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The Inter-American Legal Services Association (ILSA):

History, Functions and Future

Joseph R. Thome

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Introduction

The Inter-American Legal Services Association (ILSA) is a private regional organization created in December 1978 to help the poor in Latin America and the Caribbean obtain greater access to law and legal institutions. By and large, this mission has been carried out by supporting organizations that are based in the region and provide a wide variety of legal services to low income individuals and groups (ILSA, Grant Proposal, Feb. 1982, p. 2).

Until June 1982, ILSA's headquarters were in Washington and its core funding came from the Agency of International Development (AID) of the U.S. Government. Following the termination of AID's grant, ILSA reconstituted its headquarters in Bogota, Colombia and has received a two year grant from the Canadian International Development Agency (CIDA) to cover its basic operating costs (id., p. 3).

The primary interest of this report is to try to reach some conclusions on the role of an institution such as ILSA, in particular, and of legal services in general, within the Latin American and Caribbean contexts. To what extent did ILSA's objectives and programs relate or respond to the areas political constraints and social needs? Were any new legal service programs instituted solely as a result of ILSA's efforts? Does any useful model or lesson emerge from all the activity undertaken by ILSA over the years? And finally, what are the vital needs of legal service programs in the area, and how can ILSA best respond to these needs? These are the types of questions which this report will attempt to answer.

For this purpose, the report will first provide a brief survey on ILSA's history and its socio-political context. This is followed by a discussion of ILSA activities and accomplishments to date. The next and most important section evaluates ILSA's goals and strategies, administrative structure and program activities or, to put it in another way, its function as a promoter of legal services. The report will conclude with some general observations and recommendations.

Aside from relevant literature, various sources of information were used in the preparation of this report. Full access was provided to ILSA documents, reports and to its officials. The author also attended some ILSA conferences and Board of Directors Meetings, and finally, during July 1982, visited several legal service and related programs in Latin America and the Caribbean.

1. Background: ILSA's history and its socio-political context

1.1 The need for legal services in Latin America and the Caribbean

The persistence of inequitable social and economic structures in Latin America and the Caribbean hardly needs emphasis. Approximately 55 million people (18% of the total population) in the area live in a state of absolute poverty characterized by infant mortality rates of 128 per 1,000 births, illiteracy rates of 62%, life expectancies of 50 years, and average per capita incomes of less than \$100 per year. In addition, there are tens of millions with incomes barely above the poverty level who can't satisfy their basic needs even while the benefits of economic growth accrue to the upper echelons of their societies who enjoy standards of living similar or better than those of developed societies (Thome, 1979:252, citing McNamara, 1976, pp. 5, 6; 13, 14).

According to many authorities, it is the maldistribution of resources and not their absolute scarcity which explains poverty and underdevelopment in the third world. Since as a rule the privileged few control the distribution of resources, including public services, the problem becomes one of increasing the bargaining power of the poor so as to facilitate or improve their access to available resources (Thome, id., pp. 252-253, citing Sen, 1977, pp. 14-17).

In Latin America and the Caribbean, the legal system has by and large served to preserve the status quo (Dodd et al., 1980, pp. 539-40). Even improving the "access to justice" may constitute no more than a band-aid, for many if not most class inequities exist according to law, not despite it (Johnsen, 1980, p. 24).

Nevertheless, improving the access of the poor to existing legal institutions and services may be a necessary first step toward law reform and social change. As described in an ILSA document which explains the need for legal services:

Legal problems impact on the lives of poor people more seriously than on any other group. The inability to use the legal system can be and often is disastrous for poor people in ways that are inapplicable to others. The thin margins on which poor people live make law a crucial instrument for survival and advancement. Small farmers confront challenges to their land titles or are unable to gain access to water rights and credit; workers are denied minimum wages or other labor code protections; women and minorities are illegally discriminated against; bureaucratic obstacles prevent poor people from taking advantage of their rights to health care, housing and other social benefits; and low-income groups are often the principal victims of harrassment by police and other authorities. More often than not, the poor--lacking access to administrative, judicial or legislative remedies and without legal counsel--are simply forced to endure these situations. (ILSA Grant Proposal, Feb. 1982, p. 1)

ILSA, then, was established to support the work of those organizations which were providing legal services to the poor and other underrepresented groups and individuals (ILSA Bulletin, June 1979). But as shown below, as of 1978 few programs had the resources to fulfill these functions effectively. Many didn't even try to go beyond a half-hearted effort to resolve a particular problem of a specific individual. However, some innovative legal service programs had come into existence during the 60's and 70's, most as a consequence of internal political and social developments in the area, and others as a result of Alliance for Progress and Law and Development programs emanating from the U.S.

1.2 Legal Services in Latin America Up to 1978*

Legal services for the poor have formally existed in Latin America since the nineteenth century. Following the hispanic model, the provision of this service by the private bar was considered as an ethical responsibility of the lawyers. Altruism, charity or "clientilism" were the rule. Potential clients needed "contacts" in order to gain access to a lawyer; since the services were

*This section was prepared in collaboration with Santiago Onate.

"pro bono" he didn't receive them as a right but rather as a "gift" from the particular lawyer. Lawyers had full discretion in the selection of the cases and their clients.

At the turn of the century numerous procedural codes contained a device by which the courts appointed a free lawyer to defendants that were unable to hire a private lawyer ("beneficio de pobreza"). Such lawyers were appointed from a list provided by the local bar.

During the 1930's, with the emergence of the so-called "Estado social de derecho" in countries such as Brazil, Venezuela, Uruguay and Mexico, the state took the responsibility of providing legal services to the poor. The "defensorias de oficio" and the "procuradores de pobres" were created. Such institutions could be characterized as bureaucratic, in that services were provided by lawyers paid by public funds; specialized, since only lawyers take part and the service is divided in areas, i.e. criminal, civil, etc., and, judicial, as its services are almost exclusively oriented towards court litigation, are case by case oriented, and largely independent from community controls.

With enactment of numerous pieces of welfare legislation--labour relations, social security, pension funds, industrial accidents, "social" housing--and the growth of administrative structures during the second part of the century--the obsolescence of such system became apparent. The State had enacted a series of legal provisions directed to restore equality for the underprivileged while the legal services to the poor remained out of the administrative arena. The handling of cases before the newly created administrative agencies was technical and complex; no legal services for the poor existed in such areas and administrative discretion remained unchallenged.

The fifties and sixties witness another significant development in many areas. The poor organize themselves and try to vindicate some of their

rights. The ways and means chosen were not traditional, nor were they primarily "legal" in the conventional sense of the term. Those are the years of uprisings and guerrilla warfare in Cuba, Guatemala, Bolivia, Brasil, Venezuela and to some extent in Mexico and Colombia. Repression takes not only the form of military action; it is also embodied in trials of political opponents and legal actions orchestrated by the State against free trade unions and peasant organizations. The existent legal services for the poor are of no avail to these type of conflicts. These phenomena, along with the radicalization of numerous law students during the period, provide the elements for new developments in the field of legal services. The general defeat of guerrilla warfare almost everywhere gives to the "legal battle" a new dimension. Popular organizations decide to--or are forced to--face the State in its own ground. A new type of lawyering slowly appears and with it a new model of legal services. Along with this trend, several countries witnessed the fall of long standing dictatorships and engaged in the construction of democratic structures and complex land reform programs that created a favorable climate for the legal representation of the poor.

These "innovative" legal services are frequently "nonspecialized" in the sense that they are not confined to specific areas of the law but rather focus on the general problems of one or more specific groups. As such, they often include non-lawyers and do activities that go beyond traditional reactive litigation. Along with fairly traditional legal service activity, these programs have also engaged in community legal education and para-legal training, representation of the poor before administrative and legislative bodies, law reform activities, and the systematic denunciation of the inequalities that affect the full participation of the poor in the legal process. Moreover, these innovative approaches began to affect the structure and functions of state provided legal services--Venezuela--and have in others

influenced the methods and techniques of legal education--e.g., in Brasil and Mexico.

This new lawyering, as it were, is representative of the "social and political bar" which has emerged in Latin America. Though still small in numbers, it has become a force to be reckoned with and represents at present a distinct alternative to the traditional bar.

As characterized by Rojas (1982, p. 14), these social and political lawyers

". . . tend to serve foreign sponsored clinics, and conduct primarily collective cases for trade unions, political prisoners, indigenous tribes, shanty towns or peasants. They combine practice with some sort of social science research and teaching. . . . They are likely to face lawyers' censorship when moving to orthodox legal practices; they actually face some sort of state repression to a major or lesser extent. They will develop closely entrenched relations with the groups or communities they serve. They will actively lobby for social reforms and will pursue organizational goals. Indeed, their day-to-day activities necessarily put them in contact with both poor people's needs, political prisoners and civil rights issues since all these situations are usually found in politically organized workers in Latin America."

1.3 The Law and Development Heritage

But foreign influences and programs were also important in the evolution of legal services in Latin America and the Caribbean. Thus, a thorough understanding of this process and the role of ILSA within it would not be complete without an examination of the "law and development" programs of the 60's and early 70's.

This was the time when the United States was trying to promote its brand of economic and social development throughout the third world. New programs and institutions, such as the Peace Corps and the Inter-American Bank were created, and governments were pressured into enacting land and educational reforms and other social or welfare programs. For Latin America and the Caribbean, these initiatives and programs came to be known as the "Alliance for Progress."

As put by Trubek and Galanter (1974, p. 1067), "Development was in the air: liberal America was excited by the prospects of harnessing American knowledge and resources to the development tasks." In this context, law was perceived as playing a crucial role. Securing the benefits of economic progress for all, or so it was thought, required a "modern" legal system modeled, of course, upon the United States. In this context, the Agency for International Development (AID), along with private agencies such as the American Bar Association, the Ford Foundation, the American Society of International Law and prestigious educational institutions as Stanford, Yale and the University of Wisconsin undertook programs to reform legal structures and education in the "underdeveloped" world (Gardner, 1980, p. 8).

American "technology" was thus brought into play through the introduction of Socratic analysis, problem solving, "legal engineering" and other concepts and techniques into legal education, legal research and legal reform activities. These programs included the temporary movement of U.S. legal scholars and young "legal interns" into the law schools and government agencies of various Latin American countries (Trubek and Galanter:1066-1067). Many of these efforts stressed the importance of "clinical legal education" and legal aid programs (Gardner, 1980:215-6).

