a lack of clarity as to the relative roles assigned to the PIU and the National Commission, with some apparent overlap of responsibilities, particularly in the area of justice sector planning and program development.
3. The ratio of administrative overhead to direct service expenditures could be improved by eliminating the PIU and having ILANUD handle the Project financing directly, since financial management is handled by ILANUD at present.
4. The role of planner and coordinator should properly be that of the National Commission, rather than the PIU.
5. The National Commission has, in general, sponsored and completed worthwhile programs which will have a lasting beneficial effect.
6. The National Commission has not fulfilled its potential as a global planning body which would coordinate and prioritize programs within an overall plan, and it has not, in fact, formulated any long-range plans.
7. The National Commission has taken effective steps to strengthen its organizational institutional development, but has had little opportunity to develop its potential as a leader of court reform.
8. The participation of the legislative representative on the National Commission is effectively non-existent.

9. The National Commission could not sustain itself financially at this time, were the financial assistance of AID to be terminated.
10. A structured curriculum for both support staff training and professional education has been developed by the Judicial School.
11. No real study of court procedures and administration has been made by the National Commission, the Judicial School, nor the Department of Planning of the Supreme Court.
12. Public Defender training has not been completed by the Judicial School.
13. The audio-visual department of the Judicial School lacks needed equipment to produce quality educational materials.
14. The Legislative Reference System data base and retrieval programs are operative, but currently available only to the LRS project staff.
15. The users committee, which was to insure coordination and compatibility among and between the three data base programs, has never been formed.
16. The method of deploying the LRS data to other justice sectors and the general public has not been developed.
17. The LRS staff lacks the networking and telecommunicating expertise necessary to develop the aforementioned LANs and to interconnect them into one system.
18. The framework of the LRS data base and basic entry of legislative data will be completed by the end of 1992, but due to the volume of statutes, revisions, additions, superseding legislation, court actions, and investigation and analysis required to determine the state of the law, the "purification" process, to determine exactly which laws are in force and which have been superseded or repealed, will not be completed by that time.

#### **1.7 PRINCIPAL RECOMMENDATIONS**

1. In order to develop the institutional capacity of the National Commission, programmatic responsibilities for management of the Project should be placed in the Commission rather than an ILANUD office. This would include needs assessment, project planning and development, monitoring project results and evaluation. There should be no separate PIU staff.
2. ILANUD should continue to have responsibility for financial management of the grant, including payroll, purchasing, accounting, monthly and quarterly financial reporting, and dealing with expenditure variances.
3. The Project Monitoring Committee provided for under the bilateral agreement should be formed and activated to provide high-level direction and guidance to the Project.
4. Efforts should be made at the highest level to secure the active participation and cooperation of the Asamblea Legislativa in the work of the National Commission.

5. **The National Commission should establish working committees of high level technical personnel in the Commission member entities to evaluate particular issue areas and recommend solutions to the Commission.**
6. **Needs of the Audio-Visual Department of the Judicial School should be identified, and equipment necessary for production of comprehensive educational materials should be supplied to it.**
7. **An additional technical assistant should be added to the audio-visual department of the Judicial School.**
8. **The on-going efforts of the LRS staff should be supported, with emphasis on the determination of the validity of legislation rather than less important or less urgent matters. Activities should be more closely monitored so as to maintain the original direction of the Project.**
9. **The Procuraduría should produce a time-phased, detailed plan for completion of the loading of data and deployment of the system. The estimates in this plan should be based upon solid verifiable facts.**
10. **The purchase of 30 additional microcomputers requested by the Procuraduría should be approved, to facilitate and speed up review, proofreading and verification of laws in force, and to, in effect, permit moving the system from the "laboratory" to the "production floor." The LAN formed by these computers and the four existing computers would be an effective test of the system as a working network in addition to its primary function in the "purification" of the legislative data.**
11. **The users committee should make contact with the Asamblea to coordinate the LRS system with that of the Asamblea, and to facilitate the on-going entry of legislation into the system at the time it is promulgated.**
12. **Before the Procuraduría's local area network (LAN) is installed, plans should be developed with the assistance of a telecommunications/network expert and a LAN expert should be added to the staff of the LRS.**
13. **The problem of interconnectability of the LRS with the data bases being developed by the Supreme Court and the Facultad de Derecho should be immediately addressed. A users technical committee should be formed to provide leadership and coordination of plans for access by other justice sector agencies and by the general public.**

## CHAPTER II

### THE PRESENT EVALUATION STUDY

At this writing the JSIP has entered its last year. The original Project Assistance Completion Date (PACD) was September 30, 1991. The present amended PACD is December 31, 1992. The Project agreement provides for one or more evaluations to be made during the course of the Project. No previous evaluations have been made.

#### 2.1 METHODOLOGY

This evaluation was conducted in March and April, 1992, on the basis of interviews with major and minor players, review of documents, visits to the physical location of the various projects, and reading of materials both directly and indirectly related to the Project.

#### 2.2 THE COURT SYSTEM AND PENAL PROCEDURE IN COSTA RICA

No project works within a vacuum. There is always some framework, whether cultural, historical, legal, geographical or mixed, within which the work must be done. Costa Rica's judicial system framework is unique in many respects, and unlike any other in Latin America.

##### 2.2.1 The Court System

The court system of Costa Rica is monolithic and vertically structured, with the Supreme Court, the Corte Suprema de Justicia, at the top, and beneath it in descending order, the Tribunales Superiores, the Juzgados de Primera Instancia, and the Alcaldías.

The Corte Suprema has 22 justices, or magistrates, and is divided into four Salas, or chambers. The Sala Constitucional, which is the fourth chamber (Sala Cuarta) has seven magistrates, and the other three have five magistrates each. Each Sala elects its own chief justice or presidente.

When the Supreme Court sits en banc it is known as the Corte Plena. The presidente of the Corte Plena is at the top of the hierarchy.

Supreme Court magistrates are elected by the Legislative Assembly, the Asamblea. A two-thirds vote is necessary to elect a member of the Sala Constitucional, but only a majority for the other salas. Appointments are for eight years, and reappointment is assured unless two-thirds of the members of the Asamblea vote against it.

All subordinate judges and court personnel are appointed by the Corte Plena. Terms of judges are for four years, at which time they come up for reappointment.

##### 2.2.2 Criminal Procedure

Costa Rica has a mixed system of penal procedure. It is based upon the procedures utilized in the province of Córdoba, Argentina, and according to some reports, functions better in Costa Rica than it does in Córdoba. It has retained the basic elements of the Roman Law-Napoleonic system in the first stages of the criminal action, the instrucción, but has adopted some of the features of the Anglo-Saxon common law in the trial stage, which is by law oral, public and continuous. At this stage witnesses are submitted to examination by the judge or judges (in some cases three judges take part) and by the defense counsel and the prosecutor.

For a more detailed review of the court system and criminal procedure, see Appendix 2A.

### 2.3 COMPONENT EVALUATIONS

Each component of the Justice Sector Improvement Project has been separately examined. The results of the investigation are set forth in the following Chapters III through VI.

## CHAPTER III

### THE ILANUD PROJECT IMPLEMENTATION UNIT (PIU)

#### 3.1 HISTORY AND BACKGROUND

The September 1988 US-GOCR Assistance Agreement (the "bilateral agreement") established ILANUD as the implementing organization for the Justice Sector Improvement Project and required that ILANUD establish a separate Project Implementation Unit (PIU) to manage it. ILANUD was to "perform the planning, programming and supervising of all Project activities, including the preparation of annual work plans which will be submitted to AID for approval," and was also to recruit, organize and supervise Project staff, monitor their progress, and "coordinate the daily activities" with each component and with USAID. Financial management duties included developing time-phased financial plans, a project accounting system, and disbursement procedures for foreign exchange and local currency.

##### 3.1.1 The Project Implementation Unit

In 1989, ILANUD established the Project Implementation Unit (PIU) to meet the structural requirement of the bilateral agreement. Of the \$2.83 million to be granted by AID over the life of the project (excluding the \$66,670 budgeted for audits and evaluation), \$539,010 was allocated to "Project Implementation". This represents 18.6% of the total project budget excluding audits. The PIU was the only project component which did not require matching funds from the GOCR.

##### 3.1.2 Project Implementation Unit's Duties

The Project Implementation Unit's proposed role had been envisioned in some detail in the 1988 Project Paper. In addition to fairly extensive planning, supervision and financial management functions, this paper suggested various types of direct technical assistance to the project components such as development of audio-visual materials and computer training. The project paper also made it clear that a primary purpose of establishing the Project Implementation Unit was to develop ILANUD's capacity to assist in the development and implementation of similar justice sector projects in other Latin American countries.

Much of the project paper's detailed description of PIU responsibilities was repeated in Attachment 2 of the AID-ILANUD sub-agreement signed March 29, 1989. However, the PIU portion of the attachment was soon voided by an April 11, 1989 project implementation letter which substituted the very general description found in Sections IV and V of the Assistance Agreement. Although the detailed description was eliminated from the AID-ILANUD sub-agreement, the 1989 and subsequent project work plans (approved by AID) indicate that the concept for PIU remained much the same.

The 1989 Work Plan for the PIU said the unit would function in a "totally unbureaucratic" fashion, with only a director, an assistant and a secretary. In 1990, a purchasing agent was added to the staff. The director, assistant director and secretary were terminated in December 1991 and a new director was hired in February. The new director plans to retain the purchasing agent and will soon hire a secretary who she hopes will also be able to do some of the financial paperwork for the components.

## 3.2 PIU's FINANCIAL MANAGEMENT RESPONSIBILITIES

### 3.2.1 General

The Project Implementation Unit has taken responsibility for working with each component to develop its annual work plan and budget, as required by the agreement. It also gathers information from the components about the matching funds they have committed to their projects. However, cash disbursements, payroll, monthly expenditure reporting and other accounting functions for the AID grant are handled by the ILANUD controller's office. (The only funds managed directly by the PIU are for petty cash.)

### 3.2.2 Budgetary Involvement, Past and Present

It appears that the PIU was more involved in preparation of component budgets in the earlier years of the project. The PIU staff did much of the work of costing out program plans developed by the component agencies, e.g., for their travel and equipment proposals. The 1992 budget proposals were developed under the previous director, so it is unclear just who will take major responsibility for development of budgets for future programs. (The new PIU director's budget experience was not evaluated.) The proposal submitted recently by the Minister of Justice was put together by the National Commission, which presumably developed the limited budget information in that paper (although this was not confirmed).

### 3.2.3 General Operating Procedures, Pre-1992

In general terms, the PIU has functioned as a purchasing intermediary between the component agencies and the ILANUD controller's office for purposes of insuring that requested goods and services will meet with AID approval. All requests for goods and services were sent by component agencies to the PIU, whose purchasing agent checked to see that the request was within the scope of its annual work plan and budget.

PIU also verified that the request met all provisions of the grant agreement, AID-ILANUD sub-agreement and letters of implementation. These included such things as "buy American" provisions and project personnel requirements.

The PIU clearly played an important role in establishing the justice sector projects and in helping to develop the capacity of the National Commission. The staff was sensitive to the delicate balance necessary to strengthen the expertise of local GOCR entities while insuring project compliance with AID grant requirements. This type of success would have been nearly impossible for AID to achieve directly.

When the PIU determined that a component agency request would not meet AID requirements, the director or assistant director would contact the agency and suggest alternatives. Depending on the situation, this might mean changing from Japanese to American manufactured equipment, reducing the quantity of office supplies to that needed only for project purposes, changing a seminar audience from penal system staff (an area subject to certain limitations) to an allowable group, or identifying project consultants in fields required for implementation of the current work plan.

If the PIU staff was not sure whether an expense request would meet with AID approval, it sought an informal opinion from AID staff. Every effort was made to prevent a situation in which the US government, through AID, would have to directly refuse a request from a Costa Rican

government agency. Such a refusal directed to a sensitive high official, who might be unaccustomed to being told "No," could very well cause severe difficulties for the Project. This unfortunately did happen on rare occasions when a request did not go through the PIU process. This points up the necessity that the PIU director be a person of both diplomacy and stature.

#### 3.2.4 Initial Paperwork Problems

Initially, there were problems with delays in processing of purchase and hiring requests through ILANUD which caused great frustration within the component agencies. However, interviewees generally confirmed that these problems were ironed out within a relatively short time. The remedy to this problem may have been the "pre-processing" by the PIU and its policy of providing a 24-hour turn-around on all requests.

#### 3.2.5 1991 Change of Director and Staff

In December of 1991 the PIU director and his staff, except the purchasing agent, were discharged, for reasons not entirely clear.

Although the ILANUD-AID sub-agreement requires specific AID approval for hiring of key personnel, and submittal of a proposed contract and supporting documentation 30 days prior to the proposed effective date of such action, the current director of the PIU was hired and served in that capacity for approximately two months before AID was aware of her presence.

After the PIU director and assistant were removed, the PIU purchasing agent has submitted pre-processed agency requests directly to the ILANUD controller. The controller has handled any necessary negotiation concerning requests that do not meet AID requirements. However, he reports that the problems have been few, probably because the agencies are now much more familiar with AID's requirements, and less likely to submit requests that are clearly impermissible.

#### 3.2.6 Operating Procedures Under New Director

By late April, 1992, the controller expects that the PIU's new director will be sufficiently familiar with the work plans, budgets and grant requirements to take on these negotiating functions herself. At that point, ILANUD's role will once again be simply to process the paperwork for payment after PIU review. However, as always, it will serve as a final check on the purchasing process to catch any violation of AID requirements.

The current director of the PIU believes that its most important role now is to insure development of a global perspective within the justice sector. She is particularly concerned with coordinating activities among the entities receiving funds, insuring that they do not duplicate efforts and that their projects are compatible (as in the information services area). She also believes that the PIU must begin to make qualitative evaluations of the component projects, rather than just to see that the quarterly activities have been conducted according to the annual work plans. She believes that to date, the quarterly project reports have simply been quantitative measures of progress. She would like to determine, for instance, just how useful are the courses given by the Escuela Judicial, how good is the data in the LRS, etc.

#### 3.2.7 Financial Management

Monthly and year-to-date reporting of expenditures is done by the ILANUD controller's office. Variance reports are reviewed by the controller, who discusses any need for budget adjustments

directly with the component agency. The AID-ILANUD sub-agreement allows reallocations up to 15% of the budgeted amounts, which the controller has interpreted as allowing reallocation only between line items of each component budget, not between the totals allocated to each component.

The controller is now in the process of working with the components on 1992 budget adjustments to compensate for overages in their December 1991 expenditures. Each component's 1992 budget will be adjusted for its own project-to-date total expenditures. Among the three components and the PIU, the total 1992 reduction is approximately \$62,000. While it would have been preferable to make these adjustments by early February rather than in the second quarter, the expenditure reductions are relatively modest and should be well within reach during the next eight months.

A brief analysis of 1991 expenditures indicates that the three project components fell significantly behind their budgeted expenditure levels for the year, and that the PIU's share of actual expenses exceeded its share of the budgeted amount, even though the expenses were also below budget. Of the total \$1.89 million budgeted for the justice project in 1991, only \$1.02 million was spent. (These comparisons are based on rough calculations using a constant colones-dollar exchange rate, but the ratios among components will be valid, nevertheless.) The PIU was budgeted at 17.5% of the total for the year. However, even though its total expenditures were approximately \$75,000 less than budget, its share of actual 1991 expenditures was 25%. The ratio of administrative service costs to "on the street" services was therefore not as low as planned. Charts showing comparisons of the component ratios for the total project and for the 1992 budget, as well as 1991 budget-actual comparisons, are included herewith as Appendices 3A and 3B.

### 3.3 CONCLUSIONS

While the Project organizational-managerial structure has worked quite well, there have appeared several actual and potential problems which merit attention. These are set forth as follows:

#### 3.3.1 Lack of Clarity As To Managerial Responsibilities

From the 1988 project paper on through the various agreements and annual work plans, it appears that the role envisioned for the PIU has overlapped with that of the National Commission. This overlap may account for some of the differences of opinion about who should have programmatic responsibility for the justice sector project. From an organizational development perspective, the overlap may have been an impediment to the expressed goals of developing institutional capabilities of both the National Commission and Project Implementation Unit.

