



**USAID**  
FROM THE AMERICAN PEOPLE



**CHECCHI**

**JUSTICE SYSTEM REFORM PROJECT  
MONTENEGRO**

**CONTRACT NO. 170-C-00-03-0010-00**

**SUMMARY OF PROJECT ACCOMPLISHMENTS**

**Submitted to:**

**U.S. Agency for International Development**

**Submitted by:**

**Checchi and Company Consulting, Inc.  
Hercegovacka 50  
81000 Podgorica  
Montenegro  
Phone (+381-81) 667605**

**July 1<sup>st</sup>, 2003 – March 31<sup>st</sup>, 2007**

---

## TABLE OF CONTENTS

<b>OVERVIEW: PROJECT PURPOSE AND OBJECTIVES .....</b>	<b>1</b>
<b>I. PROJECT ORGANIZATION AND IMPLEMENTATION CONTEXT .....</b>	<b>2</b>
<b>II. PERFORMANCE MONITORING PLAN.....</b>	<b>3</b>
<b>III. SUMMARY OF MAJOR ACCOMPLISHMENTS .....</b>	<b>3</b>
A. Establish New Institutions.....	3
B. Assist in the Drafting and Implementation of New Laws .....	11
C. Improve Court Administration and Management Practices .....	18
D. Improve Physical Infrastructure, Professional Resources and Equipment of the Judiciary.....	27
E. Increase Public Access to the Courts, Improve Court Service and Information Dissemination	29
<b>IV. LESSONS LEARNED &amp; SIGNIFICANT ISSUES AFFECTING IMPLEMENTATION..</b>	<b>30</b>
A. Institutional Strengthening of Judicial Council.....	30
B. Additional Support for Administrative Office .....	30
C. Improve Legislation Implementation by Ministry of Justice .....	30
D. Further Judicial Training .....	30
E. Improve Public Administration .....	31
F. Finalize Case Management Software.....	31
G. Integrate Court Computer Systems .....	31

---

## OVERVIEW: PROJECT PURPOSE AND OBJECTIVES

The general purpose of the Justice System Reform Project (hereinafter the “Project”) was to further the development of the rule of law in Montenegro. Specifically, the Project was to support the Government of Montenegro’s efforts to reform and modernize the framework of laws affecting the operation of the judicial system, implement structural changes in the judiciary mandated by reform legislation, and improve the day-to-day operations of the courts through the introduction of modern case management and court administration practices and procedures. The Project was also to assist with efforts to increase the supply of essential equipment and materials to the Montenegrin court system. The Project represented USAID’s principal vehicle for providing technical assistance to the Montenegrin judiciary from July 2003 to March 2007.

From July 2003 – December 2005, the Project operated under USAID Mission Strategic Objective (SO) 2.0: “More Effective, Responsive and Accountable Democratic Institutions” and Intermediate Result (IR) 2.0.3: “More Effective, Independent and Accountable Legal Institutions”. In January 2006, USAID adopted a new strategy for Montenegro and the Project commenced operation under Strategic Objective (SO) 1.31: “Strengthening Democratic Governance of a Market Economy” and Intermediate Result (IR) 1.31.2: “Government Institutions Implement Economic Framework”. The benchmarks, anticipated outputs and results set forth by USAID under SO 1.31 were also designed to support and complement USAID’s other Strategic Objectives in Montenegro, “Increasing Enterprise Growth in High Potential Sectors and Municipalities” (SO 1.32); and Reducing the Risk of Political Stability (SO 2.11).

The Project was originally conceived as a three-year program to operate from July 1<sup>st</sup> 2003 – July 28<sup>th</sup> 2006 at the cost of \$6,449,246. However in May 2006 the Project was granted a seven-month extension in the amount of \$250,000 with a significantly narrowed scope of activities. In February 2007, the Project was granted a second extension by USAID, for a one-month period of time at no additional costs. By the completion date of March 31, 2007 the Project had operated for a period of 44 months at a total cost of \$6,699,246.

In order to meet the broad purpose of furthering the development of the rule of law in Montenegro, the Project formulated five main objective areas in which to operate its judicial reform programs:

1. Establish New Institutions (\*Component 1):

Implement changes in the structure and operations of the judiciary mandated by changes in legislation including the creation of a new Appellate Court, an Administrative Court and an Administrative Office for the judiciary;

2. Assist in the Drafting and Implementation of New Laws (\*Component 1):

Formulate and implement changes in the current framework of laws necessary to increase the independence of the judiciary and to rationalize, streamline and speed up the process of adjudicating civil and criminal cases;

3. Improve Court Administration and Management Practices (\*Component 2):

Reduce case backlogs and caseload processing time by assisting in the assessment and identification of structural and technical impediments hindering speedy resolution of cases. Provide expert legal advice, training and other assistance necessary to promote quality and timely judicial decision-making;