Gardner and others have harshly criticized law and development programs as "legal imperialism" and have considered as ineffective their efforts toward the modernization of legal education. While many of these criticisms, particularly those focusing on ethnocentric orientation, are on target, nevertheless the heritage of the law and development movement cannot be said to be all bad. Some of its prescriptions were based on diagnoses shared by Latin American scholars and activists. And many reforms and innovations in legal services, education and research in Latin America and the Caribbean owe a debt to law and development programs.

In Colombia, for example, the Ford Foundation and AID financed programs to reform legal education in various Colombian law schools. Aside from introducing new teaching techniques and promoting legal research, these programs also resulted in the creation of still active legal aid clinics at several law schools, with participation therein made a requirement for all law students. Although most of their activity is geared toward educational goals, nevertheless some of these clinical programs do have some stimulating projects (Valencia interview:1982). Even more important, they have helped to engender, through their example and graduates, an increasingly active and diverse number of non-university legal service type programs (Rojas, 1982:8-9). Similar developments occurred in Brasil, Chile, Costa Rica, Peru and other countries.

The opportunity of young Latin American legal activists and scholars to study abroad, to be involved in socio-legal research projects, and to be exposed to clinical programs were, in the long run, probably the most beneficial aspects of the law and development movement. Many of the exciting and innovative legal service and research activities that have recently blossomed throughout Latin America were organized or are directed by lawyers who participated in law and development programs and who were able to extract from this experience what was useful and relevant to their context and needs. Ironically, or naturally enough, this autoctonous development seems to have taken hold once the heavy presence in Latin America of U.S. legal scholars and interns came to an end. In some small but not unimportant way, the law and development movement seems to have succeeded despite itself.

1.4 ILSA's Origins

ILSA thus came into the scene at a propitious moment. Local groups, particularly the "social bar", was very active in many Latin American countries in establishing legal service programs. At the same time, some law and development seeds had indeed taken hold. And ILSA, while inheriting some

traits and even rhetoric from the law and development movement, nevertheless profited from this experience and began to develop a conceptual framework and mode of action which tried to avoid the patronizing and ethnocentric orientation of earlier days.

The long gestation period preceding ILSA's birth played an important role in this development. ILSA was the progeny of a three-year study on law and social change in the American republics undertaken in January, 1976, by the American Society of International Law (ASIL), under the auspices of the Inter-American Judicial Commission (IJC), and funded by the Agency for International Development (AID). (Dodd et al., 1980:534). ASIL's Executive Director, also a member of the IJC, was most influential in obtaining the sponsorship, and the corresponding legitimacy, from these institutions (id., pp. 551-555).

The basic instrument for this study was a special panel that was assembled for this purpose, which met several times over a period of 18 months (Dodd et al., 1980:553). The basic working or consultative group of the panel consisted of eight persons, of whom 5 were from Latin America or the Caribbean (though two resided in North America), and three from the United States, all with some experience in Latin American (ASIL Grant Proposal, 1979:6). In addition, the panel sponsored 5 major conferences between 1976 and 1978, which were attended by individuals from sixteen countries in the Western Hemisphere (Dodd et al., 1980:553).

The goal of these meetings and their broad representation was to base a legal service program on what the Latin nations and people themselves perceived as their problems. A conscious attempt was thus made not to impose foreign models but rather to achieve a common agreement of needs, goals and programs through a participatory and collaborative process. At the end, the panel concluded that an inter-American legal services association (ILSA)

should be organized to promote the use of legal aid, public interest law or group representation, and law reform activities as vital instruments for protecting human rights and fulfilling basic human needs throughout the hemisphere (ASIL, 1978:37-41).

Apprehensive of potential political problems, ILSA at first adopted a cautious stance and limited its support to traditional legal aid programs. But as explained in a subsequent section, ILSA has over the years moved toward a "social bar" stance, and presently emphasizes support of group representation programs and law reform activities.

2. History of ILSA:1978-82.

2.1 The organization period (September 1978 through April 1979)

The work and deliberations of the ASIL panel referred to above culminated on a proposal for a grant, submitted by ASIL to AID in mid-1978. In August 31, 1978, AID approved a \$380,580 three-year grant to ASIL for the creation of an Inter-American Legal Services Association in Latin America and the Caribbean (AID, Grant 1978).

According to the grant, ILSA's over-all objective was to support Latin American and Caribbean organizations that provide legal services to the poor and under-represented. Toward this end, ILSA was to pursue the following activities (ILSA Newsletter, 1981, p. 2):

- to increase financial assistance to legal services organizations in Latin America and the Caribbean
- to foster greater communication and interaction among these organizations through conferences and media
- to assist and provide technical support
- to stimulate research aimed at improving the efficiency and effectiveness of legal services
- to obtain greater support from Latin American and Caribbean governments and bar associations for domestic initiatives to expand delivery of legal services.

Soon thereafter, ASIL's executive director began to establish the organizational structure necessary to carry out ILSA's program of action. The process of incorporation was initiated, and the central office opened at ASIL's headquarters. The first Board of Directors meeting was held on December 8, 1978, at which time the ILSA's bylaws were adopted, the ASIL executive director elected as ILSA's first president, directors named for 2 regional offices in Bogota and Kingston, and a tentative work program established for the next six months (ILSA Bi-annual Report, March 1979:2-3).

Having ILSA's central office located in Washington was deemed important, at least at this early stage, in order to establish and maintain contacts with funding sources in the U.S., such as AID, Ford Foundation and IAF. In

addition, a central core of direction was needed, and no other individuals or host institutions were available (Rubin comments, May 1982).

From the beginning to the present, ILSA's Board has consisted of eleven persons (all male), composed predominantly of Latin Americans and Caribbeans. This national diversity represented a conscious and laudable attempt to break the patronizing top-down approach of other development programs, as well as to achieve legitimacy and respectability for ILSA (Kessler interview, 1982). As seen later, however, the process of selecting the initial board left something to be desired.

During this remainder of this period, efforts were concentrated on obtaining tax-exempt status, drafting a brochure, planning a large meeting on legal services, subsequently held in Santo Domingo, and developing an operational staff (ILSA Bi-annual Report, March 1979, p. 2-5).

2.2 The "take-off" period (May 1979 through November 1980)

After a winter of preparation, ILSA finally blossoms as an operational institution during the Spring of 1979. Several events mark this transition:

- 1) A young attorney is hired as a full-time executive director;
- 2) ILSA organizes a conference on legal services, held May 3-5 in Santo Domingo; and
- 3) The Board of Directors, meeting during the Santo Domingo conference, agrees on specific strategies for ILSA.

Aside from expanding its operational capacity, the existence of an independent full-time administrator with his own albeit small staff also allowed ILSA to develop as an institution in itself, separate and independent from ASIL and with its own program of action (Liebenson interview, August 1982).

The Santo Domingo conference, which brought together thirty-seven lawyers, scholars and jurists from fourteen countries, helped this process along by

identifying and enumerating the needs of legal service programs in the area, as well as how ILSA could best serve these needs. Increasing the number of legal service programs, whatever their nature, broadening the bases of financial and political support, and improving the quality of legal service programs were identified as the most pressing needs. In this context, it was thought that ILSA could best meet these goals by providing seed-money grants to new programs and/or facilitating the funding process by acting as a broker between legal service programs in the area and funding agencies; increasing its net-working activities in the area through conferences, workshops and dissemination of information; and otherwise helping these programs to obtain legitimacy if not political support (ILSA, Bi-annual report, August 1979, pp. 1-4).

The meeting of the Board very much reflected the discussions and themes of the conference, as well as the participation at both sessions of grass-roots activists and scholars who had not been present at earlier ASIL or ILSA meetings or conferences. As the composition of those active in ILSA's programs and administration became more representative of various legal service activists and observers found throughout the hemisphere, so did ILSA begin to get a more accurate picture of the situation and to develop more effective strategies. The Board agreed that ILSA's focus should be on supporting "on the ground" client-based legal service programs, particularly through networking, seed-money grants, technical assistance, and research (ILSA Bi-annual report, August 1979, p. 4; Liebenson interview, August 1982).

In late 1979 A.I.D. approved a one-shot grant of \$50,000, enabling ILSA to begin providing small seed-money grants to new projects, once they had been evaluated through field reviews by ILSA staff. During this period ILSA also intensified its technical and brokerage assistance to new projects, increased its networking activities and began to develop a research agenda. At the same

time, timely changes were made in ILSA's Board of Directors and administration (ILSA Bi-annual reports of October 1980 and February 1981).*

2.3 Re-assessment and Consolidation Period (October 1981 to date)

Given that in mid-1981 AID had rejected ILSA's application for a new three year general support grant, ILSA's capacity to survive as an institution came into question during this period. While AID subsequently provided a 5 month extension of its original grant, thereby continuing its funding through May, 1982, a serious internal crisis was nevertheless at hand.

To its credit, ILSA's staff and Board moved quickly to meet the challenge. Discussions were initiated on the need to seek alternative sources of funding and to re-structure ILSA (ILSA, Meeting of Board of Directors, October 1981). Four largely inactive members of the Board are replaced by three legal service activists. And in the last meeting of the Board of Directors under the AID grant, held in May 1982 at Miami, Florida, a number of decisions crucial to ILSA's future were adopted. The Washington office was to be closed as of June 1982, and the headquarters located at the Latin American Regional Office in Bogota, Colombia. At the same time, the Latin American Regional Director was elected President, and a highly qualified lawyer from New Zealand but residing in Colombia selected as the new Executive Director. The former President would continue as Chairman of the Board, and the former Executive Director as Secretary and Treasurer. Furthermore, the Caribbean Regional Office would become a separate but closely affiliated autonomous institution. Aided by a \$50,000 grant from CIDA, the proposed

*These activities are analyzed in more detail in Section 4.3 below.

re-structuration took place as scheduled (ILSA Final Progress Report, 1982, pp. 10-11).

Despite the crisis and ensuing re-organization, ILSA's program activity continued unabated throughout the period. Of particular importance was the "First Conference on the Organization and Delivery of Legal Services in Latin America and the Caribbean," held in San Jose, Costa Rica in October, 1981, which brought together over sixty program leaders and scholars from Latin America and the Caribbean, as well as twenty other experts from Canada, the United States, Europe, Africa and the Middle East (ILSA Grant Proposal, 1982:6).