The bilateral agreement provides for the creation of a Project Monitoring Committee, made up of representatives from AID, GOCR, and a third from ILANUD acceptable to the others. This committee was to meet at least monthly to provide direction and handle any disputes that might arise. The committee was never formed, but its functions were handled to some degree by informal meetings of the parties.

The original project paper contemplated strengthening the Costa Rican government's ability to coordinate and improve its own justice system, using the National Commission as the principal institution to accomplish this. It also contemplated strengthening ILANUD's ability to manage similar justice system projects elsewhere in Latin America. Unfortunately, this created a situation where two entities were to learn on the job at the same time, with the intention that each become capable of standing alone without the other's support by the end of the grant period.

The overlap in responsibilities is apparent in the Assistance Agreement, Annex 1, Section III A, particularly the part describing institutional development of the National Commission: planning and coordinating efforts among the various sectors of the justice system, evaluating progress, developing financial management abilities and technical resources, and supervising research. PIU's responsibilities for management of the project, which were nearly identical, have been described above. As the Commission has become more firmly established as a coordinating body for the justice system (with the exception of the Asamblea, which rarely chooses to participate in its meetings and projects), it has seen less and less need for the PIU's programmatic involvement. Regardless of any political or personality issues, this is a natural and expected development which is certainly appropriate from an institutional development perspective.

The ideas of the current PIU director, set forth above, regarding qualitative evaluation of programs by the PIU are perfectly appropriate and necessary for a successful, coordinated justice sector effort. However, this is exactly what the National Commission should be doing. The PIU director does not believe that the Commission could take on this responsibility now, given its current staffing and all the projects in its current work plan. Nevertheless, from an organizational standpoint, only confusion can result from having two entities charged with overall planning, coordination and evaluation in the same arena.

### 3.3.2 Future Project Organizational Structure

The evaluation team believes that if AID wishes to foster the institutional capacity envisioned for the National Commission, it should structure any future assistance in a way that phases out the role of the PIU in Costa Rica. Specific suggestions for how AID pursues its goal of developing ILANUD's institutional capability for programmatic management of similar projects elsewhere are outside the scope of this evaluation, which deals with the PIU as such, rather than ILANUD itself.

A suggested arrangement would be to grant any additional funds to ILANUD (as is the case now) and require that ILANUD modify its memoranda of agreement to eliminate the Project Implementation Unit and give the National Commission responsibility for planning, coordination, programmatic reporting and evaluation. ILANUD would continue to handle all financial and accounting functions for the grant, with the exception of budget development, which would be the responsibility of the Commission as outlined above.

The National Commission, under such an arrangement, would not be regarded as simply one of three equal components, but as the program evaluator, planner and coordinator. This would probably require some "beefing up" of the Commission by the addition of technical staff, but the PIU's current staff budget could go toward the cost of such additional staff. This would be an improvement over the present use of the funds for somewhat parallel administrative expense.

The purchasing agent who now works for the PIU should be assigned to the Commission and continue to "pre-process" requests from the agencies before transmitting them to ILANUD (as is also the case now).

Since the need for justice sector improvement projects in Costa Rica exceeds GOCR budget resources and remaining AID grant funds, it is natural that the project components would look to the resources of the administrative unit for financial relief. The PIU budget was 18.6% of the total AID grant. The 1992 share is only 7.6%, since other components spent proportionately less in earlier years. Although modest for the financial services provided, ILANUD's overhead (which is included in each component's budget) is another 3%. Since the project has had almost three years of experience, it would appear that some of the financial resources of the PIU could be reallocated

to provide greater professional expertise for the National Commission. This approach is also recommended in evaluating proposals for an extension of the bilateral agreement.

ILANUD has developed systems for financial administration of the project which are well-regarded by the AID controller's office and external auditors. In view of this, a new mechanism for accounting is not recommended. Even if existing models are used (e.g. other AID-funded foundations), setting up a new system and training personnel takes money and staff time which could be used more effectively for programs.

Whether the bilateral agreement is extended or not, financial and programmatic support from AID for Costa Rica's justice sector project, and the National Commission in particular, will eventually be concluded. The administration of AID funds should be structured so as to promote the stated (and laudable) goal of developing the National Commission as an effective, self-sufficient coordinator of ongoing justice sector improvement efforts.

### 3.3.3 Project Implementation Unit v. National Commission

Several problems are inherent in the current structure of the Project Implementation Unit vis a vis the National Commission. Although the Commission is expected to become a coordinating body for all elements of the justice sector, it does not currently review the proposed annual work plans and budgets for the AID justice sector improvement grant. The theory has been, apparently, that the three programmatic components of the project (the National Commission, the Escuela Judicial and the LRS) are "at the same level" and no one component should have an advantage or responsibility over the other two. This, however, disregards the express purpose and make-up of the National Commission: to take a global view of the justice system, identify problems and needs, develop solutions, coordinate efforts, and evaluate the progress of all member entities. Although the Asamblea is not participating as hoped, all other GOCR entities are properly represented on the Commission.

Clearly, it would be duplicative for both the PIU and the Commission to work with AID project components on their annual work plans, budgets and progress reports. Further, when each component works directly with the PIU (as an agent for AID) rather than through the National Commission, difficult decisions about programmatic priorities and budget allocations are not tackled by the very group which should be establishing them: the National Commission.

This is not to say that AID should delegate to the Commission any decision-making authority over which projects it will fund. However, a better mechanism might be for the National Commission to establish a list of program priorities and required resources, subscribed to by all members of the Commission. AID could then decide which of the proposed programs it wished to fund, if any. When done in a program-oriented fashion, the process of developing joint budget recommendations can be very effective in fostering a more realistic understanding of financial constraints and more cooperation among entities which are functional equals (such as the three branches of government or the several departments operating within a single branch).

If AID pursues this approach of delegating responsibility for planning and coordination of AID-funded projects to the National Commission for continuance of the project beyond the current bilateral (JSIPII), a modified incremental budgeting system is recommended. Rather than insist that the Commission rank all project requests in precise order (zero-based budgeting), AID should identify several potential levels of funding and ask that budget proposals be prepared for each level. For instance, if \$1 million is the minimum amount likely for an extended or new bilateral and \$2 million is the ceiling, the Commission should be asked to prepare a base proposal for \$1

million and four additional increments of \$250,000 (or two of \$500,000 or whatever gives AID the cut-off points it may need).

This means that the Commission should consider priorities among all the projects that need to be done, coming up with a base package of top priorities, say \$1 million - with additional packages of smaller size (in order of priority) which could be funded if more money is made available for the project.

There is little reason to force ranking within the base amount since considerable time can be wasted when a group has to decide which of several projects is first, yet three or four will almost certainly be funded. It would be advisable for AID to inform the National Commission in advance if certain types of projects will not be considered, e.g. foreign sabbaticals or initiation of brand new projects.

The point is to have the priorities set by the Commission rather than by AID picking and choosing from a laundry list onto which every component throws its wishes and dreams.

#### 3.4 FINDINGS, PROJECT IMPLEMENTATION UNIT

1. The Project Implementation Unit has, in general, performed well its required functions under the Implementation Agreement.
2. ILANUD has developed adequate systems for financial administration of the Project, and audits of the justice sector project have been clean.
3. The PIU has been involved in preparation of component budgets, but this involvement has lessened somewhat as the component beneficiaries have gained experience. Continued involvement in this area may have worked against development of that capacity in the local government bodies.
4. There is a lack of clarity as to the relative roles assigned to the PIU and the National Commission, with some apparent overlap of responsibilities, particularly in the area of justice sector planning and program development.
5. The Project Monitoring Committee provided for in the bilateral agreement has never been formed.
6. The ratio of administrative overhead to direct service expenditures could be improved by eliminating the PIU and having ILANUD handle the project directly, since all financial management is handled by ILANUD at present.
7. The role of planner and coordinator should properly be that of the National Commission, rather than the PIU, with the PIU purchasing agent transferred to the Commission to handle pre-screening of expenditures.
8. The Project requires a dedicated and diplomatic staff to insure that goods and services are acquired in a timely manner without violating any of the AID grant requirements. The PIU's system of having its own purchasing agent pre-process purchase requests prior to payment by ILANUD has worked relatively smoothly after resolution of early logistical problems.

9. There has been at least one significant violation of the grant requirements which call for written AID approval prior to contracting services for key project personnel. The new PIU director had apparently been working in that capacity almost two months prior to AID staff being aware of it.

### 3.5 RECOMMENDATIONS. PROJECT IMPLEMENTATION UNIT

1. In order to develop the institutional capacity of the National Commission, programmatic responsibilities for management of the Project should be placed in the Commission rather than an ILANUD office. This would include needs assessment, project planning and development, monitoring project results and evaluation. There should be no separate PIU staff.
2. ILANUD should continue to have responsibility for financial management of the grant, including payroll, purchasing, accounting, monthly and quarterly financial reporting, and dealing with expenditure variances.
3. The current PIU purchasing agent should continue to pre-process agency requests prior to payment by ILANUD. He should, however, be reassigned to work for the National Commission. ILANUD would continue to have final responsibility for insuring that expenditures meet AID grant requirements.
4. At least one position from the PIU budget should be transferred to the National Commission to provide additional technical staff capability for justice sector planning, program development and monitoring. Other PIU funds could be used in the component agencies to supplement current project budgets as needed.

## **CHAPTER IV**

### **THE NATIONAL COMMISSION FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE**

#### **4.1 HISTORY AND BACKGROUND**

According to one of the magistrates of the Corte Suprema, the idea for an organization comprised of members of the several branches of government for the purpose of discussion and planning arose around 1982 from discussions over coffee among some of the attorneys of the entities involved. In its early stages it was, apparently, nothing more than an informal discussion group.

Executive Decrees issued on July 31, 1985, August 21, 1985, July 28, 1986, and July 29, 1987 gave legal standing to the National Commission and provide that it shall be composed of:

- Two magistrates of the Corte Suprema
- The Minister of Justice
- A member of the Legislative Assembly
- The Procurador General
- The President of the Colegio de Abogados
- The dean of the Facultad de Derecho of the University of Costa Rica

The last decree provides for a permanent Executive Secretary.

The functioning of the Commission was sporadic during the first two years of its existence, although it did offer some training programs and seminars. In 1987, with the results of the 1986 FIU sector study having come under discussion, and with the Commission now able to count on the services of its Executive Secretary, its activity increased.

Up until 1988, the Commission's activities were supported by ILANUD under the Regional Project. The bilateral agreement for the Justice Sector Improvement Project (JSIP) was signed in September of that year, and the sub-agreement with the National Commission was signed March 29, 1989.

#### **4.1.1 Purpose of the National Commission**

The last of the above-mentioned decrees provides:

"The Commission shall have as its general objective the coordination and creation of programs for the improvement of the administration of justice sector..."

The vision was of a high-level organization of the key actors in the justice system, which could plan, discuss and coordinate broad plans of improvements within a global framework, and which could avoid conflicts and dilution of long-term efforts which frequently result from uncoordinated, unfocussed activity.

#### **4.1.2 Legal Status of the Commission**

The National Commission has not been granted "personerfa juridica", the legal capacity to contract, by the Legislative Assembly (the Asamblea). This fact severely limits its ability to engage directly in programs it may wish to pursue, either with or without the assistance of AID.

A legislative project has been sent to the Asamblea to remedy this situation, but, for one reason or another, the Asamblea has not seen fit to act. The Asamblea has, however, apparently discussed granting of such personería for a limited time period, which would not solve the problem.

It is said that some diputados believe that such an enactment would be unconstitutional because the Corte Suprema, which is an independent body under the Constitution, is represented on the Commission by two magistrados. Other persons interviewed believe the delay is simply a manifestation of national pride, since the U.S. government is heavily involved with the Commission.

At the suggestion of AID, the Commission is attempting to solve the problem by bypassing the Asamblea and creating a foundation, for which the legal requirements are less stringent. As a foundation, the Commission could enter into contracts, and additionally, its proponents say, the Commission as a foundation could seek outside international funding. We are told that the foundation has already been formed, but at this point consists of nothing more than "a square on an organizational chart."

#### **4.2 THE NATIONAL COMMISSION'S ROLE IN THE JSIP**

Under the JSIP agreement, the National Commission is charged with:

- a) Updating of the FIU study and follow-up activities.
- b) Administrative strengthening of the Judiciary.
- c) Revamping of legal education and training.
- d) Institutional development of the National Commission.
- e) Advocacy of specific programs of justice sector modernization.

##### **4.2.1 Results Expected and Results Achieved from the National Commission's Participation**

The JSIP Project Paper states that the "most important component of the JSIP involves enhancement and development of the National Commission..." It was hoped that the Commission could become a major force for reform throughout the judiciary, but it was recognized that the Commission might turn out to be simply a forum for the discussion of problems and concerns of the various representatives.

The evaluation team has concluded that actual performance of the Commission lies somewhere in between "major force" and "discussion forum," even though excellent programs have been conceived and executed. The reasons for the team's opinion are set forth in the following sections of this report.

##### **4.2.2 Specific Programs of The National Commission**

Summaries of the contents of work plans submitted to AID for each of the component bodies for the years 1991 and 1992 are attached to this report as Appendix 4A and 4B.

• 1989 Work Plan

The 1989 work plan of the Commission included the updating of the 1986 Sectoral Study (which was not accomplished until December, 1991); creation of a Planning Department of the Judicial Power, which was accomplished; institutional development of the Commission by obtaining personería jurídica (which was not accomplished) and by securing the appointment of an Executive Secretary, which was accomplished. Three publications were produced.

• 1990 Work Plan

The 1990 repeated the plans of 1989, and in addition provided for support of the Facultad de Derecho of the University of Costa Rica by training for law school teachers, including computer instruction; support for the preparation by the Facultad de Derecho of thesauri covering labor and family law; and support for creation of computerized data bases of legal periodicals and student graduation theses. Publication of material on the new code of Constitutional Jurisdiction was provided.

• 1991 Work Plan

The programs presented by the National Commission during 1991 were, for the most part, designed to meet specific needs of the courts, particularly the Supreme Court, and other bodies within or in contact with the judicial system.

Assistance was given in 1991 to the Supreme Court to aid its Planning Department; to the Facultad de Derecho of the University of Costa Rica to allow it to create computer databases on jurisprudence, doctrina, and student theses and to the Procuraduría General to analyze the impact of reform of constitutional jurisdiction on the attorneys of the Procuraduría. The Asamblea was aided by a program to train teachers through the Facultad de Derecho to, in turn, train legislative aides and technicians in the handling of legislative matters. A Legislative Procedure Manual was published as a result of this effort. Research was conducted on speedy trial problems and legal education, and seminars, forums and workshops were conducted on various subjects of immediate and practical interest. Publication of guides, thesauri, etc. were undertaken.

• 1992 Work Plan

The 1992 Work Plan does not appear to be the best effort of the PIU, the National Commission or any other component of the JSIP. It provides for libraries, computers and miscellaneous assistance to almost every sector represented on the Commission. If there is a long-range vision involved in most of these programs, it is not apparent to the observer.

Two programs, in particular, stand out as being of doubtful priority:

One of these calls for the resurrection of the law library of the Colegio de Abogados (the Bar Association), and preparation of a database. The Colegio de Abogados has recently constructed a rather luxurious complex located well away from the judicial center of San José. It contains an auditorium which is rented out for all sorts of programs, from seminars to flamenco dancers. It contains a restaurant which does a brisk business in private wedding receptions and birthday parties. It appears that a rejuvenation of the library of the Colegio de Abogados, particularly at this location, would serve a very limited purpose. If there are truly books and other material of importance, the Colegio should perhaps consider donating its library to the Facultad de Derecho or the Court itself, where better use could be made of it.

Another program calls for visits to leading law schools of the United States by (presumably) law professors or the dean of the Facultad de Derecho, to conduct studies to determine what law students should be taught in modern times, and to investigate modern teaching methods. The work plan does not state the number, duration, participants or reports to be made of such activity. It seems to the evaluation team that before foreign jaunts are requested, comprehensive studies should be made using materials readily available in Costa Rica. After such local study, the persons conducting such studies would be in a position to pinpoint the scope and duration of any inquiry to be made outside of the country.