4. Improve Physical Infrastructure, Professional Resources and Equipment of the Judiciary (\*Component 2):

Conduct assessments on court facility, material and technology needs and establish a comprehensive strategic plan for addressing those needs. If necessary, expand existing computerization efforts into the basic court system, properly integrate such efforts into an overall IT system, and provide legal re-

source materials, office equipment and court facility upgrades where necessary to enhance efficiency and increase the ability of courts to deliver legal services; and

5. Increase Public Access to the Courts, Improve Court Services and Information Dissemination (\*Public Awareness Subcomponent):

Utilize “pilot” courts to establish best practices and make overall court operations more open and accessible to the public by enhancing the flow of information through dissemination of publications and procedural guides. Carry out activities and training programs designed to increase customer-service orientation by court personnel and improve the level of understanding and cooperation between judicial officials and media representatives. Establish a means for monitoring and measuring citizen reaction to the anticipated changes in public awareness.

\* Please note that for both contractual and reporting purposes to USAID the Project’s five objective areas were divided into two general categories: Component 1 – Support for the Legal Reform Process and Component 2 – Improvement of Court Operations. All Project quarterly and annual reports utilized these two categories to describe programming activities. Likewise, the Project’s internal operation was governed by these categories, with both long-term and short-term technical advisors being assigned to specific programming activities under the Component 1 and 2 designations. The Public Awareness subcomponent was implemented by Mendez England & Associates (ME&A), a U.S. small business subcontractor to Checchi and Company Consulting, Inc., the prime contractor.

## I. PROJECT ORGANIZATION AND IMPLEMENTATION CONTEXT

The Project operated out of its field office located in Podgorica, Montenegro for the entire period of contract implementation, and was organized to utilize a combination of resident long-term advisers, including a Chief of Party (COP) and a Senior Court Administration and Management Advisor (SCAA), expatriate and regional short-term technical advisers, and local support staff. From approximately July 2003 to September 2004 the Project operated under the direction of COP Ted Parnall. In October 2004, Mr. Robert Underwood replaced Mr. Parnall as COP, and remained with the Project until its completion in March 2007. The SCAA position also changed hands during the period of Project implementation, with Mr. Richard Martin serving from July 2003 through November 2004, and then Mr. Keenan Casady assuming the position until the close out of Component 2 activities in June 2006. Furthermore, from July 28<sup>th</sup>, 2003 to September 3<sup>rd</sup>, 2004 the USAID Cognizant Technical Officer (CTO) to the Project was Ms. Dora Plavetic. Thereafter Ms. Vesna Ratkovic assumed the position as CTO and remained in this post until the close of the Project in March 2007.

In addition to fulfilling the role of manager and administrator of the Project’s contract with USAID, the COP also acted as the principal technical advisor to Component 1 activities. Component 2 activities were generally led by the SCAA, with significant input received from both expatriate and local short-term advisers. Aleksa Ivanovic performed the role as Senior Legal Advisor to the Project and Keith Rosten and Tom Reynders, Senior Associates from the Checchi home office in Washington, DC, provided essential supervision and support throughout the entire contractual period. In addition to Aleksa Ivanovic, the local staff was made up of a second Legal Advisor (until January 2006), an Office Administrator, a Legal Assistant, a Translator and a Receptionist.

The judicial reform environment into which the Project came in late July 2003 was extremely active, with Montenegro adopting key pieces of legislation, including a new Criminal Law, a Criminal Procedure Law, and an Execution of Judgments and Civil Procedure Law. In addition, the judiciary was faced with implementing the Courts Act, which made significant changes in the structure and operations of the judiciary. In order to properly organize and advance its ambitious reform agenda in this environment, the Project and USAID came to an agreement in 2003 with government counterparts to form a “Senior Working Group”, which was intended to provide input to the Project and guide its ac-

tivities in a coordinated and productive manner over the length of the contract. The Senior Working Group (“SWG”) was made up of the President of the Supreme Court, Deputy Minister of Justice and Deputy Minister of Finance. Unfortunately the SWG did not function as anticipated as the group was beset with internal disagreements over reform priorities and occasionally clashed with the Project on the proper scope of programming activities. In approximately October 2004, the Project elected to work directly with key counterparts and thereafter did not hold direct meetings with the SWG. Instead, the Project built relationships with its counterparts from the Ministry of Justice, Supreme Court, Judicial Council, basic courts and other important members of the judicial branch that could advance the Project’s reform agenda. These carefully fostered relationships took time, but proved to be instrumental to the many successes that the Project later achieved.