3. Summary of ILSA's accomplishments

ILSA's programs over the years can be placed within three broad categories: 1) Program support activities, 2) "Networking" activities, and 3) Research activities.

3.1 Program support activities

Through judicious use of small seed-money grants (made possible by a \$50,000 AID grant to ILSA), its links to international lending agencies, and its technical assistance to nascent projects, ILSA has been instrumental in the creation of various legal service programs in the Caribbean and Latin America (ILSA, Grant Proposal, Feb. 1982, p. 5).

In the Caribbean, ILSA played a key role in helping the Kingston Legal Aid Clinic (KLAC) in establishing a mobile legal-aid clinic to serve rural areas distant from Kingston. ILSA actively pursued a broker's role in obtaining for KLAC a three-year \$82,000 grant from CIDA, which had never before supported legal service projects. In addition, ILSA awarded KLAC a direct \$10,000 seed money grant, helped it procure the project vehicle, and provided extensive on-site assistance in organizing and generating local support for the new program.

Acting on behalf of KLAC, ILSA also obtained funding from IAF to enable KLAC's managing director to participate in training clinics held at Parkdale Community Legal Services in Toronto, Canada, and at the Legal Services Institute of Harvard University. Visits to the Washington headquarters of various legal services organizations were also included (ILSA, Bi-annual Report of October, 1980, pp. 1-3, and Grant Proposal, Feb. 1982, pp. 5-6).

Similarly, ILSA collaborated with the Belize Bar Association in organizing the Belize Legal Aid Clinic with another \$10,000 seed-money grant and

technical assistance, as well as through its efforts in obtaining for the Belize Clinic a \$28,000 grant from CIDA (id.).

ILSA was also active in Latin America, again demonstrating a resourceful use of its limited funds and its links with international funding agencies (ILSA, Final Progress Report, 1982, pp. 3-8). A one year seed-money grant of \$10,000 to the Instituto de Estudios y Desarrollo de la Asistencia Legal (IEDAL), a new group representation legal services program in Santiago, Chile, so it could initiate the delivery of legal services, as well as research and law reform assistance, on behalf of two associations of pushcart vendors. This project is associated with a Church sponsored program which provides other types of services to these vendors, and also receives assistance from IAF.

In Colombia, ILSA completed a one year \$6,000 grant to Propublicos, a collective advocacy or group representation legal service program, in support of its program to assist the Comité Regional Indígena del Cauca (CRIC) in resolving the land tenure problems affecting the communal land holdings of the native indian population of the Cauca Valley in Colombia. This program has also received funding from IAF. Rural legal aid was also supported in Ecuador through a one year grant of \$10,000 to PRODESARROLLO, an autonomous organization that provides assistance to peasant organizations, enabling it to create a National Legal Assistance Center (CENAJC) for peasants and rural workers, with offices in three regions. Similarly, ILSA made a one year grant of \$6,400 to the Estudio Jurídico Popular of Panama, so that it could expand its program of legal assistance and education for worker, peasant and other grassroots organizations.

Finally, ILSA made possible the organization of the Asociación de Defensa y Capacitación Legal (ADEC) in Lima, Peru, through a seed money grant of \$10,000 and a one-year program grant from IAF for \$22,000 (subsequently

renewed). ADEC is a group oriented legal service program that provides legal and other assistance to organized labor groups and also publishes Cuadernos Laborales, a journal reporting on legal, administrative and socio-economic developments in the labor field (ILSA, Bi-annual report, October 1980, pp. 4-6).

ADEC is a representative example of the innovative type of legal service programs that have emerged from a growing "social bar" movement in Latin America (Rojas, 1982, p. 14). Rather than representing individual clients before the courts, as in traditional legal aid programs, ADEC acts on behalf of various small labor unions or worker's associations which represent fishermen, miners, private watchmen and public employees. Aside from basic legal assistance to these associations and its members, ADEC provides a wide variety of services to the groups it represents, including lobbying, law reform projects, group organization and mobilization, collective bargaining training, and legislative research assistance to labor-oriented congressmen. Perhaps the two most important services provided by ADEC are the labor-law journal it publishes, the only one in Peru which provides a forum to diverse ideological tendencies, and the legal, economic and financial counseling it provides to workers' groups. As the economic and financial counseling is particularly in demand, ADEC has a half-time labor economist in its staff. ADEC also collaborates with other groups which provide assistance to labor groups. ADEC's staff consists of 3 lawyers, 2 legal interns, 1 labor-economist (half-time), one economics student and 2 secretaries. Most of its basic overhead expenses (rent, office equipment) are covered by the fees paid to ADEC by its clients (Yanez interview, 1982).

Given the precarious financial situation of most legal service programs in Latin America and the Caribbean, ILSA's success at evaluating and playing broker between nascent projects and such international funding agencies as the

Ford Foundation, IAF and CIDA has been most welcome in the area, and has become one of ILSA's most important program support components (Gonzalez, A., interview, 1982). The success of this brokerage role was due in large part to ILSA's project evaluations and technical assistance. In 1979, ILSA's Board created the position of Technical Director to coordinate and direct this function. The location of this office in Chile, however, has resulted in the assumption of much of this work by ILSA's executive director.

3.2 "Networking" and information exchange and dissemination.

By and large, legal service programs in Latin America and the Caribbean are very isolated from each other, even within their own countries, and have even less communication or exchanges with corresponding programs in other countries. In this context, it is very important to provide intellectual and other stimuli or incentives to those who are committed to legal services for the poor. ILSA has filled this vacuum through a variety of "networking" programs and services (Bates interview, July 1982).

Two major ILSA sponsored conferences on legal services (Santo Domingo, May 1979; and Costa Rica, September 1980), as well as smaller regional meetings not only allowed ILSA to identify and establish relations with legal service programs throughout the Hemisphere, but also provided an unique opportunity for program leaders to meet, often for the first time, others with similar concerns and interests, and to share ideas and experiences with activists, policy makers and scholars from throughout the world (ILSA Final Progress Report, May 1982, p. 3). Not unimportantly, these conferences give local legal service programs a luster of international legitimacy, and with it, some political clout (Gonzalez interview, July 1982).

The process of organizing these conferences, as well as the participation of its staff or associates in other conferences or workshops, technical

assistance and field trips, enabled ILSA to establish a network of legal service activists and scholars throughout the Hemisphere.

Two ILSA Newsletters, published during the Spring and Autumn of 1981, have been the principal mechanism for maintaining communication among this network (ILSA Grant Proposal, Feb. 1982, p. 7). In addition, ILSA has produced a bi-lingual pamphlet, and is at present preparing a publication of the papers presented at the Costa Rica conference in October of 1981 (ILSA Grant Proposal, August 1982, pp. 2-3). In addition, a Documentation Center, consisting of publications and primary documents regarding legal services, was organized in Chile and its services made available to interested programs and individuals. Unfortunately, not much use has been made of this service over the years, bringing into question its continued existence.

3.3 Research Activities

In 1980, a non-salaried Research Director was named, whose main function was to organize a conference for Latin Americans interested in legal service research, with the view of preparing an inter-disciplinary research agenda for ILSA. While funding requests to various foundations were rejected, making impossible the holding of a conference, small working groups were able to come together at Board meetings or other conferences to discuss research issues and to plan a research agenda (ILSA Bi-annual Report, October 1980, p. 8). ILSA's research activities are covered in more detail in section 4.5 below.

4. Analysis and evaluation

The basic concern of this section, is not to evaluate legal service operations as such, but rather to analyze ILSA's experience as a promoter of legal services in the area in order to determine what it learned and to come to some conclusions as to whether and how this activity should be pursued in the future.

4.1 Goals and strategies

Over the years, ILSA's underlying ideology and premises, and with them its goals and strategies, have evolved and changed, ranging from a positivist assumption of the causal connection between modern legal systems and development to an instrumental perspective wherein law is basically perceived as a means of perpetuating the status quo, but which nevertheless can be used to help achieve some social change.

Initially, ILSA was perceived as an organization that would support legal services and law reform activities as a means for protecting human rights and fulfilling basic human needs throughout the hemisphere (ASIL, 1978:37-41). To this end, ILSA's objectives were to promote the exchange of information regarding law and social change in Latin America and the Caribbean, to assist in the establishment of legal service programs designed to achieve social change through law, to involve law scholars and students throughout the hemisphere in its programs, to initiate relevant research, and to help obtain funding for legal service programs in the Americas (ASIL, 1978:62-64).

These far-reaching goals, however, were tempered by the concern expressed by AID and some Latin American representatives regarding the adverse political consequences they could produce. The panel agreed that ILSA activities had to adjust to the political context of each nation. Governments had to be assured that upsetting social structures was not in ILSA's agenda; the emphasis rather was to be on implementing existing laws or programs which purportedly

benefitted the poor or weak. A cautious approach was thus adopted: emphasis, at least at the beginning, was to be placed on traditional legal aid activities, though the broader goals were to be kept in mind (Rubin, 1982).

Perhaps ILSA's founding fathers were overly cautious. But there was a basis for their concern; at that time, legal services were still perceived by many Latin American governments and bar associations as controversial, perhaps even subversive or revolutionary (indeed, this perception still persists in many areas as evidenced by the arbitrary detention, torture and even assassination of legal service and human rights advocates in places like Brazil, El Salvador and Guatemala). In any case, it was deemed important to try to "legitimize" legal service programs in Latin America among the established bar and government officials. Thus also the conscious involvement of establishment lawyers among the initial organizers and board directors. Not only would these figures make ILSA respectable, but, or so it was thought at the time, this would lead eventually to funding legal services from local sources, such as bar associations, governments, private enterprise etc. (Kessler interview:1982). But as seen below, this goal has not been fulfilled, and financial insecurity continues to plague ILSA and legal services programs in the area.

Thereafter, ILSA declarations have favored programs which emphasize group representation, do not limit themselves to judicial and litigational arenas and modes of action, and are social-change oriented (ILSA, Bi-annual report, February 1980, pp. 9-10).