The foregoing should not be taken to mean that the programs and publications produced by the Commission have not been of value. They have, on the whole, been specific responses to developing problems, and have been very useful for their purpose. They have not, however, been parts or pieces of any grand plan, which is, at this point, non-existent.

#### 4.2.3 New Proposal By the Ministra de Justicia, March 26, 1992

A 114 page proposal was submitted by the Ministra de Justicia to the AID Mission Director on March 26, 1992. Brief comments on the components of the proposal are included in Appendix 4C.

#### 4.2.4 Institutional Development of the National Commission

In order to be a continuing, viable force, a commission such as the National Commission must develop an existence, image and public identification separate and apart from that of its members. Too many organizations are the reflection of the aspirations or ambitions of one or two strong-willed individuals, and disappear from the scene upon the death or change of interests of the prime movers.

It is, in itself, a considerable achievement for the Commission to have maintained an organization of top-level dignitaries who meet regularly and conduct meaningful discussions of current justice sector problems.

The beginning of real institutional development of the Commission was made possible by the decree of July 29, 1987, which gave it permanent legal status and provided for the appointment of an Executive Director. The present Executive Director has been energetic and competent in the performance of her duties and has, from all reports, been successful in holding together an organization of personages who might not, at times, see eye-to-eye on important issues.

There have been periodic turnovers of membership, due to change of national administrations, expiration of terms of office of the president of the Colegio de Abogados and the dean of the Facultad de Derecho. These turnovers have had no appreciable effect on the operation or identity of the Commission itself.

The Commission is regarded by most of those who have contact with the judicial system as an organization of real value and continuity, whose members are, for the most part, diligent both in their attendance at the biweekly meetings and in their conscientious consideration of the business of the Commission. Only once or twice was the opinion expressed that the Commission might become a "white elephant."

While the Commission has established an identity, and has made progress in its organizational development, it has not been given the opportunity to be a real planning and coordinating body, partly because of the fact that it has not been required to do so under the Justice Sector

Improvement Project. For this reason its development to handle future projects of this kind has been somewhat restricted.

It should be noted that the weakest link in the National Commission has been the legislative member, who very seldom appears at the biweekly meetings and who apparently takes little or no part in the business of the Commission. This may be due in part to the fact that the Asamblea now has its own \$2 million project with AID. The lack of real participation of the legislative branch is regrettable, since one of the objectives of the National Commission is the preparation and/or promotion of legislation for the improvement of the administration of justice.

#### 4.2.5 Sector Assessment Follow-Up

An update of the 1986 FIU sectoral study was made in late 1991, by a project under the auspices of the National Commission. The findings of the project group were presented at a workshop conducted in December, 1991. This is the first update which has been completed, even though the work plans for each year until 1992 provided for such a study. The 1991 update covered not only the judicial sector, but police and penitentiary matters as well. The findings which deal with the judicial system are set forth in Appendix 4D of this report.

It is apparent from this update that the main problems of the judicial system continue to be substantially the same as those identified in the original 1986 study. This is not to say that progress has not been made, but that much of the work remains to be done.

The update calls upon the Supreme Court to "dedicate itself to the study of a complete reform of the judicial system." Other less sweeping recommendations call for continuing efforts of the Supreme Court to secure legislative approval of the Ley Orgánica del Poder Judicial and Ley de Carrera Judicial, and for a number of efforts dealing with administration of the courts.

#### 4.2.6 Financial Planning

Executive Decree No. 17,646-J provides that the Executive Power will make budgetary requests for the maintenance of the Commission. A condition precedent of the Project required the Ministry of Justice to pursue Costa Rican government budgetary support for the National Commission. If such efforts have been made, they have not been fruitful.

The executive secretary of the Commission states that it would not have sufficient financial resources to continue operations if AID support terminates.

If the Commission is converted into a foundation, as discussed above, alternative funding from outside international sources might become available. In the meantime, the AID is the Commission's only apparent means of sustenance.

### 4.3 CONCLUSION

#### 4.3.1 Makeup of the Commission

The very makeup of the National Commission, and the role it has been called upon to play in the Justice Sector Improvement Project, present real challenges for those responsible for keeping the Project on track.

The members of the Commission are all high-level, busy people, who are more accustomed to making broad policy decisions than to working on details of specific programs. In fulfilling their role with the JSIP their primary concern is, or should be, in the coordination of activities between sectors and thereby working toward long-term goals which they are to set or determine. They must, however, under the terms of the bilateral agreement, be specific and detailed in the programs they present. They accomplish this, of course, by relying upon the managers or directors of the beneficiaries of the programs which are presented to them, and in reliance upon the expertise of the Commission's Executive Director.

Once the detailed programs are formulated, they must be approved, first by the PIU which prepares the work plans, and then by AID. This stage is a delicate one for both the PIU and AID, since they are dealing with important individuals who may be greatly offended if they are told that their particular program cannot be funded, or that the supporting documents are deficient in some respect. The problem is compounded if they must deal with individuals they regard as being somewhat below them in stature or prestige. At this point the diplomatic talents of the PIU director, the AID representative, and the executive secretary of the Commission come into full play.

#### 4.3.2 Lack of Long-Range Planning

The overall impression of the Evaluation Team is that the National Commission has completed a number of very worthwhile and skillfully executed projects, but that a global vision and planning has been lacking. One interviewee opined that they have been "putting out fires." Another has referred to the "bandaid approach." The Commission has, up to the present time, no real long-term planning. The planning has been simply the preparation of annual work plans. These plans consist of requests for funding of various relatively small programs. The programs are prepared from requests from the organizations involved with them. These requests, about two per month, form the basis of the agenda for each meeting of the Commission.

The lack of focus of the Commission may be seen in its failure to address the problem of court administration. The 1986 FIU sectoral study identified one of the major problems to be "Judicial reliance on outmoded court practices and procedures."

As far back as 1981 Dr. Carlos José Gutierrez, a well known and respected lawyer, writer and diplomat, observed that the majority of the working time of the magistrates of the Supreme Court is dedicated to administrative matters rather than administering justice. Even at this late date we are told that the entire Corte Plena meets all afternoon on Tuesdays and Thursdays to consider administrative matters, most of which are minor. For instance, we are advised that each and every course offered by the Judicial School, and the participants therein, and the date and time thereof, must be approved by the entire Corte Plena. The National Commission has assisted in the establishment of a Department of Planning for the Supreme Court, but its director indicates that, for the most part, its function is to prepare the budget and plan such things as the layout of new court buildings. The Court's Administrative Office is concerned for the most part with the personnel problems of support staff.

The only attempt of the Commission to meet the very basic problem of outmoded court procedures has been a very recent study on court delay, made in courts located in outlying areas.

The Executive Director states that the long-range plan of the Commission consists of the 1986 FIU sectoral study and its update completed in 1991, and that the recent proposal submitted by the Ministra de Justicia to the AID mission director constitutes a "five-year plan."

#### 4.3.3 Lack of Clear-Cut Lines of Authority

The lack of global, long-range planning and coordination of the National Commission seems to pervade the entire Justice System Improvement Project. This appears to be due in some part to the provisions of the bilateral agreement. See Section 3.3.1 of this report.

The objective of the National Commission component of the Project was, under Annex I, III, of the agreement:

"to develop the National Commission into an effective instrument for planning, promoting, monitoring and evaluating the execution of a coordinated national administration of justice program."

At least one of the members of the Commission has taken this to mean that the National Commission was to be in charge of keeping the whole JSIP coordinated. As set forth in other parts of this report, other persons within the Project felt that the Project Implementation Unit was to have that authority, and still others feel that AID itself should be making these determinations.

#### 4.3.4 Management of the National Commission

The Commission has made a start as a potentially effective policy-level coordinating body for the justice sector in Costa Rica. However, given the high level of its membership, the Commission itself cannot tackle much of the leg-work required to develop and implement specific solutions to issues such as information systems, modernization of operating procedures, personnel administration and educational development. The members of the Commission have neither the time nor the technical expertise to handle matters at that level. Nor does the Executive Secretary of the Commission.

A system of work groups or committees is suggested to help implement the policy-level progress already being made by the National Commission. These groups, composed of technical experts representing each member agency, would be responsible for issue analysis and development of recommendations in their area of expertise. For example, the director of computer systems for each Commission member agency (and the leader of each major computer project) would sit on the Information Systems Committee. This committee would meet frequently (weekly, if necessary) to identify problems, investigate potential solutions and make recommendations to the Commission for how the problems can be solved in a mutually beneficial and cost-effective way. Each committee member would be responsible for keeping his or her agency's Commission representative informed about the committee's progress and for securing any appropriate agency approvals so that Commission members are not surprised by committee proposals.

Support for these working committees could either be provided by technical staff hired by the Commission (using some of the positions now funded in the PIU budget) or by the staff of one of the committee member. However, the committee should not function as though it were an entirely new office. Its purpose is to keep the various agencies better informed of each other's activities, to spot duplication or gaps in effort and to coordinate at a technical level so all sectors of the justice system benefit wherever possible.

Suggested permanent committees would be in the areas of information systems (including data bases, office automation, financial accounting and other computer-based systems), financial management (including budget development and personnel administration) and education/training

(including professional and support staff development). Other committees could be created on an ad hoc basis to deal with specific issues that may not require permanent attention.

The comments contained in this section of the report should be read in conjunction with those set forth in the section dealing with the Project Implementation Unit.

#### 4.4 FINDINGS, NATIONAL COMMISSION

1. The National Commission has, with a few exceptions, sponsored and completed worthwhile programs which will have a lasting beneficial effect.
2. The National Commission has not fulfilled its potential as a global planning body which would coordinate and prioritize programs within an overall plan.
3. The National Commission has not formulated long-range prioritized plans for improvement of the justice system.
4. The National Commission has taken effective steps to strengthen its organizational institutional development, but has had little opportunity to develop its potential as a leader of court reform.
5. The National Commission has not been granted "personerfa juridica" by the Legislative Assembly, and cannot, therefore, enter into binding contracts.
6. The National Commission has formed a foundation, which is presently only a "paper" organization, resulting in two parallel organizations at the present time.
7. The role and responsibilities of the National Commission under the Justice Sector Improvement Project bilateral agreement are not entirely clear.
8. The participation of the legislative representative on the National Commission is effectively non-existent.
9. The National Commission could not sustain itself financially at this time, were the financial assistance of AID to be terminated.
10. The lack of technical committees within the National Commission limits its ability and effectiveness as a global resource and planning organization.

#### 4.5 RECOMMENDATIONS-- NATIONAL COMMISSION

1. The role and responsibilities of the National Commission under the Justice Sector Improvement Project should be clarified, by amendment to the bilateral agreement if necessary.
2. The Project Monitoring Committee provided for under the bilateral agreement should be formed and activated to provide high-level direction and guidance to the Project.
3. Efforts should be made at the highest level to secure the active participation and cooperation of the Asamblea Legislativa in the work of the National Commission.

4. The National Commission should be encouraged to formulate broad, long-range plans and to then propose specific programs which would further such plans.
5. The National Commission should be encouraged to attack such obvious and important problems as the over-involvement of the Corte Plena in the petty details of court administration.
6. In order to develop the institutional capacity of the National Commission, programmatic responsibilities for management of the Project should be placed in the Commission rather than an ILANUD office. This would include needs assessment, project planning and development, monitoring project results and evaluation. There should be no separate PIU staff.
7. ILANUD should continue to have responsibility for financial management of the grant, including payroll, purchasing, accounting, monthly and quarterly financial reporting, and dealing with expenditure variances.
8. The current PIU purchasing agent should continue to pre-process agency requests prior to payment by ILANUD. He should, however, be reassigned to work for the National Commission. ILANUD would continue to have final responsibility for insuring that expenditures meet AID grant requirements.
9. At least one position from the PIU budget should be transferred to the National Commission to provide additional technical staff capability for justice sector planning, program development and monitoring.
10. The National Commission should establish working committees of high level technical personnel in Commission member agencies to evaluate particular issue areas and recommend solutions to the Commission. Permanent committees are recommended in the on-going areas of information systems, financial management and education/training. Ad hoc committees could be established as needed to handle other short- and mid-term issues.

## CHAPTER V

### THE JUDICIAL SCHOOL (ESCUELA JUDICIAL)

#### 5.1 HISTORY AND BACKGROUND

The origins of the Judicial School can be traced to a series of training courses for support personnel established by the Costa Rican Supreme Court in 1964. By 1971 the need for training "professionals", i.e., judges, prosecutors and public defenders, was recognized, and the Supreme Court formally created the Escuela Judicial.

##### 5.1.1 Legislative Recognition

In August, 1981, the Legislative Assembly enacted Law No. 6593, which recognized the Escuela Judicial as a legal entity within the judicial system. This law provided for a Consejo Directivo made up of a supreme court justice, two lower court judges, a member of the judicial police organization, and the director of the Judicial School. Since that time, non-voting members from the public defenders office and the Ministerio Público have been added.

Law 6593 and the rules subsequently adopted by the Supreme Court make various provisions for mandatory service within the judicial system, and for publication of legal research, by the Judicial School's graduates.

Prior to the implementation of the Justice Sector Improvement Project in 1989, most of the formal training offered by the Judicial School continued to be provided for support personnel rather than the legal professionals, although some seminars and conferences were offered to the latter group.

##### 5.1.2 The 1986 FIU Sector Study

The 1986 Costa Rica Judicial Sector Assessment by ILANUD and the Florida International University found a high level of dissatisfaction with the Escuela Judicial, particularly among public defenders and other non-judicial professionals, who were receiving sporadic to non-existent training.

##### 5.1.3 The 1988 Bilateral Agreement

The 1988 bilateral agreement for the Justice Sector Improvement Project (JSIP) provided the Escuela Judicial with sorely needed guidelines and funding. The present evaluation attempts to cover the achievements and deficiencies noted during the JSIP period.

#### 5.2 THE JUDICIAL SCHOOL AND THE JUSTICE SECTOR IMPROVEMENT PROJECT

The JSIP Project Paper noted various deficiencies in the operation of the Judicial School. These included the lack of structural curricula for professional education; the lack of pedagogical training for the School's faculty; the lack of audio-visual educational tools; and the reliance on the traditional lecture system of education as taught in the University of Costa Rica Law School (the Facultad de Derecho). Under the terms of the bilateral agreement, the Judicial School was to address and correct these deficiencies within the project period.

The Judicial School was also to provide additional training for the public defenders, and was to produce and publish a comprehensive set of benchbook manuals and other reference materials. It

was also to conduct studies and develop programs on court administration, and model education and training programs which could be made available for use in other Latin American countries.

### **5.3 IMPLEMENTATION**

#### **5.3.1 Summary of Activities, 1989**

Immediately upon activation of the Project a preliminary diagnostic study was undertaken to determine the work performed by the judiciary, and to provide the School with 24 profiles of judges, prosecutors and public defenders, and two profiles of the secretario and the escribiente. The study included a description of the day-to-day functions of each unit, the labor expected and that actually performed by each unit. This study pinpointed specific areas that required remedial action.

##### **◦ Diagnostic Study**

The diagnostic study pointed out that judicial personnel located outside the San José area received less training than those in the metropolitan area. To remedy this, the activities of the Centros Regionales were augmented. In each of the 12 centers a judge was appointed as coordinator. The coordinator then met with the faculty and staff of the Judicial School to help identify and plan the academic activities to be held in each center.

##### **◦ Grupos Asesores**

In addition to the coordinators, the Supreme Court appointed eight Grupos Asesores--advisory groups to provide hands-on training in the individual courthouses--and Educational Committees to help develop courses and educational materials.

##### **◦ Classes, 1989**

According to its 1989 report, the Judicial School in that year presented 15 classes attended by 716 individuals; five seminars, attended by 114 individuals; five workshops attended by 132 individuals; eight conferences for 244 persons; and two round tables for 166 persons. See Appendix 5B.

Evaluation questionnaires were prepared for each activity and these, along with faculty comments, were used as the basis for program modifications and improvements.

##### **◦ Publications**

Eleven publications were produced in 1989, almost all of which appear to have immediate, practical application. Particularly excellent are the two basic textbooks for Level I support staff courses. A listing of the 1989 publications is included herewith as Appendix 5A.

No court administration courses were prepared or offered during 1989 because the necessary planning information had not been gathered by the time the class schedule was prepared.