## II. PERFORMANCE MONITORING PLAN

The Project was obligated to design a plan for measuring improvements in judicial reform performance over the life of the contract. This plan was to outline specific indicators, benchmarks, and targets for each of the Project’s components and establish baseline data against which subsequent performance could be measured. The Project utilized Annex 1 attached to the original contract as its Performance Monitoring Plan (PMP) until February 2005 when, recognizing the fluid judicial reform environment on the ground and the shifting priorities of governmental counterparts, the Project requested permission from USAID to develop a new PMP. This permission was granted in March 2005 and the Project engaged international expertise to devise a suitable PMP scheme that would address this changed judicial reform environment, as well as incorporate and reflect new reform opportunities. (The final Project PMP that is attached hereto was approved by USAID in April 2005.) The PMP benchmarks included targets for all relevant programming activities (divided between Component 1 and Component 2 programs) as specified in the Project’s contract with USAID for the three-year period of implementation. (Please note that for the July 1, 2006 – March 31, 2007 extension periods of programming, the Project operated under the *Addendum to Year Three Work Plan for Extension Period* document. This document contained specific Project benchmarks.)

PMP measurements were taken in April 2005 and again in October and June of 2006. Over this period the Project achieved a remarkable level of overall success. As measured by program indicators, the Project met (18.5) of the (21) targets contained in the PMP. This represents an 88% success rate in meeting contractual benchmarks. Considering the many hurdles that the Project faced, including an independence referendum that considerably slowed programming, repeated turnover of key counterparts, and the government’s failure to strictly follow the deadlines and requirements of the Courts Act, the Project is very pleased to present its Summary of Major Accomplishments.

## III. SUMMARY OF MAJOR ACCOMPLISHMENTS

### A. ESTABLISH NEW INSTITUTIONS

- 1) Administrative Court: The Courts Act required that an Administrative Court commence work no later than July 1, 2004. However the Government of Montenegro did not abide by this deadline, and subsequently issued an amendment that permitted an extension of the deadline until December 31, 2004. This seriously undermined the Project’s planned activities which required sufficient time to properly implement. Fortunately, the President of the Administrative Court, Branislav Radulovic, proved to be one of the Project’s strongest counterparts and was able to have the institution fully operational in January 2005. Thereafter, the Project was able to work closely with the Administrative Court in implementing a wide range of activities over a two-year time period. The goal was to improve the entire administrative system of justice in Montenegro.

a) *Case Management and Administration* – In February 2005, the Project’s SCAA and Project Legal Advisors commenced a series of interviews with Administrative Court personnel, including judges, court administrators and staff from the Registry Office. Following these initial visits, Project staff developed and then confirmed the content of a detailed, comprehensive flow chart that depicted the “workflow” of the court. The purpose of this analysis was to identify hurdles, “bottlenecks” or other inefficiencies in the judicial or clerical processing of work that unnecessarily impeded, delayed or complicated the activities of the court on a day-to-day basis. In eliminating these inefficiencies, it was hoped that the Administrative Court would not incur a severe backlog of administrative cases in light of the court’s responsibility for absorbing the Supreme Court administrative caseload (900 cases). The Project’s efforts were also designed to assist the court in preparing for the eventual utilization of case management software.

As a result of the above-mentioned analysis, 16 recommendations and findings were issued by the Project and presented to the Administrative Court President for implementation. These recommendations were approved and implemented over a two-year period. The recommendations focused on practical, straight-forward methods for reducing the time necessary to process a typical case through the Administrative Court. The following is a sample of the recommendations issued by the Project:

- Implement a new color-coded, terminal digit case filing system and eliminate “delivery books”
- Generate a daily report identifying due or overdue filings or pending events
- Assign expert associates to as much of the procedural work as possible
- Focus on improving the court’s service of process and courier systems
- Implement Article 9 of the Court Rules to increase the working hours of the judges and staff to eliminate any backlog
- Require judges to hear cases in consecutive order to ensure that the oldest cases are a priority
- Require that all cases are scheduled for a date certain and purpose certain

The Project subsequently tracked the implementation of all 16 recommendations at the Administrative Court. This was basically achieved by regular observation and follow-up interviews with judges and court staff. By the close of the Project, 90% of the recommendations had been implemented. It is possible that 100% implementation is obtainable; however, the issue of the lack of a case management software program for the courts would first have to be resolved. (See Section 4 below: *Lessons Learned and Significant Issues Affecting Implementation*.) The implementation of the recommendations resulted in a clear benefit to the Administrative Court’s case management and administration orientation. In 2005, the Administrative Court resolved 1279 cases, or 45.85% of the total cases (2789). In 2006, after the majority of recommendations had been implemented, the Administrative Court resolved 10,038 cases out of a total of 11,496 cases, or 87.39%. This represents an approximately 42% overall improvement in the number of cases that were processed at the court, a major testament to increased efficiency.

b) *Training Seminars and Curriculum for Civil Servants* – As part of the support for the Administrative Court and in cooperation with the Human Resources Agency (HRA), the Project developed a series of training events for first and second level civil servants from various administrative agencies and government ministries. The primary purpose of this training program was to improve the overall work efficiency, productivity and professionalism of the agencies and ministries that oversee administrative cases. By achieving these objectives, there was an expectation that the Administrative Court would eventually see a decrease in the percentage of cases appealed to the court. Unburdening the Administrative Court from its heavy caseload is

critical to its institutional success. Moreover, the administrative system of justice benefits from having the lower level administrative agencies decide cases in a legally consistent manner, as it ultimately reduces the amount of time necessary to review the cases by the last instance Administrative Court judges.