Nevertheless, an incremental and pragmatic approach continues to be advocated by some members of ILSA's board of directors, particularly those from the Caribbean. Paraphrasing Sir William Douglas, Justice for the Supreme Court of Barbados, it was inevitable that this careful adjustment to local political contexts had to take place--it is because of this flexibility that

ILSA and its associated programs have been able to operate in various countries and under diverse regimes (Douglas, 1982). On the other hand, most of ILSA's South American associates have from the beginning advocated a more aggressive legal service approach with emphasis emphasizing on public and group representation and law reform activities (Umana, 1982).

These differences or even conflicts over the concepts of or approaches to legal services have to a certain degree always existed within ILSA. Indeed, they may be inherent to an organization which from the very beginning has tried to avoid imposing its own models or solutions but has rather promoted a participating and democratic process which represents and is responsive to the various programs it is associated with. But as there has been no uniformly agreed upon model of legal services among the programs represented in ILSA, it necessarily follows that the more participatory and representative ILSA becomes, the more eclectic its goal statements.

At this point, it could be concluded that the problem is also an accomplishment. But in fact, this goal-conflict within ILSA has contributed in some degree to its present division--i.e., the Caribbean Regional Office, whose members were always more oriented toward the traditional legal aid model, spins off ILSA to become its own autonomous legal service association. Ostensibly, this is done to facilitate funding, and close ties will supposedly be maintained with its former parent organization. But this division does indicate a goal conflict with the Latin American branch of ILSA, where the group representation-law reform model has tended to predominate, at least in rhetoric.

Despite these differences over long term goals and strategies, there is no real danger of a permanent split between the Caribbean and Latin American sides of ILSA. Both sides recognize that the substantial differences in cultural, legal and political heritages and contexts also result in different

possibilities and strategies. Yet they acknowledge the importance of supporting and learning from each other and of the vital need to keep open the few channels of communication that exist between the two areas.

This determination to maintain ILSA as a true hemispheric institution is reflected in its latest statement of objectives (as contrasted to more general goals) which follows a realistic approach attuned to the expressed needs of both Latin American and Caribbean legal service programs. These objectives include: to make available more financial assistance, training and information and solidarity to these programs, chiefly by acting as broker or middleman with other institutions; to foster communications and cooperation among legal service programs in the region; and to help legal service programs establish legitimacy and support within their own countries (ILSA, Grant Proposal, August 1982, p. 3).

4.2 Organization, Fund Raising and Institutional Ties

Critiques have been formulated to the process through which ILSA was organized. In the first place, the selection of many of the Latin American and Caribbean delegates of the ASIL Panel on Law and Development, which ultimately resulted in ILSA's formation, were selected on the basis of personal contacts and of a rapid tour through Latin America undertaken by an ASIL official. As a result, individuals were selected who had little experience or interest in legal services or law reform, yet some of them remained as members of ILSA's Board after its organization. Similarly, other individuals were invited to several of the conferences organized by the Panel for no apparent reason (Bates interview, 1982). The end result was a two-three year organization process which consisted mainly of international conferences among a congenial set of people, characterized by some as an "old boys" club. Fortunately for ILSA, there were more than a few committed legal service activists within this club.

A serious operational problem has been and continues to be financing. There were high hopes at the beginning regarding the fund-raising potential of ILSA's first president and some of its Directors. Unfortunately, there was no organized fund raising activity either in Washington or in Latin America or the Caribbean (Bates 1982; Kessler, 1982).

Related to the fund-raising problem was the issue of the individuals, groups or institutions with whom ILSA worked or was associated. The original group of ILSA founders and Board Members was somewhat narrow and it also overly-represented the tiny island states of the Caribbean while leaving out such large and important Latin American nations as Argentina, Brasil and Mexico. The result, at least for the first few years, was a leadership structure with a certain tendency at providing assistance only to programs within the geographic and personal circles of the Board members (Trubek interview, 1982).

Although it is of course impossible to demonstrate any cause and effect relations between the original "old boys" club and policy directions, a correlation can certainly be suggested. The initial emphasis on trying to establish close relations with Governments and bar associations as a means for creating new legal service programs and opening up new sources of funding would certainly seem to indicate an Anglo-Saxon Common Law approach to the problem, hardly surprising, given the initial U.S. and Caribbean domination of ILSA's governing structure. There was an evident failure here to correctly appraise the socio-political framework of Latin America and its corresponding constraints and possibilities.

Membership in a Bar Association (Colegio de Abogados) is by and large mandatory in order to practice law in Latin America. The Colegios are thus voluntary associations which do promote the interests of the profession and from time to time hold seminars or sponsor talks, but which for the most part

are more of a social club for its members and their families. Not untypically, the site of the Colegio will not be downtown, but rather on the outskirts of the city and will include a swimming pool, tennis courts, a restaurant, bar and other country club style facilities. A law library, on the other hand, would be as out of place within the site as a revolutionary guerilla leader. Indeed, within this atmosphere, one hardly sees any young and activist lawyers, though there is an active if disorganized "social bar" in Latin America (Rojas 1982, pp. 14-17). The members of the Colegio, however, are for the most part successful practitioners who represent the domestic and foreign financial, commercial, industrial and agri-business interests within the country.

Not surprisingly, these lawyers' associations rarely support legal service programs but have rather opposed them, not so much because of any fear of losing clientele, as few if any represent poor clients, but rather because they fear the opposition. Many of the complaints of the otherwise unrepresented poor would be directed against urban slum landlords, latifundistas encroaching upon the holdings of poor peasants or indian communities, employers, merchants--that is, precisely the clientele most members of the Colegios represent.

Most Governments also do and would not look kindly upon independent-minded legal service groups that would represent the poor against its own agencies and programs. What few legal aid programs they support are generally small and tightly controlled in-house programs within ministries or other agencies.

Thus, the efforts of ILSA to generate support from these groups were doomed to fail. On the other hand, until recently ILSA completely neglected establishing any sort of association with the one institution in Latin America--the Catholic Church--which has in several countries actively supported legal service programs, often with a human rights orientation

(i.e.--political prisoners' protection), but commonly also representing indigent or exploited groups that require assistance in order to survive, such as indian communities, shanty-town dwellers, labor unions, rural cooperatives, workers' management groups and the like. This oversight was probably due to ILSA's initial structure, as both its Board and its executive team were largely ignorant of such a context, and ended up albeit in good faith and contrary to its own principles, in trying to impose a foreign model. This failure also points up the need for a legal service promoter, like ILSA, to include basic, applied research in its programs, if for no other reason than to engage in a periodic evaluation of its policies and programs, obtain accurate readings of the socio-political context, and identify areas for potential projects.

To the extent it existed, ILSA's "in-bred quality" has for the most part been cured--ILSA is now associated with programs in several Latin American countries, and accordingly, the Board can now boast of representatives ranging from Canada to Chile.

Although the AID grant and the nearness of other potential donors probably made it inevitable that ILSA's headquarters be situated in Washington, nevertheless, this probably made it more difficult for ILSA to obtain funding from other institutions, such as Ford Foundation, IAF, and CIDA, which prefer to support programs with headquarters in a "recipient" country. The Washington connection also created image problems with some Latin American institutions and individuals, but this has not proven to be a serious problem (Liebenson, 1982 and Onate, 1982).

4.3 Governing structure and administration

ILSA has come a long way from its initial "old-boys" dominated governing structure. Its Board is now made-up of members who are widely recognized as legitimate legal service activists and/or scholars who represent a

representative number of nations and points of view, and who are beholden to anyone. But the clients or users of legal service programs are still unrepresented within ILSA's governing structure. Such participation would not only give ILSA a more democratic and legitimate governing structure (Yanez interview, 1982) but would also provide it with an invaluable source of information on how users evaluate the legal services they receive, as well as their own perceptions of an institution like ILSA. Because legal service programs in Latin America now often represent organized groups, it would not be difficult to select each year one or two representatives from such groups. Needless to say, future ILSA conferences should also include delegates from the beneficiaries, and they should also participate actively in other ILSA functions.

Since the "social bar" of Latin America actively supports these participatory structures, such a move by ILSA will likely result in increased support and legitimacy. Indeed, some legal service programs, such as CINEP in Colombia, are by and large administered through a participatory structure that involves community control (Borrero, interview, 1982).

Until recently, ILSA's Board was an exclusive male club and no women held any position of responsibility. The appointment of a female executive director is a step in the right direction. Nevertheless, women are still under-represented within ILSA, even though ILSA increasingly works or comes in contact with legal service programs directed by women or where women are very active. This growing involvement of women lawyers in legal service programs should be recognized and promoted by ILSA.

While it is important to have a representative and participatory structure at the level of policy-making and feed-back, ILSA's experience demonstrates the difficulty of dispersing its operational structure throughout the hemisphere. The executive director was headquartered in Washington, but there

were two paid regional directors located in Jamaica and Colombia, and a paid Technical Assistant Director stationed in Chile. As far as I can tell, clear lines of authority, functions and responsibilities were either never defined or never implemented. It seems clear from various sources that there was hardly any contact let alone coordination between the two regional offices, and the situation was not much better between the central office and the regional and technical assistance offices. Considering that the regional and technical assistance directors were running their own legal service programs and usually had other professional or academic activities as well, it is hardly surprising that the bulk of the work fell on the Washington office, which consisted of one executive director and a part-time administrative assistant. It became the sole coordinating link between the various groups, besides being in charge of general administration, proposal writing, program evaluation, conference organizing. It was also given or assumed the responsibility of designing fund-raising and institution building strategies. (See, for example, ILSA 5th Bi-annual report, Feb. 1981, pp. 1-2.) It is hardly surprising, then, that ILSA often seemed to act in an ad hoc basis, reacting to problems and issues as they surfaced, rather than acting in accordance with thought-out plans.

As pointed by several sources, the operation of an organization like ILSA should be in the hands of a small and preferably full-time staff. In any case, ILSA should not hire under a salary any individual who already has a full-time commitment to other activities. If the permanent staff cannot handle all its administrative or operational functions, or if the need arises for a particular type of work, then short-term assistants or consultants can be hired.