### 5.3.2 Summary of Activities, 1990

#### ◦ Adult Education, Faculty

In January, 1990 the Judicial School held its first Adult Education class for school faculty, in which regional coordinators and tutors also participated. Educational Committees on Civil, Criminal and Family Law reviewed educational materials and methodology with the faculty to assist in course planning. Four meetings for the same purpose were held in the Centros Regionales.

An Adult Education Specialist was hired full-time in 1990, and she initiated training for the Abogados Asistentes (staff attorneys) in educational methods, legal investigation and writing, and support staff training.

#### ◦ Alcalde Training

The Supreme Court also funded a program for the hiring and training of Alcaldes Supernumerarios (pro-tem judges) who would substitute for regular personnel who were taking classes at the Judicial School.

#### ◦ Basic Courses

The number and duration of basic courses was reduced during 1990 because the number of newly hired personnel did not justify the previous level of activity. However, six new classes were held for support staff and 26 new classes for judges.

The diagnostic study initiated in the previous year was completed, and the Judicial School used the findings and recommendations of the study to formulate its 1991 work plan, and to make certain changes in the format and content of some courses.

#### ◦ Audio-Visual Project

An audio-visual education technician was hired in 1990. The A-V technician, working with the Adult Education Specialist, began the preparation of course materials. Some very basic equipment was procured for the new department.

#### ◦ Publications

At least six publications were produced during 1990. Of these, two in particular are outstanding: the Texto Básico de Instrucción en Materia Procesal Laboral Nivel II, and the Guía Práctica de Instrucción Penal, Cuarta Edición. The Guía is a forms manual which, if used properly, can contribute to procedural efficiency.

### 5.3.3 Summary of Activities, 1991

#### ◦ Prosecutor Training

The courses for training prosecutors of the Ministerio Público were fully developed in 1991, and 26 fiscales participated in the program. Twenty employees underwent basic training for support staff, and 360 persons participated in 17 other courses.

- **Advanced Courses**

Two advanced courses were provided for 120 judges and other professionals. Training for faculty members was given in both San José and in the Regional Centers.

- **Grupos Asesores**

The Grupos Asesores continued their on-the-job training. They visited 25 courts during the year.

- **Publications**

Eleven publications were completed and distributed.

- **Audio-Visual**

The Audio-Visual Department produced eight video presentations, four cassette programs, and two slide-show presentations. Some computer graphics were prepared, and other audio-visual materials were produced for the Judicial Police under the ICITAP program.

- **Publicity**

The Judicial School and ILANUD cooperated in the production of a radio program and a series of comic books designed to explain laws, rights and obligations to the general public in layman's terms.

- **Public Defenders**

Implementation of training courses for public defenders was deferred until 1992 pending analysis of the results achieved with the prosecutors' training program.

#### 5.3.4 Summary of Activities, 1992

- **Moot Court Activity**

At this writing, only the first quarter of 1992 has been completed, so no meaningful report of activities can be made at this time. However, one activity was observed with great interest - a "moot court" session for prosecutors and public defenders. Participants were given a file to study and required to prepare for trial. The moot court trial was held in an actual courtroom, and experienced prosecutors, judges and public defenders took on the roles of witnesses, etc. The participants interrogated witnesses and argued points of law as if in actual trial.

After the "trial," evaluations of performance were made on the spot, and participants were informed of the strong and weak points of their performance by the "presiding judge."

The moot court session was videotaped, and the tapes will be used in the future as training tools.

This activity is illustrative of the very practical hands-on approach being utilized by the Judicial School in its training activities.

#### 5.4 CONCLUSION

The Escuela Judicial has been, in most respects, the most successful component of the Judicial Sector Improvement Project. It has achieved most of the goals set for it, and has developed a comprehensive, continuing and practical program for the training of court personnel, including judges. Its management and staff are dedicated, energetic and innovative individuals who have accomplished a visible improvement in the judicial sector.

Goals in some areas, such as court administration, audio-visual materials and a model faculty training program for other judicial schools have not been met, but the foundations are in existence and can be built upon to produce the desired results. Training of public defenders is still in its initial stages, and bench books and manuals have not been prepared. In the future, when the Legislative Reference System is completed and interchange between the LRS and other databases is established, the School will have to provide training for users of the system.

A major area in which still needs attention is that of court administration within the authority of individual judges, such as case flow management, appropriate use of the judge's available time, and other matters which depend upon the discretion of the judge rather than upon the organizational structure of the court. While the Judicial School cannot, of course, teach a course on a subject which has not been defined by the Court, the School's resources should continue to be utilized as a source of information for further action. The National Commission and the Judicial School have already commissioned some studies on court delay and division of work among court personnel, and this activity should be continued. The Grupos Asesores are also basically fact finding groups which could report (as they presently do) to the School.

Court administration is a complicated subject, but one which sorely needs attention in Costa Rica. Efforts in this area should be supported to the extent possible in the present JSIP, and could perhaps be a major focus of any future JSIP.

Funds have been well used. If any fault is to be found, the School has erred on the side of frugality, and it can continue to operate at the present level on its own. We are informed that the Supreme Court will continue funding the School's daily operations, but that does not mean that those areas still needing completion will be funded. Support in such areas is recommended to allow the Judicial School to achieve its goals and to become a complete and integrated legal education system.

Continued assistance is recommended in the development of faculty training courses to be used both in Costa Rica and in other judicial schools throughout Latin America; for completion of public defender training; for the creation of bench books and manuals; for the future training of users of the legislative and other data bases; for the preparation of audio-visual materials; and for participation in court administration studies and programs. If all or some of these areas cannot be funded in the present project, they are recommended for inclusion in any future JSIP which may be initiated.

The Supreme Courts of Central America and Panamá have agreed to create a regional judicial school which would be modeled after that of Costa Rica. The Regional School is conceived as an independent entity that will "borrow" judicial school facilities in all the participating countries. There are no plans for putting up buildings or having a heavy administrative superstructure. The continued participation of Costa Rica in this project would contribute to the strengthening of democratic ties and principles throughout the region. See Appendix 5C.

## **5.5 FINDINGS, JUDICIAL SCHOOL**

1. A structured curriculum has been developed by the Judicial School both for support staff training and for professional education. The curriculum provides for orderly progression from basic to advanced courses, and is flexible enough to permit adjustments to meet current problems and conditions.
2. The Judicial School has developed some practical, hands-on courses and activities which address the day-to-day problems faced by participants in the fulfillment of their duties.
3. Most publications and course materials produced by the Judicial School reflect the traditional reliance upon abstract legal theory -- doctrina -- rather than the "how-to" approach. One form book, however, -- the Guía Práctica de Instrucción Penal, -- contained material which could be used on a daily practical basis by the courts.
4. Audio-visual materials are extremely limited in scope and number. While the evaluation team lacks sufficient technical knowledge in this area to prepare a shopping list of specific items, it is apparent from an inspection of the School's A-V facilities that its resources are substantially below the level of those seen in other court systems of comparable size.
5. Selection of participants is a slow and cumbersome procedure involving application to the School by a certain date, forwarding of the application and School records to the Educational Committee for review and approval, and, finally, submission to the Corte Plena of the Supreme Court for final approval of course and participants.
6. Appropriate feed-back from instructors is utilized to aid in course refinement and development. Course materials and methodology are discussed with the Educational Committees and the Adult Education Specialist, and with the Audio-visual technician in some cases.
7. Evaluation sheets designed to elicit frank and explicit opinions are given to each participant at the end of each course. These evaluations rate the instructors, the content and materials for each course, and encourage comments. A random sampling of these evaluations indicates an overall satisfaction with the methods and materials used, and a preference for the "participation" approach over the lecture method.
8. Evaluation materials by the Judicial School staff have been analyzed manually, without the aid of any data processing equipment, because the computers already in place in the School are being used for training and administrative work. The process of analysis has been time consuming and cumbersome, but has, nevertheless, been productive and well-used, despite the limited clerical staff available to perform such functions.
9. The Judicial School has made use of the case-file method of training, in which students are given actual closed files and required to analyze them, point out errors and omissions and draft correct versions of documents found to be erroneous or missing. This activity is combined with round table discussions and study group assignments. This approach is widely favored by the students and has produced good results.
10. A structured program for training of Judicial School staff and visiting professors has been developed, and audio-visual techniques are being integrated into course materials and preparation.

11. The School reports that all judicial support and professional personnel have at least undergone basic training, and most have also participated in advanced courses. The training program for prosecutors is well underway, and training for public defenders is scheduled to begin this year (1992).
12. Even though the legislation establishing a judicial career system has not been approved, complete training for all members of the judicial family is now being accomplished. With the progress of training methods and availability, a unified judiciary, with members capable of undertaking any task, is foreseeable.
13. While the Planning Department of the Supreme Court has been assigned to the task of conducting further studies and evaluating and supervising all judicial system components, and the Comisión Nacional and the Judicial School have commissioned a study on court delay, none of the three agencies and/or studies have produced any immediate results. The lack of uniformity in court procedures and administration remains a major problem which has not been adequately addressed by any of the components.

#### 5.6 RECOMMENDATIONS, JUDICIAL SCHOOL

1. Microcomputer research training should not be commenced until the Legal Reference System is on line and accessible. Training conducted prior to that time would likely be forgotten by the participants, since many courthouses have not yet been provided with personal computers. Once the system is in place, and all courthouses have access to it, computer training should be started without delay.
2. The Judicial School and the courts should study and analyze the flow of paper work (trámites) in order to develop efficient methods of case management. The Estudio Sobre La Celeridad has laid the groundwork, and should be expanded to produce a comprehensive view of case flow. The Court should take the initiative in proposing changes to the procedural codes to eliminate redundant paper work, but the School should be an active participant, since any changes would involve the necessity of a great deal of retraining of support personnel to gain their full cooperation in the process.
3. The Supreme Court should address the problem of efficient court management, either directly or through the Judicial School. Consultants from countries having similar mixed legal systems could be hired to review court management practices and recommend changes. Until the court system is improved in this regard it is not realistic to expect the Judicial School to provide management training to judges and support staff.
4. Information gathered by the Grupos Asesores should be incorporated into a statistical data base to be used in court management evaluation and training. Even though not funded by the JSIP, these groups should continue to be used.
5. The School and its audio-visual department should be encouraged to study other such departments and to prepare a detailed report on what equipment is on hand and what essential equipment is needed to allow productive use of the department. An additional technical assistant should be hired, so that a comprehensive set of educational materials can be developed. These materials should be made available to the individual courts, or at least the Regional Centers, for review and as a part of the continuing education program.
6. The plan for selecting participants in the posgrado program should be restructured. More emphasis should be given to the education of Costa Rican members of the judicial system.

The posgrado program contemplates participation of attorneys from the private sector. This does not appear to be justified, when the current needs of the judiciary, prosecutors and public defenders have not been met. Private attorneys are not being trained at the present time.

7. To meet one of the goals in the initial project, the Adult Education Specialist, in consultation with the directors of other judicial schools should prepare a model plan for training Central and South American educators in modern educational techniques. The successful plan produced for Costa Rican educators can be used as the basis for model.
8. While it is too early at this time to judge whether there has been a lasting improvement of the overall performance of the judiciary, another system-wide evaluation should be made after an information system is in place and judges and court personnel trained to use it.

## CHAPTER VI

### THE LEGISLATIVE REFERENCE SYSTEM (LRS)

#### 6.1 HISTORY AND BACKGROUND

##### 6.1.1 1986 FIU Sector Study

The 1986 Judicial Sector Assessment made by ILANUD and Florida International University found that Costa Rica lacked any readily available means of determining legislation in force. The Legislative Assembly (Asamblea Legislativa) had, through the years, often failed to specifically repeal old legislation when creating new; all too often a phrase such as "all previous inconsistent legislation is hereby repealed" was utilized, or no reference at all made to previous inconsistent legislation. The result was that "no one knows what the law is."

##### 6.1.2 Early Efforts

In the 1970's an effort was made to manually compile the Costa Rican legislation up to 1970. This project was subsequently abandoned, and the compilation is now 20 years out of date and is neither accessible nor reliable.

##### 6.1.3 1985 Study

In 1985 the Asamblea conducted a study of the possible automation of existing systems to make reliable legal information available. While unwilling to itself direct a renewed effort to remedy the problem, the Asamblea has backed an effort by the executive and judicial branches. In 1987 a project proposal for computerization of legislative information was presented. That proposal is the basis of the LRS component of the present Justice Sector Improvement Project.

#### 6.2 1988 JUSTICE SECTOR IMPROVEMENT PROJECT

The 1988 bilateral agreement provides for the establishment of a computer data base of Costa Rican law currently in force.

##### 6.2.1 Procuraduría's Role

A separate unit within the Procuraduría General de la Republica (the equivalent of the Attorney General's Office) has been created to plan, develop and implement a computerized data base of all legislation and executive decrees (which have the force of law). In addition, the opinions, or dictámenes issued by the Procuraduría have been included in the plan by the Procuraduría, although they were not mentioned in the bilateral agreement. We are told, however, that this work occupies only one person, who is, in fact, on loan from the Procuraduría and who may not even be paid from Project funds.

The choice of the Procuraduría as the compiler and repository of such data was based on its broad role as the adviser of other governmental agencies, and its willingness to assume the task.

The Legislative Reference System (LRS) unit is housed in a separate building near the main offices of the Procuraduría. With the progress of the program space has become cramped, so the 30 computers which the LRS hopes to procure, along with four existing computers, are planned to be housed in the Procuraduría offices, where they would be accessible to the working attorney

staff for the purpose of verification, proofreading and study of the legislative data already entered in the database. For the foreseeable future the LRS unit will remain at its present location, which, while cramped, is adequate. A move to a rumored new building would be advantageous if it could accommodate the LRS unit and its equipment in addition to the Procuraduría's other information system plans, and if such a move would facilitate coordination and verification of the print-to-electronic conversion process. Housing everything in one building would also eliminate the need for dedicated telecommunication links for computer-to-computer connectivity.

The current staff of the LRS is highly motivated, well trained and adequate for development and expansion.

### 6.2.2 Preliminary Implementation Efforts

Initial planning efforts were made with the technical assistance of ILANUD. Systems operational in other countries, particularly Colombia, were studied. The recommendations of outside consultants were considered, and, where appropriate, were incorporated into development and implementation plans.

It should be noted that the LRS project was commenced, and initial planning done, during a period of rapid and far-reaching technological development in the computer industry. Decision making in such an environment is difficult. It was first envisioned by the designers and planners of the LRS that it would be based upon a mainframe system. The rapid improvement in speed and power of PC microcomputers soon made it clear, however, that a local area network system (LAN) would be more flexible and more economical, with no sacrifice in the quality of the system.

It was decided early-on that the use and interconnectability of the LRS with other systems being developed by the Supreme Court (Digesto de Jurisprudencia) and the Facultad de Derecho of the University of Costa Rica (the indexing of student theses and works required for graduation) would depend on the standardization of legal terms used as key words for data base searches. Thesauri of terms utilized in each of a number of fields of law--criminal, agricultural, family law, etc., were commenced under the auspices of ILANUD. A number of these have been completed. The thesauri will serve as common access and retrieval tools.

### 6.2.3 Design of the System

The LRS system is designed around PC microcomputers in a local area network (LAN) configuration. This type of system allows for communication between components of the system and for bridging between LANs in the future.

Each of the three entities involved with data base building--the Procuraduría, the Supreme Court and the Facultad de Derecho--has established its own network system. The computers in each individual network are connected by cable, and data of each entity is accessible to its own attorneys and other persons working in its own area. However, in order to have the type of system envisioned by the Project Paper, there must be interconnectivity among and between these entities. This could be done by cable, by dedicated telephone lines or perhaps by telephone modem. There must also be access from outside of any of the three networks. This outside access would almost certainly be by modem.

The Procuraduría is apparently planning that most of the data transfer take place by modem. Small volumes of information could be handled in this way, but when transfer of many pages of legal documentation is envisioned, this means becomes impractical because of the slowness of the process. Joining the three data bases by a cable connection or dedicated telephone line (which

would be a special line capable of handling large volumes of data very rapidly) would be by far the most desirable and efficient system, and also the most expensive.