The present ILSA executive and administrative organization does not diverge substantially from the above recommendation. Nevertheless, its

over-all structure is flawed by its present arrangement of sharing offices with an ongoing legal service program, Propublicos, in Colombia. Since the Director of Propublicos is also ILSA's president, this arrangement has resulted in some concern or speculation regarding the potential Propublicos influence over ILSA programs or activities. While there is no reason to doubt the integrity of any ILSA official, and though ILSA's administration is in the hands of a very independent and capable executive director, nevertheless it is important to maintain a distinct identity, separate from any one action program that could also be a beneficiary of ILSA programs. Indeed, some suspicion of "conflict of interests" has already been expressed by more than one legal service activist or director (Field notes, 1982).

4.4 Program support activities

(a) Funding support

As already described, over the years ILSA has developed a variety of activities to facilitate the organization, development and operation of legal services throughout the hemisphere. Given the precarious financial situation of most of these programs, probably no other ILSA activities have been as well received as its "seed money" grants and its assistance in securing adequate funding from international agencies such as Ford Foundation, IAF, CIDA, and the like. (ILSA Report, February 1980:7-8). The "seed-money" grants have in many cases represented that vital initial helping hand that on the one hand, allowed service programs to get on their feet, and on the other, contributed to the process of convincing international funding agencies that these were, indeed, viable programs that could be supported.

Because ILSA's capacity to provide seed money grants has been exhausted, its "broker's" role in bringing together international agencies and local service programs has become its primary funding support activity. At times the only function required has been the relatively simple though perhaps

crucial task of facilitating a contact between the funding agency and a nascent project, or providing technical assistance in preparing and presenting a proposal for funding. In any case, those legal service programs who have received this type of assistance recognize its importance and consider that ILSA should continue to provide this support in the future (Yanez interview, 1982). Indeed, one activist has suggested that ILSA could in the process try to change the prevailing cost-benefit criteria that at least U.S. funding agencies seem to follow. To him, such criteria are irrelevant for most legal service programs; while the costs are easy enough to calculate, how do you measure the benefits? Instead of treating them like an economic development project, he thinks the international agencies should consider legal services as a necessary instrument for helping the dispossessed not only in obtaining greater access to the law, but in participating more effectively in the economy and society of a given nation; as such, it is a basic human right (Triana interview, 1982).

ILSA, however, must be careful not to overplay its brokerage role with international agencies. At present, several legal service programs already have the perception that ILSA itself is a funding agency, with funds of its own to dispense. While it is not difficult to understand why this misconception exists, nevertheless ILSA must try to disabuse it and make clear the true nature of its functions.

The more serious problem in the area involves the apprehension by some observers that ILSA may be trying to impose itself as a mandatory clearing house between the programs and the funding agencies (Field notes, 1982). Whatever the accuracy of these apprehensions, the important fact is that they exist at all and thus must be addressed. As pointed out by an active participant in the "social bar" of Latin America, such an effort not only would conflict with ILSA's goals and policies, but would also be doomed to

fail and in the process cause great damage to ILSA's reputation (Field notes, 1982). Most of the on-going programs already have access of their own to funding agencies, particularly those based in Europe, which they are not about to give up. Thus, this role would only be effective vis-a-vis new or nascent programs, who may be forced to accept this condition in order to obtain badly needed funds. Even they, however, would consider this condition as "empire building".

ILSA should thus steer clear from a structure where all international funds for legal services in Latin America would be processed or channeled through its offices. For one thing, it is very doubtful it could achieve this goal even if it wanted to, and for another, it would only produce divisiveness and conflict. Moreover, assuming such a function would force it to substantially increase its administrative and professional staff, thus straining even further its fund-raising needs. ILSA instead should make clear that its functions are limited to helping other legal service programs in the process of obtaining assistance from international agencies.

(b) "Networking" and information exchange and dissemination

As noted already, ILSA sponsored conferences have played a key role in exchanging experiences and establishing contacts among legal service programs in the Caribbean and Latin America. To a person, everyone interviewed during my recent tour agreed that this type of activity should definitely continue, though many had specific suggestions as to the future focus of these conferences or meetings.

Some recommended that these conferences should concentrate on the evaluation or analysis of the different experiences, addressing such questions as: do these programs go to the root problems of the individuals or groups they service, or are they more palliatives? Are they only a facade for providing employment for lawyers? Each conference should have a basic theme

(e.g., legal services and the media; women's problems, etc.), with papers prepared and submitted to the participants before the date of the conference (Garcia-Sayan interview, 1982). As expressed by a Colombian legal service activist, these meetings and conferences are very useful insofar as they avoid becoming "travel junkets" for a privileged few. They should, in consequence, be more in the nature of workshops and their primary aim should be to evaluate experiences and suggest lines of action (Triana interview, 1982).

Another line of thought would combine these meetings with technical assistance. In addition to or in place of large, open-ended conferences, ILSA would sponsor small workshops or seminars on the problems involved in organizing and administering legal service programs, specifically including the process of applying for grants to international agencies (Yanez interview, 1982).

On the other hand, ILSA's attempts at exchanging or disseminating basic legal service information or knowledge received mixed reviews. While the two newsletter issues were generally praised, many legal service directors felt that the priority at this stage should not be in a journal-type format that appears infrequently, but rather on a periodic bulletin with basic information on different programs, conferences, bibliography and the like (Miami meeting, May 1982). A Peruvian example was presented as a potential model (Yanez interview, 1982). Apparently, most legal service programs in Peru share in the expenses of financing a small coordinating staff whose main task is to prepare and distribute a periodic and low-cost bulletin with basic information on each program and legal service activities in general. Particularly useful in this bulletin is the information on specific activities of each program often consisting of training or educational sessions which are open to representatives of other programs. The bulletin also provides bibliographic references and other useful information.

ILSA's documentation center, however, was either ignored or unknown by all legal service activists with the exception of those who were members of ILSA's Board of Directors. While some interest was expressed toward such a service, none was very enthusiastic and most seemed to think that the cost and effort of operating a useful documentation center could better be invested in activities with a higher priority. ILSA's Technical Director, who operates the Documentation Center out of his offices in Chile, claims that lack of publicity explains the infrequent use of the service (Bates interview, 1982). Yet the service has been amply explained in the ILSA conferences and its newsletters. The fact remains that most of the references are in English, concentrate on the U.S. experience, are spotty and outdated, and thus of relatively little use or relevance to the Latin American context and needs.

(c) Legitimization

A somewhat understated but nonetheless important goal for ILSA was to broaden the political base of support for legal service programs throughout the area. While it is difficult if not impossible to accurately measure ILSA's contribution toward this end, nevertheless various Latin American legal service activists are of the opinion that ILSA's activities have helped to legitimize legal service programs. FUNCOL (1982 interview) for instance, thinks that ILSA has been and should continue to be a legitimizing element, not only in its own right, but in helping to generate support from other international institutions. Governments who otherwise may have moved against such programs are likely to have second thoughts when they are identified with international agencies.

The head of the Vicaría de la Solidaridad in Chile, the Church supported legal service program for those arbitrarily detained by Government authorities, also stresses the importance of legitimizing human rights activity through collaboration with programs like ILSA. In his view, it is

important to insert human rights activity within legal service programs which engage in a broad range of activities, most of which are professional in character. The point here is to "de-politicize" human rights advocacy: to have it perceived as just one among many typical and legitimate legal service activities. In pursuit of this goal, the Vicaria is now farming out much of its human rights work to private attorneys who handle a wide variety of cases. Collaboration and identification with ILSA would further facilitate this process (Alejandro Gonzalez interview, 1982).

However, ILSA also has to worry about its own legitimacy vis-a-vis the legal service programs with whom it would work. As already noted, it cannot try to impose structures or modes of action upon programs that have learned to survive through adversity and who tend to view any U.S. based and financed program with a jaundiced eye. ILSA's track record has helped to dispel most suspicions about its intentions, and its recent move to a Latin American headquarters and success of receiving financial aid from a Canadian source also helps. Nevertheless, in the view of some, ILSA has not yet established a clear institutional image or identification, and it won't have complete legitimacy until it does so (Garcia interview, 1982).

4.5 Research activities*

From its early days, ILSA perceived the importance of learning more about legal services and legal needs in Latin America and the Caribbean. Research was considered a fundamental component of its more general objectives. Contrary to the U.S. context, however, research on legal services in Latin America and the Caribbean is still suffering from birth pangs. While a number of articles have been produced on the subject they seldom reach those actually

*This section was prepared in collaboration with Santiago Onate.

engaged in the delivery of the services, but largely remain inside the academic community. On the other hand, legal service activists and staff, including some ILSA associates, tend to consider research as a "luxury" and secondary to their day to day problems. Nonetheless, ILSA has initiated a number of activities that are slowly starting to bridge this gap.

In early 1980, ILSA's research director met with several members of the Board in order to plan a panel on Legal Services for the Annual Meeting of the Law and Society Association, to be held in Madison, Wisconsin. In June the meeting took place and a panel was presented within the Law and Society Program. Simultaneously, a one day work shop was organized by ILSA at the University of Wisconsin's Memorial Union. In it, Latin American scholars as well as a number of North Americans actively engaged in research on legal assistance, discussed various on going projects and exchanged points of view about methodological, financial and networking issues related to research.

In the 1980 work shop the idea of organizing a conference emerged. Initially, the 1981 San Jose Conference was envisaged as a "research conference" but it was subsequently widened to include all aspects of legal service and the research component was reduced to one of several panels. Nevertheless a clear result of the San Jose Conference was the recognition of research as an integral part of ILSA's tasks. It was agreed that many of the problems facing most legal service programs in the area could be better understood and perhaps solved through serious research and evaluation. Moreover there was the need to explain and evaluate the innovative projects that have recently surfaced but are little known.

A first result of this new trend emerged recently (June 1982) in a meeting organized in Osgoode Hall by Prof. Frederick Zemans--ILSA's Canadian Board Member--in which a series of national reports on Legal Services in Brazil, Peru, Mexico, Colombia and Venezuela were discussed in conjunction with

working papers on the subject written by English, South African, Canadian and U.S. scholars and legal service practitioners. A number of those papers will be presented in their final form at the Würzburg International Congress on Procedural Law (September, 1983). The Osgoode Hall meeting represents one of the first consistent efforts to discuss legal services in Latin America by action-oriented researchers. ILSA proved to be a useful channel in finding and encouraging the Latin American researchers providing them with the unique opportunity to have their working papers examined and discussed, thus enabling them to improve their on-going work on the basis of a comparative approach.