Thus far the problem of interconnectivity has been explored only at the conceptual level, and the actual details have not been studied. The Procuraduría apparently assumes the problems would be minimal, but in fact they may be very difficult of solution. Each of the three systems uses a different indexing and accessing system, and the coding is not compatible between them without some very sophisticated software intervention. The only common element between the three is the use of the thesaurus.

The foregoing constitutes a problem which should be addressed without delay, by a committee of the technical staffs of each of the entities involved. This technical working committee should also consider use of a communications file server with the macro thesaurus and user access programs residing on this computer.

#### 6.2.4 Operating System and Input Method

The LRS utilizes well-proven commercially available operating systems and LAN products which should be adequate for an envisioned 34 workstation LAN.

The input method is well-conceived and executed with good data entry and verification procedures. By their very nature, however, statutes, legal opinions and other textual material tend to be long and wordy. Because of this, conversion of existing legal text will be a lengthy, labor-intensive process.

At the present time, documents used to create the Supreme Court's Digest and the Procuraduría's dictámenes are typed. This is presumably true of new legislation, also. The typewritten material is then transferred onto a computer-readable medium. Data once entered must be checked and verified. This necessitates an additional step in the process which should be eliminated, if possible. If new material, whether jurisprudence from the Supreme Court, new legislation and decrees, or bibliographic references, were created or captured on computer readable media, rather than typewritten, and made available via diskette or tape, the need for re-entry of legal textual materials would be eliminated. This would, of course, require the cooperation and coordination of all entities involved in the production of such new material. It would also require compatibility among the various entities of the word processing format used.

The work of the LRS will not be over with the completion of the entry of data presently at hand. The system must be maintained and entries of new legislation made as it is promulgated. To the evaluation team's knowledge, there has been no contact with the Asamblea to plan for the entry of such new data, nor to insure that whatever coding, indexing and word processing systems used by the Asamblea would be compatible with those of the LRS. Coordination of data entry at this point would eliminate time-consuming problems of format conversion later on down the line.

#### 6.2.5 Use of the Criminal Law Thesaurus As a Search Tool

The use of the criminal law thesaurus, as well as thesauri prepared for other fields of law, would benefit LRS users by providing an additional access method to the LRS data base. Legislation is entered into the data base with key fields consisting of the number of the law, the date, and the title. Access is easy and rapid if one of these keys is known. Use of the thesaurus would permit access even if no key is known, if the user knows the area of the law or key concepts or words under the subject matter. Alternative indexing could be made, but the problems in doing so would be just as complicated as those existing with the thesaurus.

The thesaurus would also have the advantage of providing a universal access method to other justice sector data bases and would enable users to accumulate information pertaining to an area of law from within various data bases.

The major disadvantage for the use of the thesaurus is the work involved with coding statutes and related legal actions with thesaurus phrases or reference numbers. This will be a truly monumental task which will involve not only physical entry of data, but examination of each piece of textual material for determination of the sections or phrases of the thesaurus which would apply to it.

To insure the practical usefulness of the thesaurus, the systems should be tested to make sure that the three data bases code identical things in the same manner, so as to achieve a "full pointer" system. This investigation could be handled by the users committee without outside technical help.

In spite of the massiveness of the task, the evaluation team believes that the Procuraduría should be allowed to proceed with the LRS project as planned. The additional 30 microcomputers which have been requested would enable the LRS to significantly increase the rate at which the coding is accomplished, as well as the identification, verification, editing and loading of material into the LRS data base.

#### 6.2.6 Compatibility and Interconnectability With Other Data Bases

The Facultad de Derecho of the University of Costa Rica, the Supreme Court and the Procuraduría General are all in the process of developing data bases covering topics within their area of interest and expertise. The Colegio de Abogados and the Asamblea technical support staff have also initiated, or plan to initiate, data bases of bibliographic material.

Each of these systems will employ a LAN with its own separate data base. While physically separate, they could be interconnected to form a distributed Justice Sector data base. This concept is well-recognized and widely used in many sectors using microcomputers; however, as noted above, the evaluation team found no coordinated joint planning or other activities to indicate or insure that the three microcomputer-based systems will, in fact, be interconnected.

#### 6.2.7 Accessibility of the Data Base Information

No matter how complete the information contained in it may be, no data base is useful unless its information can be easily retrieved by those who need it. Obviously, the staff of the Procuraduría can access the information by utilizing its own computers in its own offices. The whole idea of the program, however, was to make current information available to all persons who need it or want it. This includes not only the attorneys of the Procuraduría, but judges, public defenders, prosecutors, legislators, private attorneys, and, of course, the general public.

While at least two alternatives for public access were mentioned during interviews with the Procuraduría's project staff, there are no written plans to deploy the system for such access.

The Project Paper for the JSIP provides that the Procuraduría would establish a users committee. The founding members of the committee were to be members of the following: The Procuraduría (which would chair the committee), the Supreme Court, the Ministerio de Justicia, the Presidency of the Republic, the Asamblea Legislativa, the Facultad de Derecho, the Colegio de Abogados, and Fedecámaras. This committee was apparently never formed. Its purpose would have been to solve the very problems of interconnectability and accessibility now facing the LRS.

The most frequently mentioned means of public access was that which could be provided by a telecommunication system, operating by means of modems. Theoretically, anyone with a computer and a modem could dial into the Procuraduría data base and make such searches as might be necessary, print out hard copies of pertinent information, and be thus able to research the law in much the same manner as is done in the United States through the Westlaw or Lexis systems.

It is envisioned by the managers of the LRS that users other than governmental agencies could be charged a fee of so much per minute for such public access, and that the fees would help defray the costs of operating the system. This would be handled by a commercial enterprise, which would do the bookkeeping, billing, etc. for a percentage of the fees collected.

So far, plans for public access have been uncoordinated, unclear and unstudied. The staff of the Procuraduría agrees that this area needs immediate serious attention.

### **6.3 PROGRESS TO DATE**

#### **6.3.1 What Has Been Done**

A substantial percentage of the legislative enactments has been entered into the Procuraduría's data base, with cross references to all other laws which have referred to, or been referred to in, other legislation. This means that even at the present stage of its development the data base would be a valuable tool for researchers, even though it cannot be determined with certainty which of the laws which may refer to each other is the current law in force. Such a determination would require an examination and comparison of the legislation and a judgment call as to viability.

The framework of the project--hardware configuration, design of the data base, and software programming--has all been accomplished. Completion of basic data entry and cross-referencing should be completed by the end of December. The laborious task of determining the present validity of each piece of legislation will not have been completed by that time.

#### **6.3.2 What Needs to Be Done**

The entry of existing data, and the entry of new data created by the promulgation of new legislation and decrees, must be continued. If the process were to be stopped at this point, most of the work already done would rapidly become useless, as occurred in the case of the 1970's project.

In order to accomplish the stated purpose of the whole project--to determine the current legislation in force--a huge amount of additional work is necessary. Each piece of legislation must be examined and compared with other legislation covering the same subject to determine whether previous legislation has been repealed, either expressly or by implication. This step would require the services of knowledgeable lawyers, or at a minimum, law students in their last year of study. The opinions of these examiners would then have to be reported in some fashion to the Asamblea Legislativa, which would be expected to ratify the determinations made, by appropriate legislative pronouncements.

To date, the efforts of the Procuraduría to determine the validity of legislation have not been remarkable. While it is true that most of the energy and resources of the LRS have been directed toward the entry of the basic data, i.e., all legislation, valid or invalid, it is now time to push the verification process. It seems that a lesser emphasis might be placed on other less important or less urgent matters, and a greater amount of attention given to the determination of validity of the legislation already in the data base. The requested 30 computers, if purchased, should be used

primarily for this purpose rather than simply as an automation of the offices of the Procuraduría's attorneys.

At this point, the Procuraduría should be able to prepare a comprehensive, prioritized, time-phased plan for full completion of the LRS project. Without such a plan any funding will continue to be not only a "shot in the air," but a shot in the dark. Any extension of the present Project should be conditioned upon the production of such a plan.

In addition to the foregoing, and as stated elsewhere in this report, a system for merging, or interconnecting the data bases of the Procuraduría, the Facultad de Derecho and the Supreme Court must be developed. The users committee mentioned in the Project Paper should be formed without delay to attack this problem.

Lastly, a comprehensive, practical means of access must be developed, as noted above. This, also, should be a priority problem to be addressed by the users committee.

#### **6.4 CONCLUSION**

The Legislative Reference System is a monumental undertaking. It attempts to remedy, in a matter of three years or so, the neglect of several decades. Its director and staff are dedicated, highly motivated individuals who believe in what they are doing and are working very hard to accomplish their aims. There is no evidence of any insincerity of purpose on the part of anyone working on the project.

Even now, the system has some real value, but to reach the potential envisioned for it, much needs to be done. The halting or hindering of the project at this time would result in the loss of most of the work which has gone into it.

#### **6.5 FINDINGS. LEGISLATIVE REFERENCE SYSTEM**

1. The LRS data base and retrieval programs are operational within the LRS unit of the Procuraduría.
2. Current availability to the LRS data is limited to the LRS Project staff.
3. Analysis and indexing of statutes, including revisions, additions, deletions, modifications, etc., to augment and distinguish between current and repealed statutes is a continuing, laborious process.
4. Attorney General opinions (dictámenes) are being added to the LRS in a separate data base. The addition of the dictámenes was not a specified part of the Project; very little, if any, AID funding is being used for this activity, however.
5. The users committee mentioned in the Project Paper, which was to insure coordination and compatibility among the three data base systems, has never been formed.
6. The method of deploying the LRS to other justice sectors and to the general public has not been developed.
7. Separate data bases have been developed for the Supreme Court, the Facultad de Derecho of the University of Costa Rica, and the Procuraduría LRS.

8. Efforts are underway to install three separate microcomputer based local area networks (LANs) for the aforementioned three data bases, to allow access by each entity to its own data.
9. While an intellectual framework for interconnecting the three separate LANs has been developed, (see *Hacia Una Red Nacional de Información Juridica para Costa Rica*, published by the Comisión Nacional) the technical aspects of interconnectivity have not been fully explored, and no written plans for such interconnectivity exist.
10. Users may have to consult the various data bases individually to aggregate related material, although in theory the use of the macro thesaurus could be used as a tool for such aggregation.
11. The LRS staff lacks the telecommunicating and networking expertise necessary to develop the LANs previously mentioned and to interconnect them into one system.
12. The lack of telecommunications/networking experience is reflected in the lack of planning regarding such things as server security, standard, backup and recovery procedures, and cabling layouts.
13. While leadership, teamwork and motivation are high at the component level, the expertise necessary to accomplish the interconnectivity of the LANs to form a large national network is lacking.
14. The hardware, software, and data base portions of the LRS, and initial entry of legislative data should all be completed by the end of December, 1992. However, the complete set of verified laws in force will not be loaded into the data base by that time, because of the labor intensive process necessary to identify, review, and proofread the legislation and related documents.
15. No efforts have been made to coordinate LRS procedures with those of the Asamblea, to facilitate entry of new legislative data as new laws are promulgated.

#### 6.6 RECOMMENDATIONS, LEGISLATIVE REFERENCE SYSTEM

1. The on-going efforts of the LRS staff should be supported, with emphasis on the determination of the validity of legislation rather than less important or less urgent matters. Activities should be more closely monitored so as to maintain the original direction of the Project.
2. The Procuraduría should produce a time-phased, detailed plan for completion of the loading of data and deployment of the system. The estimates in this plan should be based on solid verifiable facts.
3. The purchase of 30 additional microcomputers requested by the Procuraduría should be approved, to facilitate and speed up review, proofreading and verification of laws in force, and to, in effect, permit moving the system from the "laboratory" to the "production floor." The LAN formed by these computers and the four existing computers would be an effective test of the system as a working network in addition to its function in the "purification" of the legislative data.

4. If the envisioned 34-computer LAN is installed, the technical support staff of the LRS project should be increased to include a LAN administrator, or alternatively, network support on a time and materials basis should be obtained from a private vendor.
5. Before the 34-computer LAN is installed, detailed installation plans should be developed with the assistance of a telecommunications/network expert. Plans should include cabling requirements, environmental and security specifications for the LAN file server, and backup and data recovery procedures.
6. The users technical committee envisioned in the Project Paper should be formed to provide leadership and coordination regarding plans for access by other justice sector agencies and the general public. This committee should investigate alternative methods for deploying the LRS to users other than the Procuraduría and decide which deployment scheme should be implemented.
7. The aforementioned users technical committee should investigate, study, recommend and implement interconnectivity plans. It should also be responsible for obtaining input from justice sector users and other potential users as to the design of user-friendly access screens.
8. To provide the telecommunications, networking, and interconnectivity skills lacking in the LRS staff, ILANUD or the Comisión Nacional should provide LAN integration expertise through a time and materials contract with a private firm or individual with demonstrated experience in this area.
9. A file server computer to handle communications among the data bases, index, aggregate information requests, and system administrative functions such as user accounts, security, etc., should be considered. This computer would be much like the Operator in a telephone system, in that it would receive outside requests for data and would then refer these requests to whichever of the three data bases contained the information sought.
10. The users committee should make contact with the Asamblea to coordinate the LRS system with that of the Asamblea, and to facilitate the on-going entry of legislation into the system at the time it is promulgated.

**PERSONS INTERVIEWED**

**Justice Sector Improvement Project Evaluation**  
**March 15-April 15, 1992**

Edgar Cervantes	Presidente, Corte Suprema
Luis Paulino Mora	Magistrado, Sala Constitucional
Rodrigo Montenegro	Magistrado, Corte Suprema Presidente, Comisión Nacional
Luis Fernando Solano	Magistrado, Corte Suprema
Fernando Cruz Castro	Judge, Tribunal Superior
Elizabeth Odio B.	Ministra de Justicia
Alvaro Ferrandino	Former chief, Public Defenders Office
Alfredo Jones	Director, Depto. de Planificación Corte Suprema
Gilda Segreda	Director, ILANUD PIU
Gerardo Villalobos	Former director, ILANUD PIU
Olman Aguilar	Former asst. director, PIU
Arturo Herrera	Comptroller, ILANUD
Gustavo Certad	Asst. to director, ILANUD
Benjamin Odio	Attorney-Adviser, ILANUD
Teresa Peña	Director, Education Section, ILANUD
Ana Garita	Thesaurus, ILANUD
Lourdes Flores	Thesaurus, ILANUD
Egennery Venegas	Executive Director, Comisión Nacional
Santiago Pla	Director, Judicial School
Carmen Blanco	Sub-director, Judicial School
Marlene Castillo Prado	Atty-Advisor, Jurisprudence Digest and Information Unit

Enrique Pochet	Project manager, Procuraduría LRS Unit
Manuel Ramos	Computer specialist, Corte Suprema
Olga Marta Mena	Professor, UCR Law School
Victoria Rodriguez	Librarian, UCR Law School
Laura Navarro	Atty-Advisor, UCR Law School
Gustavo Bolaños	Computer Technician, UCR Law School
Ron Venezia	AID Mission Chief
Douglas Tinsler	AID Deputy Chief of Mission
Linn Hammergren	AID Regional Administration of Justice Officer
Tom Clarkson	AID
Ann Lewandowski	AID

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Investigación Sobre El Funcionamiento Administrativo del Juzgado Agrario de Liberia etc.

Cuadros: Sinopsis Del Proyecto, Gilda Segreda

Información Jurídica Aplicada a la Docencia e Investigación del Derecho--Manual de Usuario, Olga Marta Mena

Indice de Trabajos de Graduación, 1987-1990, UCR School of Law

Actualización Numero 1--Indice de Trabajos de Graduación

Indice de Publicaciones Periódicas Jurídicas Nacionales

Bibliografía Sobre El Aborto (Tesis)

Lista de Bibliografías Sobre el Derecho Agrario

Bibliografía Sobre Derecho Constitucional

Programas de Cursos 1991, Escuela Judicial

Evaluation Questionnaires, Constitutional Law course, Escuela Judicial

Evaluation Questionnaires, Contract Law, Family Law, Criminal Procedure courses, etc. (random samples)

STATEMENT OF WORK

A. Objectives:

Beginning in November 1991, an outside evaluation team will carry out an evaluation of the Justice Sector Improvement Project having the following general objectives:

- to assess the continuing validity and relevance of the effort and to suggest modifications as may be required to increase the likelihood that the effort will achieve its objectives;
- to assess the effects of external and unanticipated actions and/or events on the Project;
- to determine whether all required actions have been carried out and performance to date is consistent with expectations; as well as what additional actions are needed to sustain the positive effects of the effort;
- to determine what impact has been brought about by or is associated with the effort;
- to help identify areas (either continuations and follow-up on existing activities or new actions) which could be included in a proposed second-phase project.

B. Scope of Work:

The evaluation team should include the following members:

- 1) an evaluation specialist, fluent in Spanish, who will serve as team leader and be responsible for preparation of the final report;
- 2) a legal education specialist, fluent in Spanish;
- 3) a computer systems expert, with specific expertise in computerized legal reference systems, and fluent Spanish;
- 4) a project financial analyst with Spanish fluency.

It is anticipated that the primary method of data collection for the evaluation will be through interviews with GOCR officials (Supreme Court, Judicial School, Attorney General's Office), ILAMUD (Project Implementation Unit) and AID, supplemented by site inspections, questionnaires and a review of project documentation. The timing and sequence of information gathering activities will be left to the discretion of the evaluation team. However, it is estimated that six weeks for the evaluation specialist/team leader, four weeks for the

legal education specialist, two weeks for the computer systems expert, and one week for the financial analyst should be sufficient to perform the work required.

The evaluation should be attentive to the different components of the Justice Sector Improvement Project: the development of sectoral planning and coordination through the establishment of a National Commission for the Improvement of the Administration of Justice; the provision of judicial training through the Supreme Court's Judicial School; the development of a computerized legislative data base through the Attorney General's Office; and the development of ILANUD's ability to carry out similar projects in other countries as a result of the experience gained in implementing the JSIP. Special attention should be given to the specific Project targets and the indicators of their fulfillment. Attention should also be given to the inputs/outputs of the Project and the identification of any unexpected effects.

The following general questions should be asked about the Project:

1. What has been the relation of the planned activities with those of the Regional Administration of Justice Project? Has ILANUD (a. the Project Implementation Unit and b. ILANUD in general) provided adequate management and technical backing to the JSIP?

2. Do the activities contribute to the achievement of greater coordination and integration of the criminal justice sector?

3. Do the activities have inherent value and concrete results even if overall integration is minimal?

4. Should specific corrective actions now be taken in any Project area?

5. Should AID consider specific follow-on activities? Are these new areas where a second-phase project might focus more attention?

With regard to this point, the evaluation team should review the areas already addressed by the Project, including various diagnostic studies and pilot activities sponsored by the National Commission, as well as other target areas identified in the Costa Rica Justice Sector Assessment (carried out under the Regional Administration of Justice Project) to determine the need for and content of a subsequent bilateral administration of justice project.

The following questions should be asked for each of the Project components:

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### The National Commission

**Major objective:** The development of the National Commission as an effective instrument for planning, promoting, monitoring and evaluating the execution of a coordinated national criminal justice sector program.

1. Does the Commission have permanent legal status as well as the necessary authority to make it an effective entity?
2. Has the GOCR developed a means to sustain the operations of the Commission upon termination of the Project?
3. Does the Commission have a long-term adviser and what are his/her working relations with members of the Commission?
4. Has a criminal justice sector program been developed with action priorities, an estimate of resources needed and supporting analyses of options?
5. Are specific, fundable project proposals in law reform, training and technical assistance under elaboration?
6. Has progress been made in the development of a plan for sector assessment follow-up?

### The Judicial School

**Major objective:** the creation and implementation by the Judicial School of the Supreme Court of an in-service training program for legal professionals (judges, public prosecutors and public defenders) to improve their professional performance.

1. Has the Supreme Court issued a decree that establishes and defines a professional-level training program? Are the respective roles of the Judicial School and the University of Costa Rica Law Faculty articulated?
2. Has the Judicial School developed a plan of institutional reforms to improve professional level training?
3. Has the Judicial School developed a curriculum that suits professional development needs of judges and other judicial officials?
4. Has the staff been trained in the use of this curriculum, and where necessary, have UCR faculty and other specialists been consulted?
5. Have instructional materials been developed to support the new curriculum?

6. Has the Judicial School developed yearly operating plans and course offerings to promote professional-level training?
7. Has any agreement been developed to promote UCR academic recognition of the Judicial School program?
8. Has the Court made adequate provision for the future financial support of the School?
9. Do the ideas now circulating about developing a "Master's" Program or regionalizing the School respond to high priority needs? Are they worth pursuing in the second-phase project?

The evaluation team should identify a representative sample of participants in the School's training programs and provide them with a questionnaire designed to provide the team with a basis on which to evaluate the effectiveness of the programs.

#### Legislative Reference System

Major objective: the establishment of a system accessible both to sector institutions and to the public which provides up-to-date, systematic information on legislation currently in force.

1. Has an office to implement this system been established in the Attorney General's Office? Is this office sufficiently staffed and does it have sufficient equipment and training to carry out the effort?
2. What are the pros and cons of the Attorney General's Office using the ILANUD criminal law thesaurus as the search tool for the LRS?
3. Has an actual computerized data base been developed? Is it compatible with the Supreme Court data base? Is the operating system and the substantive input method adequate? Have outside consultant recommendations been adequately used and followed in systems development?
4. Has a plan been developed for the merger of the data bases of the UCR Law Faculty, Supreme Court and Attorney General's Office? Has there been any progress toward the implementation of the plan? Has an adequate administrative and financial structure been arranged to sustain the LRS after AID assistance ends?
5. Has a system been developed to provide for public access through computers and hard copy or other appropriate means?

#### ILANUD Project Implementation Unit

Major objective: Through the experience gained in implementing this Project, ILANUD will be able to carry out other justice sector

improvement projects in member countries (part of its original mandate).

This part of the evaluation should focus on the following responsibilities of the ILANUD Project Implementation Unit:

1. Planning, programming and supervising all Project activities including the preparation of work plans to be submitted to A.I.D. and which ILANUD will develop in close coordination with each of the beneficiary agencies of the Project;
2. Supervising and monitoring project implementation by the beneficiary agencies including the development and implementation of appropriate guidelines for the supervision of personnel and monitoring progress toward achievement of Project objectives;
3. Developing and establishing guidelines and procedures for contracting and supervising national and international consultants that will be involved in the Project; and
4. Carrying out various financial management activities including establishing detailed, time-phased financial plans, establishing and maintaining the Project's accounting system, establishing disbursement procedures for foreign exchange and local currency in coordination with USAID, making direct disbursements, opening Letters of Credit in favor of contractors and suppliers, and certifying invoices for payment.

In addition, the evaluation will include an analysis of the cost structure of the Unit to determine whether it is operating in the most efficient manner possible or whether there are lower cost alternatives.

C. Reports:

1. A draft report should be submitted to USAID/Costa Rica within thirty (30) days of the completion of data collection and a final report with ten (10) copies to AID/Washington within thirty (30) days of receipt of USAID/Costa Rica's comments on the draft report. It is anticipated that the entire evaluation team will work together, if possible, to ensure that their collective experience is brought into the evaluation process. The report will be prepared in English and should contain the following sections:

- a. Basic Project Identification Data Sheet;
- b. Executive Summary: Should not exceed three (3) pages, single-spaced. It should state the development objectives of the Project, the purpose of the evaluation, the study method, summary of findings, conclusions and recommendations, development impact, and lessons learned about the design and implementation of development projects related to the administration of justice. The

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recommendations should be limited in number, presented in priority order, and be clearly actionable by AID;

- c. a paginated Table of Contents;
- d. Body of the Report: The body of the report should not exceed thirty (30) pages, single-spaced, although detailed discussions of methodological or technical issues may be placed in the appendices. The subsection for each Project component should contain a specific narrative of the implementation history for that component, adequate to acquaint an intelligent reviewer with how the Project activities were carried out. The body should include a discussion of 1) the purpose of the evaluation and the questions which it addresses; 2) any previous evaluation(s) reviewed with a brief description of conclusions and recommendations made in the earlier reports, and what use was made of the previous evaluation(s) in their review of the Project; 3) the economic, political and social context of the Project; 4) the evidence and findings of the evaluation with respect to the questions addressed; 5) conclusions drawn from the findings; 6) the Project's lessons learned, describing the causal relationship factors that proved critical to Project success or failure, including necessary political, policy, economic, social and bureaucratic preconditions within the country and AID. It should also include a discussion of the techniques or approaches which proved most effective or had to be changed and why, as well as the lessons learned relating to replicability and sustainability; 7) recommendations based on the findings and conclusions, stated as actions to be taken to improve Project performance as appropriate. All recommendations should be substantiated by the factual findings of the evaluation, and when appropriate, alternative recommendations for AID to consider should also be presented. The recommendations should be presented in a separate section of the report and should be listed in order of priority; and 8) a separate section on the development impact of the Project, particularly for end-of-project or ex-post evaluations. This section should clearly present the development benefits resulting from the Project.
- e. Appendices: The report is to include the following appendices:
- 1) the evaluation scope of work;
  - 2) a list of documents consulted;

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- 3) a list of agencies and individuals consulted;
- 4) if deemed necessary by the team, a brief summary of study methodology; and
- 5) if deemed necessary by the team, any supplementary technical material too lengthy for inclusion in the body of the report.

## 2. AID Evaluation Summary Form

Immediately following presentation of the final report, the contractor should submit to USAID/Costa Rica an AID Evaluation Summary Form completed in draft. The Mission will finalize the Form and distribute the required copies.

Ralph G. Smith \*\*

## COURTS AND CRIMINAL PROCEEDINGS IN COSTA RICA

Costa Rica is known as a country which not only accepts progress and change, but one which is frequently in the vanguard. Its fierce devotion to democratic principles and its resistance to concentration of power in any one branch of government is reflected in its court system, which is unique in the Latinamerican community. Its penal procedure also reflects its willingness to vary, in some respects, from the traditional procedures of the Romano-Germanic civil law system.

### THE COURTS

All courts in the justice system are administered under the authority of the Corte Suprema de Justicia. Courts within the system are:

- The Corte Suprema de Justicia
- The Tribunales Superiores--Appellate, or "second instance" courts
- The Juzgados--Trial, or "first instance" courts
- The Alcaldías--The lowest court, equivalent to the Justice of the Peace

The Corte Suprema now consists of 22 justices (magistrados). When it sits as one body it is known as the Corte Plena. It is divided into four chambers (salas)--the Sala Constitucional consisting of seven justices, which handles constitutional matters including amparo and habeas corpus, and three other Salas, each consisting of five justices, which handle all other matters.

Magistrates or justices of the Corte Suprema are elected by the Legislative Assembly for 8-year terms, with reappointments for successive 8-year terms. A two-thirds vote is necessary to block reappointment. Magistrates of the Sala Constitucional must be elected by a two-thirds vote of the Asamblea; magistrates of the other salas are elected by a simple

majority.

The Sala Constitucional is a recent addition to the Supreme Court, and constitutes a fundamental change in the legal system. The Sala Constitucional handles constitutional cases, amparo and habeas corpus directly, rather than as the last appeal in a long process. The procedures with regard to amparo and habeas corpus have been greatly simplified, to the point that a habeas corpus action may be commenced by something as simple as sending a telegram. This has caused a drastic overload of the Sala Constitucional which the justice system is straining to accommodate. The decisions of the Sala Constitucional, unlike those of the other Salas, are "vinculante", or binding on the other courts. This is a fundamental change from the Romano-Germanic system in which there is limited, if any, stare decisis.

Each sala elects from among its own members a presidente of that sala. The presidente of the Corte Plena is elected by all 22 magistrates of the court.

Judges and alcaldes of the lower courts are appointed by the Corte Suprema for 4-year terms, after which they come up for reappointment.

All courts in the system are specialized to one degree or another--some handle criminal matters exclusively, others civil matters, labor cases, juvenile cases, domestic relations, etc.

An unusual aspect of the Costa Rican system is its inclusion under the Judicial Branch the following:

- The Ministerio Público, which is in charge of criminal prosecutions,
- The Public Defenders Office, which must provide criminal defense to any defendant, regardless of his financial condition, and
- The Organismo de Investigación Judicial, which is a judicial police force.

## CRIMINAL PROCEDURE

The normal case has two phases:

1. The instrucción, or investigation.

2. The trial (juicio), which is oral and public.

## **THE DENUNCIA**

The denuncia, or complaint, is one of the first acts of the formal instrucción. It is made by any person who has notice that a crime has been committed, in writing, or verbally before the instrucción judge, an agente fiscal (a prosecutor), or the judicial police.

Making a denuncia is optional--no one has to report a crime, except for public officials and medical personnel.

After the denuncia is made it must be referred to an agente fiscal, unless it was filed with him in the first place. The agente fiscal must then, within a 24-hour period, make a demand for instrucción, or move to dismiss the denuncia or transfer it to another court if the facts warrant.

## **THE INSTRUCCION**

### **Objectives:**

1. To determine if a crime has been committed.
2. To determine mitigating and aggravating circumstances.
3. To determine the perpetrator.
4. To determine the age, education, record, living conditions, mental condition, etc. of the accused.
5. To determine the extent of injury caused by the accused.

The instrucción is basically written and secret.

After the declaration of the accused, the sumario may be examined by the accused, the victim, defense counsel and the Ministerio Público.

The judge can reject the fiscal's request for instrucción and order the case filed away with no action if no crime has been charged or if the case cannot proceed for some other reason.

If the offense carries jail time, the judge may order detention. If not, he can cite and release. The judge may order that the accused be held incommunicado for a maximum of 10 days if there is danger of collusion with accomplices, etc. The order would not apply to defense counsel.

Once the accused is "at the disposition" of the judge, he must be questioned, if he is in custody, within 24 hours. Before questioning, the judge must request the defendant to name his attorney, and if none is named, the judge must appoint counsel. The defense counsel and the agente fiscal may be present at the declaration. The "agente fiscal" is the prosecutor who handles the prosecution at the instrucción level. At the trial level, the matter is handled by the "fiscal de juicio."

The accused may make his declaration in the absence of his defense counsel if he wishes, or he may remain silent. No presumption of guilt arises if he elects to remain silent.

Before the declaration of the accused is made, the judge must procure from him his personal data, and advise him in detail of:

- the charges against him.
- the evidence against him.
- his right to remain silent.
- his right to have defense counsel present.

In his declaration, the defendant may bring out anything he believes to be appropriate to show his innocence or clarify the facts, and he may indicate the investigation or proofs he desires to be made.

The judge then asks such questions as he deems appropriate, which must be clear, precise and not leading, suggestive or deceitful. The accused can make as many statements as he desires as long as they are relevant and not dilatory.

Once the declaration is made, it must be read aloud to the accused, otherwise it is invalid.

Within six days after the declaration of the accused, the instrucción judge may:

1. Order the case to proceed, or
2. If he feels there are insufficient grounds either to proceed or to dismiss, he may issue an order of "falta de mérito." This does not close the case, but leaves it dormant pending more proof.
3. If neither of the foregoing is the case, the judge issues a "sobresamiento irrevocable y final" (dismissal with prejudice).

Procesamiento, the instrucción proceeding, is ordered if there is probable cause to believe that an offense was committed and that the accused committed it. (The corpus

delicti).

The judge may order the defendant held in custody, or, if the penalty does not exceed 10 years, and the judge believes the defendant would receive no more than five, he may order "excarcelación" or freedom pending trial. This might be under "caución juratoria" (own recognizance), or "caución real" (cash bond). Judges rarely allow the defendant to be released on his own recognizance.

The judge's order of excarcelación may be appealed within 24 hours by either the accused or the fiscal.

The instrucción must be completed within two months, starting with the declaration of the accused. However, the judge may request two two-month extensions, so instrucción almost always lasts at least six months. Extensions are authorized by the trial court, which acts as the superior of the instrucción court in such a case.

After the prescribed period of instrucción, whether two months or six months, if the judge cannot either dismiss the case or elevate it to trial, there may be an extraordinary extension of instrucción. This can be six months if the penalty is one year or less, or one year if the penalty is greater. If the defendant is in custody, he must be released during any extraordinary extension. The extraordinary extension does not close the instrucción--it only "paralyzes" it pending further proof necessary to either dismiss or elevate to trial.