But this has been only a first step. In the near future ILSA could probably play a more significant role in this field coordinating research efforts in a master plan that identifies programs, strategies and barriers in a coherent fashion and which at the same time proposes operative strategies and fosters institutional stability.

Until now, there have been very few opportunities for Latin American legal service activists or scholars to reflect on their experience. Financial support to these activities is necessary because regional or national funds for research oriented studies and evaluations are extremely scarce in the area. On the other hand, ILSA has a wide network of contacts with some of the world's leading scholars on the area of legal services; indeed, some are members of its Board and others closely linked through academic ties.

5. Conclusions

After three years of operation, what is ILSA's balance sheet? This report has already detailed and evaluated ILSA's efforts and accomplishments. Through its seed money grants, broker's role and technical assistance, ILSA has been instrumental in helping to organize new and innovative legal service programs throughout Latin America and the Caribbean. Moreover, ILSA's newsletters, international conferences and workshops, personal involvement by its staff, and other activities represent the prime force behind the creation of a hemispheric-wide network of legal service activists and scholars. This network not only has made possible the exchange of experiences and information among groups and individuals with little if any prior contact, but has also helped to produce a movement of solidarity among legal service programs, activists and scholars throughout the Hemisphere. As a result, many otherwise isolated legal service programs now receive psychological support and motivation, which may encourage them to persist in the often frustrating and unappreciated, not to say quixotic, pursuit of justice for the poor.

Not unimportant in themselves, the exchange of information and moral support produced by the networking activities are nevertheless not as significant as the political function of such networking. An association of legal service programs tends to shield any one program from political attacks by local bar associations, other interest groups, and governments themselves, particularly when links are established to important international agencies such as CIDA, the Ford Foundation, IAF, and the like. Legal service programs can now be presented as typical and acceptable components of legal systems throughout the Western World. Material support and publicity can be generated through the association.

ILSA programs have also promoted and facilitated a growing trend toward more applied and theoretical research on the function of legal service

programs in the Latin American and Caribbean societies. Though some dispute this, most legal service activists now recognize the importance of basic research, not only to document the legal needs of the poor and to evaluate existing programs to meet these needs, but also to generalize from these experiences so as to provide broader explanations of the relationship between the legal service movement and the changing socio-political context, and, finally, to set out patterns or models which may be relevant to other places and other times.

Extremely interesting work is already being carried out by individuals such as Joaquim Falcao in Brasil, Santiago Onate in Mexico, Luis Passara in Peru, Rogelio Perez in Venezuela, and Fernando Rojas in Colombia. ILSA sponsored activities have intensified the contacts that already existed among these scholars and activists, to the point that agreed-upon agendas of action, cooperative efforts, and joint funding proposals are now realistic goals, not pipe dreams.

ILSA has thus played a very important role in the development of legal service programs and activities in Latin America and the Caribbean, and its contributions have been reconized by legal service directors and activists throughout the Hemisphere.

As can be expected of any organization, it does not have a perfect record. Particularly at the beginning, it counted with too narrow a base of leadership or direction, resulting in some ethnocentric or misconceived analyses of the socio-political context and plans of action. By and large, however, ILSA has learned from its mistakes and has over the years substantially expanded the base of people from which it draws information and ideas, so that at present it seems to be well attuned to the most important needs of legal service programs in the area, conscious of what can be done, and in contact with at least some of the more innovative and productive

programs. Its major remaining defect is its governing and administrative structure. The present structure has produced an intermingling of identities between ILSA and a distinct operational legal service program in Colombia. While this relation has not yet caused any serious reaction or problems, it is nevertheless a potential source of conflicts and misperceptions, and efforts should be made to re-establish a separate and autonomous identity for ILSA. Moreover, as already noted, client groups or beneficiaries are totally unrepresented in ILSA's Board and women are very under-represented. ILSA is conscious of these problems and appears determined to resolve them.

Finally, ILSA still hasn't developed a consistent fund-raising strategy, or program of action, leaving it in a vulnerable position and making difficult long-range planning.

Aside from the need to resolve the above problems, ILSA should continue along the path it has followed during the past two years. As pointed out in a recent discussion among directors and staff of six different legal service programs in Bogota, Colombia (Roundtable of July, 1982), it is important that ILSA maintain a flexible approach and work with different types of legal service programs, provided ILSA is satisfied with their work. Sometimes the political context or the type of problem or client only permits individual type of assistance. Such is the case, for instance, when the primary clientele is a non-unionized and difficult to assemble group, such as domestic servants. Nevertheless, this individual case-by-case approach, when combined with educational or training programs, may lead toward the organization of the group, thus increasing its chances of self-help activity (Leal, at Roundtable of July 1982).

Conversely, at other times the problem is not the lack of legal service programs, but the existence of statutes or regulations which perpetuate an inequitable situation. In this case, then, law reform activity might be the

preferred course of action. In another context, however, the better approach might be to experiment with new methods in educating and training groups or their representatives from the vast squatter settlements in implementing their legal rights, improving the quality of their housing or public services, and other self-help mechanisms (Borrero, at Roundtable of July 1982). CINEP, for example, teaches techniques for preventing arbitrary evictions through role playing and the re-enactment of actual or simulated evictions, with CINEP staff and members of the squatter settlement assuming the roles of policemen, lawyers, people being evicted, etc., and with the audience actively participating through corrections, advice, questions, and the like (personal observations, July 1982).

In short, ILSA has to be able to adapt itself to different contexts, needs, possibilities. While continuing to work with more traditional but effective legal aid clinics in the Caribbean, it should encourage new initiatives and plans, as it did in helping to obtain vehicles so as to organize mobile units for servicing outlying areas for both the Montego and Kingston legal aid clinics in Jamaica.

Similarly, in Latin America it should not abandon the working legal-aid clinics, but should establish a closer relationship with the new "social bar" programs that have been emerging throughout Latin America. These programs are oriented toward group representation; engage in solving root-problems through interdisciplinary teams, where the lawyer may play a secondary role; use a wide variety of mechanisms besides litigation; and emphasize a participatory structure where the beneficiaries or clients play an active role in formulating policy and strategy and evaluating the effectiveness of specific modes of action.

In addition, ILSA should increase its commitment to research, emphasizing at this stage short-term applied or evaluate research with a "quick return" to

operational programs, so as to make clear that the value of research is not merely for academic speculation.

Whatever its course of action, ILSA should steer clear from any project which tries to coordinate or channel the activities of different legal service programs in accordance with ILSA's own preferred course of action. There is too much diversity among the different programs to allow for this, aside from very clear indications that each program wants to try its own way, though collaborating to the extent possible with others. ILSA can advise and encourage, particularly when asked to do so, but should focus on a back-stop or support role and refrain from trying to impose a structure or model of action. This position was clearly expressed and agreed-upon by all the participants at the Bogota round-table, with similar opinions expressed by almost all the other legal service activists I interviewed.

Staying behind the scene can be difficult for those with clear ideas as to the direction legal services should take. But ILSA can be more useful and in the long run probably more influential by assuming the role of facilitator rather than leader.

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INTER-AMERICAN LEGAL SERVICES ASSOCIATION (ILSA)
ASOCIACION INTERAMERICANA DE SERVICIOS LEGALES

CARIBBEAN OFFICE

Ronald G. Thwaites
Regional Director, ILSA
31½ Olivier Place
Kingston, Jamaica
Telephone: (809) 922-2236

CENTRAL OFFICE

Paul M. Liebenson
Executive Director, ILSA
2223 Massachusetts Avenue, N.W.
Washington, D.C. 20008 USA
Telephone: (202) 265-4313
Cable Address: AMINTLAW
Seymour J. Rubin, President

OFICINA LATINOAMERICANA

Fernando Umaña Pavolini
Director Regional, ILSA
Calle 68 No. 5-43
Bogotá 2, Colombia
Teléfono: 249-67-29
Dirección de Cable: PROPUBLICOS

July 19, 1982

Ms. Roma Knee
LA/DP/SD
Room 3253 Department of State
Agency for International Development
Washington, D.C. 20523

Dear Roma,

As you know, Joe Thome is doing an evaluation of ILSA, and of the Role of Law Project which preceded it.

I thought that, in view of my close and long connection with both, it might be useful for me to do a general impressionistic evaluation. This is not an attempt to cover all of the works upon which either the Project or ILSA entered, but is an effort to set out the general principles on which the Project was based, to suggest the reasons for which ILSA was brought into existence, and to make some sort of judgment about progress towards the objectives of both. What I have written is perhaps overly philosophic and minimally detailed; but I think it should be of some assistance to AID in deciding not only on possible future participation in the work of ILSA, but on the significance of this type of effort both in terms of human rights, and of the relevance of this sort of effort to assist in the building of participatory democracies to economic and social progress in the Americas.

In any case, here is the result of some deliberation and retrospection. I hope that it is both readable and useful. And I hope it persuades AID that this sort of effort is essential to the economic progress to which the major AID resources are devoted.

I would be pleased to have your comments, and those of any others who may be interested.

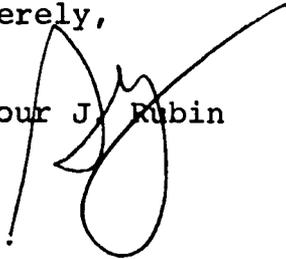
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Ms. Roma Knee
July 19, 1982
Page Two

I add only that this is entirely my own appraisal. I have not checked it with the ILSA Board, or with anyone else, though I have given Paul Liebenson a copy, and will distribute it to the ILSA Board, and probably also to the Inter-American Juridical Committee, where the entire effort originated.

Sincerely,

Seymour J. Rubin



Enclosure

cc: Joseph L. Thome
Fred Zemans
Paul Liebenson

LAW AND SOCIAL CHANGE - AN APPRAISAL

In 1975, the Inter-American Juridical Committee, the juridical organ of the Organization of American States, took up a topic considerably apart from its customary agenda. That topic--the role of law in social change in the American Republics--had little to do with the Committee's regular work in the field of public or private international law. Yet it could be argued that on various occasions the Committee--a body consisting of eleven jurists, elected in their individual capacities by the General Assembly of the OAS--had taken up issues relating to international law as it affected economic and social development, and had stated as early as 1959 that "the relationship between the respect for human rights and the effective exercise of democracy is... evident, because democratic rule must necessarily be based on... essential rights and freedoms." Included in those rights and freedoms were such as free elections, freedom of thought and expressions, and the rights not to be subjected to arbitrary detention and to habeas corpus. It is not a far stretch from this enunciation of principle to the thought that the manner in which law can facilitate a genuinely participatory democracy might be within the purview of the Committee.

At any rate, the proposal for a study on the role of law in social change was accepted by the Committee,

though without great enthusiasm and with some doubts. As the proponent of the topic, I was designated as rapporteur. In subsequent sessions the Committee endorsed a report suggesting that the American Society of International Law organize an Inter-American panel on the subject; in due course, reports on the work of that panel were received; and in 1976 the Committee formally welcomed the formation of the Inter-American Legal Services Association (ILSA), organized as a District of Columbia non-profit corporation, with an Inter-American Board of Directors. The work of the panel, and the work of ILSA since its formation, has largely been financed by the Agency for International Development (AID), with supplementary grants from the Inter-American Foundation, and, in respect of several projects, the help of several United States foundations and the Canadian International Development Agency (CIDA). CIDA has subsequently indicated some willingness to give limited general support to ILSA; AID, presumably because of disenchantment with governmentally-supported legal aid abroad as at home, has terminated its grants, at least for general (that is, non-project) purposes.

As of present writing (June 1982) there are therefore some six years of effort on the part of both the panel and ILSA. This is a period of time and of experience which gives a reasonable basis for appraisal. I initiated the Role of Law project and served as President

of ILSA from its formation until May 1982. (I remain Chairman of its Board). It seems appropriate that I put on record my own judgment on the matter. Such an appraisal may lack the presumption of objectivity which would attend an evaluation by one not closely identified with the work under scrutiny. But it is likely that anyone with interest sufficient to write on the subject will reflect major, possibly unstated assumptions. Recognition that these assumptions exist may be a reasonable trade-off for the hypothetical objectivity of distance.

I

One cannot even casually look at the societies of the American Republics (and I would guess that the societies of other nations are in this respect no different) without being cognizant of the wide gaps between formal adherence to the precepts of participatory democracy, and to laws and norms promoting it, on the one side, and reality, on the other. In this regard, the United States has been--and to a considerable extent is--no exception. The "separate but equal" fallacy pervaded United States doctrine for much of its history formative of present social--and consequently economic and political--conditions. Affirmative action programs--whatever may be their effectiveness--are a testimony both to the existence of the problem and to efforts to deal with it. But it takes no more than a casual glance at Latin American

and Caribbean societies to see that the gap between pretensions--as reflected in constitutions for example--and actuality is generally if perhaps not always both broader and deeper than is the case for the United States. The gulf between rich and poor, in respect not only of economic circumstances, but of access to justice, of vindication of formally assured rights and their availability, is enormous. And the favored class is much smaller--or the disadvantaged much larger--in relation to total population than is the North American situation. This is so even in that unfortunately small number of Latin American nations which may be classified as democracies.

This gulf, this discrepancy, is moreover not only a moral--or human rights--issue. Important though the human rights issue is, it shares place with the economic consequences of what is essentially exclusion of a majority of the population from any meaningful participation in the work, and the benefits, of nationhood. Large parts of the population find themselves with neither much voice in the formation nor of the administration of the laws which govern them. Upward mobility in economic and in social status is more the exception than the rule. At least one consequence is that an enormous resource--the human resource--is lost. It is not merely--if "merely" is an appropriate qualifier--that the poor do not have reasonable access to justice, but that the potential

skills of large segments of the population do not make the contribution to development of which they are capable. Neglect of this resource is, from the point of view of development, like neglect of any other resource--a wasted opportunity. It is, of course, worse than merely letting fertile soil lie fallow, or mineral resource go un-mined, since the human resource is not only more productive the more it is used, but is humanity itself--the objective of, as well as the means toward, development and progress. In this sense, the contribution which law may make to integration of the disadvantaged into society, both in defining social goals and in setting norms for their achievement, has the possibly unique quality of a breeder reactor--producing the more as the resource is used--and of harmoniously unifying ends and means.

To say this, is, however, merely to define the problem--and the opportunity. One must begin with the understanding that an unjust society--one that denies in fact if not in theory the right to full participation of the majority of its citizens--has committed not only a wrong but a mistake. But that wrong and that mistake is built into the structure of most societies. And to define the problem as basically structures is merely to begin an inquiry into the role of law in social progress. Nor can such an inquiry disregard the fact that, as one recent article put it, "...systems of legal

education and of the allocation of legal resources are geared more or less rationally to...the fulfillment of ...goals [which] in most territories of the region represent the prevailing values and beliefs of small, ruling minorities....This has serious implications...for the relationship of the poor to the legal system. Marginality is their historical condition, constitutionally guaranteed" (See Dodd, Liebenson, Rubin, The Inter-American Legal Services Association, 12 Lawyer of the Americas 533, at 536-7 (1980). The same, obviously can be said of the relation of the poor, of most countries and not only those of the Americas, to the economic, political, and social systems of the nations in which they live. A just and equal legal system--in the full sense of that phrase, that is, of a working participatory democracy--is thus not, as is so often felt if not said, a sop to the poor, an act of a Lady Bountiful which has the merit of quieting at the same time the pangs of conscience and the unruly mutterings of the hungry mob--but an essential of a beneficially developing and enduring society.

To bring about participatory democracy--in any country or any region, but certainly in the American Republics--is a burden too heavy to lay on any single project. Clearly, a project which confines itself to the limits of what is feasible--even if the goal is set somewhat above the reach--must operate on a limited scale,

and within externally-defined borders. The project in the Role of Law in Social Progress in the Americas, and ILSA even more so, were hedged about by certain practicalities, which in no way diminished the essential objectives but did define and channel methodology.

II

One of these practicalities is one which has all too seldom been acknowledged in developmental projects. That is the absolute need that those to be benefited be of the opinion that they should be benefited, and that they be active participants in the design, execution and formulation of aims of the project. All too often, a foreign model--which is believed to have worked well elsewhere, though often that belief is ill-founded--is sought to be transplanted. The American version of the common law system has, for example, worked tolerably well in the United States, at least in the sphere of establishing a framework for industrialization and economic expansion. As James Gardner has put it, American lawyers, with the highest of motives, have often tried to implant American legal methodology in acts of what he has somewhat unkindly called "Legal Imperialism." Where, as in commercial transactions, the needs are similar, and no great societal differences exist, the method has had its successes. Even the model of the large American law partnership has taken a somewhat uncertain hold. But

where the needs are different, where the majority of the population is systematically excluded from a real participation in the economic and social life of the country, the method of inculcating the legal methods of Langdell and Ames has produced no visible effect, other perhaps, than frustration.

From the outset, therefore, the project emphasized that its specific manifestations had to be based on the perceived needs and desires of the intended beneficiaries. In so saying there was undoubtedly a certain amount of dissimulation: for even if interested persons or groups of persons in Colombia or Guatemala or other countries of the region were to assert their interest and take an active role, most such persons or groups were themselves--in the manner of public interest law firms in the United States--not composed of the poverty-stricken, the campesinos, or the favelists. Nonetheless, they were at least of the same nationality, had worked with the poor and the disadvantaged, and came as close to the ideal as was possible. At the base of insistence on participation, at all stages, by such groups, was the belief, justified in many a failed project, that without indigenous support and participation, a project, however meritorious it might seem to the well-intentioned outsider, would survive only so long as external support systems were provided.

Public Interest Law

A consequence of insistence on broad--domestic, indigenous, no one word seems quite right--support has been a considerable restriction in what the project and, later, ILSA, could undertake. In the first place, there was clearly evident from the beginning a great lack of interest in what in the United States has come to be thought of as "public interest" law. The original trinity of themes put forward in initial discussions in the Inter-American Juridical Committee were a) legal aid, mostly to the individual orphan, widow, abandoned wife, or campesino, though sometimes to groups of such; b) law reform, a less conventional but more broadly focused technique; and c) public interest law, which had been highly fashionable in the reformist mood of conservatism and consumerism in the United States of the 1960s and 1970s. But the test of local support practically eliminated public interest law--the law being built in the United States by environmental groups, consumer groups, conservationists--as a topic of real interest in others of the American Republics. Thus, except for a first panel session in Barbados in 1977, when a Mexican environmental group passed out some rather attractive publications, there has never been any indication of interest in the project from any such groups. Hence ILSA had done little or nothing to protect Latin American or Caribbean environments or consumers. The causes of this

sort, though they sporadically excite some attention, as in the case of Brazilian nuclear power development, do not seem to have the domestic support which would be necessary.

Law Reform

For other but broadly analagous reasons, "law reform" has not been an issue--or set of issues--with which either the project or ILSA has been able effectively to deal. Generally speaking, the difficulty is like that of "public interest law" that is, lack of a domestic constituency, of a group of persons within the nation who are both willing and able to press their view on whatever may be the power structure. But, where in the case of public interest law one encounters massive indifference, measures of law reform, other than the most clearly adjective and procedural, encounter hostility and resistance. No society encourages change, especially it may be said, those which are most avowedly devoted to change. In the mansion of capitalism, liberal or conservative, there are many houses. Not so in most, if not all, of societies in which doctrinal faith is either socially or legally mandatory. There the always present forces of inertia are reinforced by resistance to challenge to the popularly received or mandated doctrine. And that resistance is particularly strong if change is perceived as a threat to the existing social order, or to perceptions--however little related to actuality--of an appropriate and egalitarian social structure.

Law "reform" by its very nature, challenges established modalities. Its proponents are by definition dissatisfied with such structures. Such proponents confront the establishment, whatever that establishment may be. Advocates of the change necessarily implied in reform of any significance are not likely to have broad support, in the absence of a substantially disaffected society, or one which is undergoing deep changes in its social structure. Nor does history give much encouragement to the thesis that such changes will better access to equal justice: swings to neither the right or the left (assuming in this respect the validity of such a distinction) if one were to take Hitler and Stalin as extreme examples, and Pinochet's Chile or Sandinista Nicaragua as milder ones, would seem to have contributed much in the way of legal reform. Most professedly democratic societies of course make protestations of their concern. So also do the exponents of "social justice"--a phrase which can be and has been often adopted if not pre-empted by exponents whose claim to it is highly dubious.