After the extraordinary extension the judge must dismiss if no new evidence has been discovered. The accused may move for dismissal prior to the end of the period if new evidence in his favor has come in.

## **ELEVATION TO TRIAL**

At some point in the instrucción period, the judge may deem the instrucción completed, but since the exercise of a penal action is a monopoly of the Ministerio Público, the agente fiscal may dispute the decision of the judge. On the other hand, the fiscal may ask for termination of the instrucción and be opposed by the judge. In each of such cases the matter goes to the fiscal de juicio, the trial prosecutor, for determination. In this situation the fiscal de juicio is the superior of the agente fiscal.

The agente fiscal may, of course, concur with the judge's determination to dismiss, or to seek an extraordinary extension, or to elevate the matter to trial.

When the judge orders the case elevated to trial, the Ministerio Público formulates the "Requerimiento de Elevación a Juicio," which constitutes the true accusation against the defendant, and which must contain, under pain of nullity:

- The personal data of the accused, or if he is unknown, a description.
- A clear, precise and detailed account of the act and its legal category.

If the victim has delegated the prosecution of the civil action to the Ministerio Público, the requerimiento must also contain the details of the civil claim.

The instrucción is closed when the judge orders the case elevated to trial. The jurisdiction then goes to the trial court, the "tribunal de juicio."

### THE TRIAL (JUICIO)

The trial phase is, for the most part:

- Oral
- Public
- Continuous

It has as its goal the holding of the "debate", where, apart from the reception of evidence, the full argument by the fiscal and the parties takes place, and the decision is made.

The trial has three phases:

1. Preliminary orders
2. Debate
3. Decision (Sentencia)

#### Preliminary Orders

When the tribunal de juicio receives the case, the presiding judge notifies the parties to appear within 10 days, to examine the proceedings and the evidence, present new evidence, and file objections or challenges which they may deem material. If they don't appear, the tribunal de juicio may send the case back to the instrucción court.

After the time of citation to trial has passed and supplementary instrucción is completed and motions or challenges have been resolved, the presiding judge fixes a time for oral and public argument of the case, which must be within 10 days.

## Debate

The debate, which includes the taking of testimony as well as argument of counsel, is oral and public, but may be private if publicity would affect public security or morale. It continues without interruption, except that in certain cases up to 10 days suspension may be ordered.

The accused is "free" during the debate, although necessary security measures are taken. He is not to be handcuffed.

The presiding judge directs the debate, ascertains that all parties are present, advises the accused to listen carefully, and orders reading of the accusation.

The charges are read by the Secretario. The accused is then called to the witness stand, and required by the presiding judge to give his personal data, which includes his name, address, business, family associates, and perhaps names of neighbors, etc. After this, the accused is advised that he may make his declaration if he wishes, but that he does not have to testify, and that if he does not, this will not be taken as an indication of guilt.

Usually the accused chooses to make a declaration, which consists of his statement of the facts in whatever form he chooses, subject to interruption for questions by the judge (or the panel of three judges, if the matter is a serious charge in which the Tribunal Superior is acting as a first instance court). The judge may then cross-examine, and after that, the fiscal de juicio and the defense counsel, as well as the other judges, may make such inquiries as they deem appropriate. There is little formal order of questioning, and sometimes the judges and the attorneys may be asking questions at the same time. There are virtually no objections, since a witness can testify to hearsay and any other matter which the court feels is relevant to the inquiry.

The accused may speak or declare as often as he wishes during the debate, as long as the court deems it relevant.

After the evidence is presented, the presiding judge gives the floor to the victim of the civil claim, the prosecutor, the defense counsel and the civil defendant, each to make his argument.

Lastly, the judge asks the defendant if he has anything more to say, and, if not, he closes the debate. The clerk of the court makes a non-verbatim record of the proceedings which all parties must sign.

## Sentencia (Decision)

Immediately following the close of the debate, the members of the tribunal de juicio

go to deliberate in secret, with the clerk of the court present. The deliberation cannot be suspended except by an act of God. If in the deliberations it is decided that more evidence is needed, or clarification of evidence, the court may reopen the debate.

The deliberation must result in a decision. It must be drawn up and signed immediately and read in public audience before anyone who wishes to attend.

If the accused is absolved, he is released; if convicted, the penalty is imposed and the question of judicial costs and restitution resolved.

## **APPEALS**

There are five means of recourse from judicial decisions:

1. Recurso de Revocatoria
2. Recurso de Apelación
3. Recurso de Queja
4. Recurso de Revisión
5. Recurso de Casación

During the phase of instrucción, the recurso de apelación is most often used. The recurso de revocatoria is the only recourse available during the trial phase. After trial, the recourses available are the recurso de casación and the recurso de revisión.

### **Recurso de Casación**

Casación is commenced before the same tribunal which made the decision. It may be interposed by the Ministerio Público, the defendant, or parties to the civil litigation. It is based upon misapplication of the law, technical defects, etc.

### **Recurso de Revisión**

This recourse is based upon claims of irreconcilable conflicts in the evidence or findings of the court, or when new evidence shows the falsity of documents, or when it is claimed that the acts did not constitute a crime, or that the accused is shown not to have committed it.

## **OTHER TYPES OF PROCESS**

### **Juicio Por Citación Directa:**

This is employed for offenses carrying a penalty of less than three years of incarceration, based on claims of false testimony, etc., and is elevated to the juez penal

without instrucción, upon an "información sumaria" made by the agente fiscal within 15 days of detention.

Juicio de Faltas y Contravenciones:

This process is for minor offenses such as drunkenness, vagrancy, etc., which are tried by the alcalde. Trial is immediate, oral and public if the accused denies the offense. There is no appeal except recurso de revocatorial which must be interposed within 24 hours of the ruling.

Juicio por Delitos y Acción Privada:

This type of action is brought by the victim in cases of calumny, injury, defamation, etc. It is commenced by a "querella", which is complaint by a victim personally injured by the actions of the accused. Upon presentation of a querella, the judge convokes a conciliation hearing. If the querella is not withdrawn and no conciliation is accomplished, the parties are cited to trial within 10 days.

This is a private action. If the complainant withdraws the querella, the matter is ended, and the judge must dismiss.

\*\* The foregoing was prepared from information contained in La Justicia Penal En Costa Rica, by Jose Ma. Rico, et al, personal observation and miscellaneous other sources.

Justice Sector Improvement Project  
Full Project Budget and 1992 Budget

	<u>Full Project</u>	<u>1992</u>
<u>Comisión Nacional</u>		
colones		35,651,556
dollars		31,900
converted to \$	\$ 678,136	\$ 306,143
component's share	23.4%	22.4%
 <u>Escuela Judicial</u>		
colones		48,511,748
dollars		-0-
converted to \$	\$ 736,630	\$ 373,167
component's share	25.4%	27.3%
 <u>Sistema de Referencia Legislativa</u>		
colones		72,293,200
dollars		29,008
converted to \$	\$ 879,555	\$ 585,110
component's share	30.3%	42.8%
 <u>Unidad Ejecutora</u>		
colones		13,485,649
dollars		-0-
converted to \$	\$ 539,010	\$ 103,735
component's share	18.6%	7.6%
 <u>TOTAL</u>		
colones		169,942,153
dollars		60,908
converted to \$	\$2,833,330	\$1,368,155
(audit was budgeted separately @ \$66,670 for total of \$2,900,000)		

Sources: Full project budget is from the 9/14/88 Assistance Agreement. 1992 figures are from budgets approved with the 1992 work plans (using 130 colones to the dollar for comparing component percentages). '92 budgets are being revised to account for variations between projected and actual year-end 1991 expenditures. Adjustments for the year will be approximately \$62,000 for all components together.

Justice Sector Improvement Project

1991 Budget/Expenditure Summary

	<u>Budgeted</u>	<u>Expended</u>
<u>Comisión Nacional</u>		
colones	39,278,816	26,057,507
dollars	77,053	3,572
converted to \$	\$ 434,133	\$ 240,458
component's share	23%	23.5%
<u>Escuela Judicial</u>		
colones	48,400,520	22,699,701
dollars	47,736	7,590
converted to \$	\$ 487,740	\$ 213,951
component's share	26%	21%
<u>Sistema de Referencia Legislativa</u>		
colones	64,846,010	33,924,059
dollars	43,008	3,612
converted to \$	\$ 632,517	\$ 312,013
component's share	33.5%	30.5%
<u>Unidad Ejecutora</u>		
colones	34,069,281	27,948,201
dollars	21,210	1,627
converted to \$	\$ 330,930	\$ 255,702
component's share	17.5%	25%
<u>TOTAL</u>		
colones	186,594,627	110,629,469
dollars	189,007	16,401
converted to \$	\$ 1,885,322	\$ 1,022,123

Note: To compare budgets among components, the amounts budgeted and expended in colones were converted using a rate of 110 colones to the dollar. While this was obviously not the actual rate during the year, it permits a relatively accurate estimate of the relative shares of the components since the amounts originally budgeted in dollars were relatively small.

JUSTICE SECTOR IMPROVEMENT PROJECT  
WORK PLAN 1991

Component No. 1 - National Commission

Program No. I-1:

To update the 1986 ILANUD-FIU Justice Sector study, with emphasis on the Judicial Power, Police and Penitentiary System.

Program No. I-2:

To give technical assistance and computer equipment to the Departamento de Planificación of the Corte Suprema.

To bring in outside experts from the Office of Court Administration of Puerto Rico, and to send the director of the Depto. de Planificación to Puerto Rico for study of the system there.

Program No. I-3:

To continue aid the instutional development of the National Commission by developing the technical and administrative capacity of the Executive Secretary.

Purchase of computer and other equipment for the Commission.

Program No. I-4:

Aid in modernizing legislative procedures by training teachers to in turn train legislative aides and technicians, through the Facultad de Derecho of the University.

Preparation of a Legislative Procedure Manual.

Program No. I-5:

Aid the Facultad de Derecho in the creation of data bases on jurisprudence, doctrina, legislation and specialized information such as student theses and legal periodicals.

Development of a thesaurus on constitutional law.

Program No. I-6:

Develop, coordinate and support specific programs by:

1. Publications
2. Research

3. Support for seminars, forums and workshops.

Program No. II-1:

Training for law students who have interest in working for the Ministerio Público. Graduates would have priority for jobs in the Ministerio Público after graduation.

Program No. II-2:

Analyze the impact of the reform of constitutional jurisdiction on the Procuraduría General. Publish the findings to aid procuradores.

Program No. II-3:

To inform and train penitentiary system personnel in techniques for prevention, counseling, treatment, etc., mostly with regard to crimes of violence.

Program No. II-4:

Provide the Penitentiary System with a library of texts and other material on cause and treatment of violence.

Component No. 2: Reorganization and Expansion of the Judicial School

Program No. 1-A:

This is the same program as II-1 above.

Program No. 1-B:

Training for 3rd year law students who have shown interest in becoming public defenders.

Program No. 1-C:

Practical training for work in the justice system for 3rd year law students. Two year course. Graduates would be required to work three years in some judicial office.

Program No. 1-D:

Training for pro-tem alcaldes--a 7-month course for law graduates. Graduates must work two years within the judicial system after graduation. (Not financed by the bilateral).

**Program No. 1-E:**

Pre-graduate training. Plans not complete.

**Program No. 2-A:**

Orientation for recently appointed judicial functionaries--  
professional only.

**Program No. 2-B:**

Basic courses for both professionals and support personnel  
who have worked no more than one year for the Poder  
Judicial.

**Program No. 3-A:**

Continuing education--support personnel.

**Program No. 3-B:**

Continuing education--professional personnel.

**Program No. 4:**

Advanced courses for judges, including supreme court  
magistrates.

**Program No. 5:**

In-house workplace training of support personnel in all  
parts of the country by travelling teams of advisers. (Not  
funded by the bilateral).

**Program No. 6:**

Broad training over a 2-year period of any support personnel  
working in any branch of the administration of justice.

**Program No. 7:**

Research in seven areas comprising nine investigations.

**Program No. 8:**

Publication of the results of research

**Program No. 9:**

Teacher training.

Program No. 10:

Evaluation of the Judicial Schools teaching methods.

Program No. 11:

Contracting of consultants.

Program No. 12:

Publicity to the legal community. (Not funded by the bilateral).

Program No. 13:

Improvement of physical facilities for the Judicial School.

Program No. 14:

Purchase of equipment.

Component No. 3: Systematization of Current Legislation

Program No. 1:

Analysis and design of system.

Program No. 2:

Development phase.

Program No. 3:

Installation phase.

JUSTICE SECTOR IMPROVEMENT PROJECT  
WORK PLAN 1992

Component No. 1 - National Commission

Program No. 1: Institutional Development of the National Commission

Continue the work of the National Commission and strengthen the technical and administrative capacity of the Executive Secretary. Identify and contact national and international organizations which might be new sources of funding.

Program No. 2: Strengthening of Law Libraries and Centers of Legal Information.

A. Law Library of the Facultad de Derecho, UCR:

Prepare a database for legal periodicals and of theses and other work prepared by law students as a requirement for graduation. These materials are in the university law library. This database would be interconnected with the rest of the university library system.

B. Corte Suprema de Justicia--Support for the Sala Constitucional:

Preparation of a database on Constitutional Law in the areas of 1) legislation, 2) jurisprudence, 3) doctrina. Approve the judicial thesaurus of standard vocabulary, promote the interchange of information among the participating institutions, and publish a bibliography of constitutional law and a vocabulary manual.

C. Procuraduria General--Cataloging and distribution of bibliographic materials concerning doctrina in the hands of the Procuraduria General:

Acquiring, processing and cataloging new bibliographic material for the Procuraduria; entering it in the existing Procuraduria database; making data available to other law libraries in the country. Long-term aim is to provide new enlarged physical space and equipment.

D. Strengthening of the law library of the Ministry of Justice:

Updating of the law library of the Ministry of Justice, to facilitate handling of matters such as decrees and legislative advice; compilation of legislation which regulates the Ministry of Justice; design of a database, acquisition of software, entry of data, purchase of computer

equipment, etc. Work in areas of constitutional law, public, corporation, administrative, penal, penitentiary law, etc.

**E. Colegio de Abogados: Creation of legal reference center:**

Resurrection of the Colegio de Abogados law library which ceased to function six year ago. Acquisition of books, studies of lawyers' needs, database for a Centro Referencial de Informacion Juridica para Abogados. Purchase of computer equipment.

**F. Legislative Assembly--Department of Technical Services:**

Indexing of materials existent in the Depto. de Servicios Tecnicos of the Asamblea; acquisition of computer equipment; cataloging and classifying of information; preparation of a database. Agreements would be made for exchange of information with other entities.

**Program No. 3: Coordination of legal services of the Public Administration.**

Coordination of judicial services of various agencies of public administration which have different, and sometimes conflicting, viewpoints. Study by experts to identify problems; publication of findings; seminars on different aspects of public administration, e.g. legal regulations, financial regulations, constitutional jurisdiction, and the social and economic context of the State.

**Program No. 4: Procuraduria General--Update of training for personnel of the Procuraduria.**

Provide a seminar given by a foreign expert for personnel of the Procuraduria because of the complexity of the problems, work overload of personnel, etc.--especially because of the new Ley de Jurisdiccion Constitucional.

**Program No. 5: Facultad de Derecho, UCR--Information concerning teaching and legal research:**

Train teams in each law school branch on the proper and uniform entry of computer data; establish policies for integration into other legal information projects in the country; assist in the preparation of the thesaurus on constitutional law; continue amplification of databases on criminal, constitutional, private and administrative law. Publish pamphlets.

**Program No. 6: Training for Penitentiary System Personnel:**

Six seminars or workshops on domestic violence, sexual abuse--including child abuse and incest--for social workers within the correctional system.

**Program No. 7: Legislative Assembly--Systematizing of Legislative Procedures:**

Preparation or revision of annotated Manual of Legislative Techniques, for standardization of legislative procedures. This is the last step of a previous program for training of legislative technical employees.

**Program No. 8: Facultad de Derecho, UCR--Review of curriculum:**

Visits to leading law schools of the U.S. by (presumably) law professors or dean, to get information for modernization of the law curriculum, and:

1. Broad studies to determine what law students should be taught in modern times: necessity of practicality and knowledge of new fields, etc.
2. Analysis of present curriculum with view to flexibility.
3. Investigation of modern teaching methods and strategy.
4. Study of how to improve lawyers so they can assist in the solution of society's present-day problems.

[Note: How many visits, by whom, and what kind of reports?]

**Program No. 9: Development, coordination and support to specific programs:**

Publish materials produced through the program and make them available to students, professors, judicial personnel and lawyers; continue studies to determine additional needs for specific studies or programs.

**Component No. 2: Reorganization and Expansion of the Judicial School**

**Program No. 1: Orientation Courses for Professional and Support Personnel:**

Basic orientation courses for recently appointed professional and support personnel.

**Program No. 2: Basic Courses:**

Basic courses for judges who are assigned to particular areas, covering procedural and substantive law, administration, practical techniques for handling cases and training in analysis of cases. One month, with evaluation.

**Program No. 3: Continuing Education for Professional and Support Personnel:**

**A. Support Personnel:**

Ten courses for support personnel, including accountants, auditors etc. Broken into categories: Administrative, Civil, Criminal, Information, and Human Relations. All five-day courses except H.R., which is three.

**B. Professional Personnel:**

Courses for professionals in various branches, to update their knowledge and deepen understanding. Most courses are five days, a few three or four.

Seminar on the U.S.-Costa Rica extradition treaty.

Seminar on "Security Measures."

Basic courses in specialized areas--Civil, Penal, and special course for Alcaldes.

Continuing education courses.

**Program No. 4. Expert Groups:**

Groups of evaluators will visit various offices to teach, or check, procedural methods, one week at a time. The purpose is to standardize procedures in each office throughout the country.

**Program No. 5. Level I and II Training:**

A two-year study program for support personnel of the Judicial Branch--mainly from the courts, the Public Defenders Office, and the Ministerio Publico. Those who complete the course would get a pay raise and hiring preference.

**Program No. 6. Research:**

Research would be conducted in five areas: 1) Constitutional Law, 2) Criminal Law, 3) Civil Law (with emphasis on the new civil procedure code), 4) Speedy Administration of Justice, and 5) Updating of training needs for the Judicial School.

An editorial council of three magistrates and a designee of the Judicial School would decide the exact areas of research. Six studies would be published for future use in the School.

**Program No. 7. Program of Publication and Production of Educational Materials:**

Educational materials, studies, audiovisual aids and other material generated by the Judicial School would be published and distributed for educational use.

**Program No. 8. Teacher Training:**

Provide training for teachers in the Judicial School, teaching committees, evaluation groups and coordinators of the Judicial School. Also, design a system for production of audio-visual materials, and a system for follow-up education in civil, constitutional, criminal and continuing education areas.

**Program No. 9. Evaluation:**

All courses would be evaluated at the time given, and periodically. Systems of evaluation would be taught to teachers.

**Program No. 10. Contracting of Consultants:**

Contract professional consultants for various courses.

**Program No. 11. Publicity To the National Legal Community:**

Put on conferences, collaborating with others in interdisciplinary courses, and improving the image of the judicial branch and administration of justice in general.

**Program No. 12 Remodeling of the Physical Structure of the Judicial School:**

Remodel the Judicial School's physical plant for better development of its activities.

**Program No. 13 Opening of the 1992 Judicial Year:**

**Program No. 14 Assignment of One Classroom for Computer Training:**

The providing of 15 computers through the Project Implementation Unit, to be used in a classroom of the Judicial School, for intensive computer training (3 days) of

approximately 600 judicial employees.

**Program No. 15 Centralamerican Regional Center of Studies and Training:**

Formation of a regional judicial school for Central America-  
-El Centro de Estudios y Formacion Judicial Centroamericano.

**Program No. 16 Postgraduate in Administration of Justice:**

Postgraduate course in administration of justice for both professionals in service and those who aspire to enter the judicial branch. Prepare aspirants to enter career specialties and strengthen ethics and judicial attitudes.

**Program No. 17 Popular Legal Education:**

Inform citizens of their rights and duties under the law; how to exercise them; and the functioning of the legal system. Heavy use of radio to reach rural areas, with this use to be extended to areas of greater density.

**Component No. 3: Systematization of Current Legislation**

Computerize laws of the last 20 years and dictámenes of the Procuraduria General since 1988 to date. Establish uniform terminology. Install system software etc. to permit access by modem for fee-users to support the system financially. Publish manuals on the use of the system, promote publicity, etc.

**Component No. 4: Project Implementation Unit (PIU) (Unidad Ejecutora)**

Handle implementation of the JGIP program with three components to plan, program and supervise activities. Coordinate efforts of component beneficiaries. Handle financial management.

**NEW PROPOSAL BY THE MINISTRA DE JUSTICIA, 26 MARCH 1992**

The Ministra de Justicia, Lcda. Elizabeth Odio B., has presented a proposal for a new bilateral agreement. The proposal was prepared by the Executive Secretary of the Comisión Nacional.

This document does not state how the new bilateral would be implemented, and no reference is made to an ILANUD project implementation unit, such as is utilized in the present bilateral. Whether implementation would be by a separate PIU as at present, or by ILANUD itself without a separate PIU, or through the National Commission as a foundation, or by some other means is not clear.

The proposal details some nine programs. The following are simply random comments and do not constitute a complete study of the proposal:

1. Legislative Reform In the Fields of Commercial Law and Criminal Justice

The only area specifically covered in the proposal is that of criminal law, and support of the Comisión de Reforma al Proceso Penal. The objectives of the inquiry are appropriate, and the members of the Commission are well-known and of top calibre.

This appears to be a worthwhile project at relatively low cost.

2. Strengthening of the Judicial School

This proposal covers a number of programs or courses which would be undoubtedly beneficial to the participants. Judging from the very good reputation of the Judicial School, it would be expected that the programs would be well presented with good written materials. It is noted, however, that the presupuesto for the activities totals some \$2,444,618.60. Since we are advised that the funds available for a new project would be approximately \$2,000,000, the programs could not be funded as presented.

The Judicial School is, from all accounts, a success, and perhaps should be able to survive and continue its work without the continued assistance of AID. If it evolves into a regional institution as being contemplated, the funding may become available from other sources.

In passing, it is noted that the proposal provides for three posgrado courses. It appears that at some point such courses would encroach upon the domain of the Facultad de Derecho of the University, and go beyond the proper function of a Judicial School, whose primary purpose should be for practical training rather than higher education.

### 3. Continuation of the Procuraduría's LRS Project

This is simply a continuation of the Procuraduría's efforts to complete its data base of legislation, dictámenes, etc., and to provide access to such material.

The LRS is an enormous labor-intensive project in which a great deal of work has already been done. If completed, it will be of inestimable value to all sectors of the judicial and legislative systems, as well as to the Procuraduría. If not completed, it will share the same fate as the aborted 1973 effort to compile the laws.

The individuals involved in the program are highly motivated, knowledgeable and energetic, and there is every reason to believe that the program will be completed, although not within the timeframe originally contemplated.

### 4. Training for Personnel of the Procuraduría General

Training for the Procuraduría is said to be necessary because of the complexity and quantity of their work, especially with the increases due to the inauguration of the Sala Constitucional. It is unclear as to whether this training would be in areas of law, or in areas of case management, procedures, etc.

The basic work of the Procuraduría is, we understand, the research of narrow legal questions submitted to it, and the preparation of dictámenes giving the Procuraduría's opinion. Since the law involved would be that of Costa Rica, it is difficult to see why foreign experts would be necessary for training.

### 5. Coordination of Legal Services of the Public Administration

This program is said to be necessary to avoid conflicts and/or duplication of legal services by various agencies, and to provide the public with knowledge of the existence of sources of information.

The end is certainly desirable, but it is difficult to see why scholarships, internships, etc., are necessary to solve such problems. Periodic seminars or in-house training would appear to be adequate.

### 6. Computerization of the Salas de Casación

This program apparently contemplates both preparation of a data base for legal research materials, and a computerization of case flow, docketing, etc. These systems would be connected in a local-area network (LAN).

The aim of the program is desirable, but before proceeding the court should:

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1. Take steps to insure compatibility and connectability between this system and the Procuraduría and other data base systems.

2. Take steps to streamline in any way possible the docket control, paper flow, etc. of the court, so that a deficient system is not simply perpetuated in computerized form.

7. Support For the Sala Constitucional

This program embodies three basic requests:

1. Additional personnel consisting of seven asesores.

2. Consultation with two international consultants.

3. Trips to Washington D.C. for three magistrates or Supreme Court functionaries for study in the U.S. Supreme Court, and trips for two consultants from Washington to Costa Rica.

The Sala Constitucional has been inundated with cases, and obviously needs all the help it can get. It may be that consultation with the administrative office of the U.S. Supreme Court would be helpful, but given the difference in legal systems and procedures between the two countries, and the press of business in the U.S. Supreme Court, it seems doubtful that much could be accomplished by this means. It might be better to consider consultation with the administrative offices of well-run state supreme courts, where the personnel involved in such matters would perhaps have more time to confer, and the workings of the system might be more readily available for inspection.

8. Investigation of Alternative Dispute Resolution Systems

This program contemplates the preparation of a bibliography, summaries of legislation and analysis.

Alternative Dispute Resolution (ADR) has been the subject of a great deal of discussion in the United States, but very little in the way of practical progress. It would appear that the present procedures, case flow, case management in general, productive use of court time, etc. should be investigated and reformed before spending a great deal of time on such things as ADR. Only one study has been made by the JSIP to try to determine causes of court delay. A great deal more needs to be done with the present system before embarking on the study of alternatives.

9. Scholarships For Law School Professors for U.S. Study

This program would provide scholarships for study in the United States of fields of law just emerging, or long neglected, in Costa Rica. These include:

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1. International Commercial Law
2. Patents and Copyrights
3. Environmental Law
4. Computer Law
5. Extradition

Attention to these fields is certainly necessary. The first steps toward the remedy of the present deficiencies, however, would seem to be intensive study of the problems with materials readily available in Costa Rica, or which could readily be supplied from outside sources. The business of a lawyer, and certainly of a law school professor, is investigation of the law. Perhaps committees of knowledgeable lawyers or law professors could be formed to study each of the fields mentioned. With the results of such preliminary investigation in hand, study of specific problems at specific schools in the United States might be warranted.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **WORKSHOP ON THE UPDATING OF THE SECTORAL STUDY OF THE ADMINISTRATION OF JUSTICE IN COSTA RICA MADE IN SEPTEMBER, 1986**

San Jose, December 5th and 6th, 1991

#### **JUDICIARY**

1. It is necessary to integrate the different subsystems of the administration of justice and support joint educational activities in order to avoid conflicts between those subsystems.
2. The Supreme Court must dedicate itself to the study of a complete reform of the judicial system in coordination with the Comision de Reforma del Estado.
3. The Supreme Court must continue its efforts to obtain legislative approval of the Ley Organica del Poder Judicial and to consider the Ley de Carrera Judicial project and, if possible, to obtain simultaneous approval of both laws within a short period of time.
4. The Ley de Carrera Judicial should provide for more participation of the Judicial School in the selection of officers and employees.
5. Participation in activities sponsored by the Judicial School should be used as criteria for the qualification of candidates for judicial positions.
6. The membership of the Judicature Council, contemplated in the Ley de Carrera Judicial project, should include the participation of, at least, a justice administrator of the highest hierarchical level.
7. The Ley Organica del Poder Judicial must include a determination of the work to be performed by "magistrados suplentes" (pro-tem judges) based on their areas of expertise.
8. Judicial officers who are legally qualified within the requirements set by the Ley Organica and who live in the judicial district should be the first choice for interim appointments.
9. The Supreme Court must study the problems faced by the "juez administrador del despacho" (chief judge) and the judicial school must include in its programs the training of such judges in court administration.
10. In addition to such training, management systems in judicial offices must be analyzed and the possibility of future utilization of professional court administrators should be considered.
11. The Supreme Court must study and seek a better system for managing judicial offices and limiting of the creation of new "despachos" (courts) as small "feudos" which preclude administrative uniformity.
12. The Supreme Court must study reducing the number of positions within the judicial system and must consolidate similar and overlapping functions and duties.
13. The standards for the composition of the legislative committee on judicial appointments now included in the constitutional reform project are vague. Definite parameters should be set for the selection of committee members and the committee's duties, objectives, powers, procedures and scope of examination should be clearly stated.

Publications, Judicial School

1. El Proceso Hipotecario
2. Comentarios a la Nueva Ley de Inquilinato
3. Guía de Actuaciones y Recomendaciones Para El Proceso Tutela de Menores
4. Escuela Judicial en Costa Rica, Perspectivas
5. Jornada Académica Sobre El Apremio Corporal
6. Traducción del Manual de Técnicas de Investigación de la FBI
7. Texto Básico de Instrucción en Materia Civil
8. Texto Básico de Instrucción en Materia Laboral
9. Antología de Derecho Procesal Penal
10. Notas Explicativas de Proceso Ordinario Y Proceso Abreviado
11. Conclusiones y Recomendaciones en Relación con La Materia de Faltas y Contravenciones.

## 1989 EDUCATIONAL ACTIVITIES

LOCATION	TYPE/SUBJECT MATTER	PARTICIPANTS	CATEGORIES
Reg.Centers	Classes-Civil Law & Proc.	101	*
Reg.Centers	Classes-Crim Law & Proc.	90	*
Reg. Centers	Tutorials	32	*
San Jose	Classes-Basic Course I	19	Supp.
San Jose	Classes-Civil Law & Proc.	78	Supp.
San Jose	Classes-Crim. Law & Proc.	114	Supp.
San Jose	Classes-Labor Law	51	Supp.
San Jose	Classes-Administrative Proc.	52	Supp.
San Jose	Classes-Basic Introductory	12	Judicial
San Jose	Classes-Civil Law & Proc.	17	Jud.
San Jose	Classes-Labor Law	51	Jud.
San Jose	Classes-Family Law	20	Jud.
San Jose	Classes-Crim. Law & Proc.	40	Jud.
San Jose	Classes-Crim. Law & Proc.	21	Pub. Def.
San Jose	Classes-Crim. Law & Proc.	18	Prosecutors
San Jose	Seminar-Landcond/Tenant Law	16	Jud.
San Jose	Seminar-Agr. Court Adm.	26	Jud.
San Jose	Seminar-Maritime Law	26	Jud.
San Jose	Seminar-Extradition Law	18	Jud.
San Jose	Seminar-Minors Law	28	Jud.
San Jose	Workshop-Minors Law	15	Jud.
San Jose	Workshop-Notarial Law	26	Jud.
San Jose	Workshop-Court Delay-Crim. Cases	25	Jud.
San Jose	Workshop-Forensic Medicine	36	Jud.
San Jose	Workshop-Civil Procedure	45	Jud.
San Jose	Conferences-Various (8)	244	Jud.
San Jose	Round Tables - (2)	166	Jud.

\* Probably Support Staff

## **REGIONAL JUDICIAL SCHOOL**

The Supreme Courts of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama agreed in March 1989 to create the Centro de Estudios y Capacitación Judicial Centroamericano. The purpose of the Centro is to provide judicial education throughout the Central American Countries and Panama and to develop a forum for the exchange of legal research and knowledge and of judicial administration programs and ideas. The Centro is Also to provide the technical assistance for the development of uniform codes of law to be used throughout the region.

The Centro will begin operations in Costa Rica and activities will be held at the Escuela Judicial of Costa Rica for its first three years. The location of the activities to be held after that period will be determined at a later date. The Centro will not be housed in a separate building, it will use whatever facilities are available in the Escuelas Judiciales.

Courses to be taught at the Centro will not duplicate courses being taught at the Escuela Judicial de Costa Rica or at any other of the participants' Judicial Schools. More emphasis is to be made on comparative law studies and its ultimate goal is a democratic system of law.

Participants will be chosen by the Supreme Court of each country and approved by the Consejo Directivo del Centro. Each participant will be expected to hold at least one seminar, workshop or class, for other members of the legal system in his or her own country, within the two months following the completion of courses at the Centro.

The Escuela Judicial de Costa Rica will provide adult education methodology training for the faculty of the Centro. It will also develop the model plan for training the faculty of other judicial schools.