There can of course be significant law reform, ranging from the substantive tenets of the Ten Commandments to revision of the United States Administrative Procedures Act. But an international--or Inter-American--initiative on law reform runs into at least a partial dilemma. Law, and the way it is administered, generally represents the then-dominant structure of a national

society. Change, therefore, is resisted; but change must be tolerated if not welcomed if law reform short of societal upheaval is to be achieved. Neither the Project on the Role of Law in Social Change, nor ILSA, have had much success in finding support for significant procedural or substantive reforms--even assuming a sufficient amount of objectivity and expertise to make the necessary analyses.

This is of course not to denigrate either the importance of a continuing examination of the adequacy of substantive and procedural law in terms of goals. It is merely to state the obvious--that law reformers, like prophets, are generally without honor in their own countries; and the imported breed is less popular than that produced at home. When to those generalities is added the distaste of any other nation of the Americas for acceptance of North American (United States) guidance, particularly in matters touching on domestic cultural or sociological patterns, and when one recalls a la Gardner the "legal imperialism" of the past, it becomes clear why law reform, as such, has not been a major force of ILSA achievement.

This is, however, not to say that ILSA has had no accomplishments in the area of law reform. It is merely to say that countable legislative or administrative reform, formally undertaken, and recorded in statutes or regulations, are few. However, just as the law in action does not always follow the law in the books, generally to the detriment of supposedly guaranteed rights, so in that

area of interface between law reform and legal aid a considerable amount of progress has been made. Moreover, the institutional changes which are the marks of that progress are themselves both a result and a cause. These changes are likely to have the multiplier effect which is an assurance of--or at least give reasonable hope for--self-sustaining and continuing progress.

It is important, thus, to examine the "legal aid" aspects of the work of ILSA.

Legal Aid

Legal aid--facilitating the access of the poor to judicial or administrative justice--is a broadly accepted principle. Though there is considerable variation in both extent and procedure, no one contests the desirability of extending such assistance to those in need of it. There are indeed legal aid clinics throughout the Americas, many of them staffed by law students for whom participation in such clinics is obligatory. No nation denies the validity of the principle of adequate representation, most make some effort to put that principle into effect.

It is however hardly hidden that, as T.S. Eliot put it, "Between the idea/And the reality...Falls the Shadow." Accomplishment often falls far short of the stated objective, for many reasons, among which are both archaic and unhelpful procedures and, even more, a woeful lack of human and financial resources. Legal aid, therefore, has the curious characteristic of being both needed and, at

least verbally, welcomed, while clearly being inadequate to the visible needs.

Out of this dichotomy has arisen, on the part of those inclined to philosophize on the matter, a frequently expressed disenchantment with legal aid, or at least with "traditional" legal aid. Professor Dodd, in the article previously cited, has cogently drawn the distinction, and pointed out the limitations of traditional legal aid. Others as well have described the "band-aid" approach, and more than hinted that to devote resources to representation of the individual poor is to misdirect utilization of all-too-scarce resources.

Nonetheless, ILSA has found a major and useful area of activity in the field of legal aid. First, there is of course the morality of the act of help to the needy individual, no matter how little that single act may assist the greater number of others who are not so benefited. Second, even in non-common-law jurisdictions, law in practice is built upon individual cases as well as on generally applicable codes: indication of the rights of an individual campesino may well set a precedent for courts, or for administrative action, and can act as an encouragement to other individuals to take action in their own behalf. The precedent established for any individual may have--one hopes will have--a ripple effect. Third, legal aid can be and often is given to disadvantaged groups and thus tends to merge into the wider ambit of rule-making and thus of law reform.

Though, for reasons of practicality--building upon what the societies of the Americas have themselves found to be acceptable--ILSA has directed much of its effort toward improvement of legal aid, a consequence has been broadening of the constituency of those, in each of those societies, who were willing to make efforts to assist in achieving a more equitable distributive justice. ILSA has worked with legal aid institutions, many of which were committed to group representation. Aside from the consequent benefits to such groups, this has resulted in relationships, domestically and internationally, which have strengthened the delivery of legal services to the poor and otherwise disadvantaged. "Networking", to use a word of some popularity, has been a major success. The example of a successful legal aid project in one country tends toward emulation. A technique adopted in one country can thus be analyzed, discussed in other contexts, and can serve as a model elsewhere in the region. Lessons learned in the laboratories of one experience benefit all. Conferences such as the San Jose (1981) meeting can bring together persons and groups which would otherwise be unaware of persons and groups with similar purposes and with relevant though diverse experiences. Similarly, the establishment by ILSA of a documentation center, while yielding results less than could have been hoped for, has spread knowledge both of interests and of techniques. Each experiment thus reinforces other efforts, not least

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in eliminating the sense of isolation which has all too often been prevalent. The results, if not spectacular in terms of immediate social reform, have been beneficial. Perhaps more important in the long term has been the mutual strengthening of the sense of responsibility and of possible achievement. That in turn has led to interaction with elements of the domestic constituency--bar associations, human rights groups and even governments--which suggests long lasting and indigenous support for approved access to justice--and to integration of classes previously excluded from participation into a responsible community.

To make the test of success for the Project and for ILSA achievement of a truly participatory democracy--which would mean an adequate role in all phases of government for the huge presently disenfranchised numbers of urban and rural poor--would be unrealistic to the point of absurdity. Nevertheless, ILSA has been able in several ways to encourage movement in that direction--in the limited field of access to justice--and to provide some help for the growth of indigenous activity. Neither the Project on the Role of Law in Social Change nor ILSA originally contemplated that it would become a source of financial assistance; yet, as time went on, and as ILSA responded to the increasing participation of the relevant domestic groups, it became evident that the provision of "seed money" grants, in what are on any basis extremely

small amounts, was an important measure of such encouragement. The limited funds which ILSA has been able directly to provide, and the larger flow of funds from such agencies as the Canadian International Development Agency which resulted, have had what can reasonably be hoped permanent effects. This is the more so because no ILSA grant has been based other than on the conclusion, after full examination by an Inter-American board, that the project being financed did have domestic support, and an institutional basis for continuing existence. As has been suggested, such projects are likely not only to put down firm roots but to have a multiplier effect. Should that prove to be the case, "traditional" legal aid projects may indeed merge into "change-oriented" measures contributing toward attainment of its large objectives.

III

Evaluation of the ILSA experience, perhaps especially by one who has been closely associated with it since the writing of the first preliminary reports to the Inter-American Juridical Committee, is bound to be somewhat subjective. Allowing, however, for that factor, it seems possible to reach certain conclusions, some not as encouraging as one would hope.

On the discouraging side, two facts--perhaps better described as conclusions--seem evident.

The first is that those in the American Republics who are committed to enhancement of law as an instrument of change in the direction of participatory democracy (and consequently of equal access to justice) are a pitifully small if dedicated group. Financial support from local constituencies is miniscule. The student who participated in a legal aid clinic as part of his legal education does not often go on to take part in, much less set up, institutions devoted to vindication of the legal rights of women, campesinos, workers, Indians, or the urban poor. The plethora of legal aid societies, civil liberties associations, consumer groups and the like which characterizes United States interest in the subject--including the "establishment", by way of bar association and other activities elsewhere in the hemisphere--simply does not exist. And, despite some movement, including a limited amount of governmental encouragement, there is little evidence that the United States model (which itself is far from perfect) will in the near future be emulated. Partially this is because of values and societal habits which have grown in the special atmosphere of the United States, including the associative tendency early noted by De Toqueville, and which are not replicated in the other American Republics. Whatever the causes, most of which are deeply rooted in the societies of the American Republics, it is not likely that there will soon be a groundswell of support for legal aid to the poor, much less for broad measures of law reform. This



means that what exists and can and should be encouraged has to be regarded at least in part as a moral obligation, and as a measure of important social change in direction, not in immediate societal result. But if the Lord has regard to the fall of a sparrow, it is no denigration that a legal aid project assists the individual widow or orphan, especially if it at the same time plants the seed and becomes a part of the larger reform effort.

A second discouragement is the reversion of the United States aid program to the thesis that what is needed is to give Latin Americans the benefits of United States wisdom. That was attempted for many years. Latin American and Caribbean jurists had the benefits of United States lecturers, experts and teaching materials. They were, and continue to be, invited to United States universities and bar associations. Encouragement has been given to the training of jurists, to the encouragement of law institutions, such as bar associations. Results, so far as participatory democracy and the rights of the poor are concerned have been all but invisible. Yet current doctrine seems to focus on such activities alone, so far as financial assistance is concerned, though there continues to be a Congressionally-mandated commitment to human rights as part of the aid program.

This is not to say that activities of the sort mentioned should not be continued. They are generally useful. But, if one is to focus on the issues of what is

probably an all-too-often used cliché, "participatory democracy," it is hard not to conclude that efforts like that of ILSA, and others should receive increased, not diminished, assistance.

The elements which ought define an aid program which aims at equal justice as an instrument both of a national human rights program and of movement--that cliché again!--towards participatory democracy are evident. First among these is that they ought be (and perceived to be) designed and constituted by local hands. There must be a domestic source of responsibility, if possible endorsed by government or governments. Programs should be based on domestic or Inter-American interest--not formulated by the wisdom--conventional or otherwise--of Washington. They should command local support, though by their nature they are not likely to have the altogether sincere or enthusiastic support of the establishment institutions. They should be capable of attaining something like self-sustaining status; permanent dependency on foreign funds is debilitating and counter-productive. They should if possible have a demonstration aspect, so that they can become models for further work, domestically or abroad. They should have a multiplier effect--be training centers, and centers for the recruitment of a wider constituency of supporters than those originally interested. They should be part, at least in general, of a broad network of similar institutions, and should avail themselves of

opportunities for giving and receiving the lessons of experience. And they should be at the cutting edge of progress, but so related to progressive (or conservative, since in this sense the two words mean more or less the same) elements in their own societies that broad support-- financial as well as participatory--will be made possible.

ILSA has, in my opinion (prejudices noted), tried to conform to these standards. It has been and continues to be a worthwhile effort. Especially is this so if one conceives, as I do, that gradual reform, gradual integration of the "Untermenschen" into the fabric of society, is a necessity, if that society is to survive under the rule of law.

Seymour J. Rubin
July, 1982