The training events focused on providing participants (primarily lawyers) with a concrete, in-depth understanding of the Administrative Procedures Act (APA), the essential legislative act for implementing administrative law in Montenegro. The seminars also delved into specific provisions of legislation relevant to the agency or ministry being trained. (For example, the Customs Department received training in both the APA as well as the Law on Customs.) In sum, approximately 175 ministry and agency officials were trained by the Project's completion in March 2007. These individuals came from those institutions that have the highest number of contested cases and that oversee some of the most critical issues in the administrative process in Montenegro. Of particular consequence to the administrative system of justice were the trainings for customs officials (since customs cases represent approximately 80% of all appealed cases to the Administrative Court) and representatives from the Commission for Restitution. Civil servants from this latter institution routinely decide whether citizens are entitled to restitution for property claims arising from the seizure of real property during the time of the Socialist Federal Republic of Yugoslavia. The following represents a partial list of the ministries, agencies, departments and administrative branches trained during the period of implementation:

- Customs Department and Ministry of Finance
- Ministry of Environmental Protection
- Real Property Agency
- Department of Public Revenues
- Republican Panel of Administrative Offenses
- Real Property Agency
- Commission for Restitution
- Ministry of Internal Affairs
- Pension and Disability Fund
- Ministry of Labor and Social Welfare
- Market Inspectors and Ministry of Economy

Key to the success of the training program was the utilization of judges from the Administrative Court as the principal trainers. These judges were experts in specific areas of the Administrative Procedures Act, and consistently prepared detailed, written presentations that incorporated practical examples of administrative case law. The Project supplemented the core group of trainers from the Administrative Court with individuals from administrative agencies, generally the ranking lawyer on staff.

Also of importance to the training program were the written evaluations and "tests" that were distributed both before and after the training seminars. These handouts were designed to gauge the level of learning of the participants in each tested subject area. On average, the Project trained 25 lawyers, administrative and ministry personnel at each of the seven training events. These individuals demonstrated a 26% increase in their knowledge and understanding of the material after the training events, a marked improvement. In terms of their satisfaction with the quality of the events, 88.64% of the participants gave the seminars the highest marks possible. The Project was consistently praised for its delivery of a professional work product.

A valuable tool in the training process was the development of a civil servant training curriculum. This project was launched together with the Human Resource Agency (HRA) in May 2006 and, after numerous updates and amendments, was finally completed in February 2007.

In order to complete this task, the Project engaged local experts from the Administrative Court and the Ministry of Internal and Public Administration. These experts worked closely with the Project's Senior Legal Advisor in developing training modules for key administrative topics. When completed, the curriculum was approximately 30 pages of useful information on the provisions of the APA and identification of "typical" problems encountered with administrative cases, including collection of evidence, appeals process, and a host of other topics. The Project printed 500 copies of the curriculum, which will be distributed by the Human Resource Agency to all first and second level ministry and agency personnel.

c) *Publications and Information Dissemination* – The Project was diligent in developing both professional and public information publications throughout the course of its work with the Administrative Court. These publications were a vital link to targeted groups, encouraging citizen understanding of the administrative process in Montenegro as well as raising the knowledge level of the professional class of judges, agency and ministry personnel engaged in the administrative process. The publications included the following:

- Three-Fold Public Informational Pamphlet – The Project completed an informational pamphlet that contained basic information on the Administrative Court. This pamphlet provided the citizens of Montenegro with guidance on court functions, including information on the jurisdiction of the court, proper procedures for filing a complaint and specific rules to follow in a typical administrative proceeding. Approximately 2000 of these pamphlets were distributed throughout the basic court system as well as the Human Resources Agency.
- Public Information Book – The Project completed a 20 page book that summarized the laws governing the administrative process, including the APA and the Law on Administrative Disputes. This book was designed primarily to educate those legal professionals that practice administrative law, with a focus on acquainting the reader with legal remedies, hearings and preliminary procedures governing administrative cases. The book also had a section explaining many of the relevant legal provisions in "layman" terminology for use by the public. Approximately 500 copies of the book were distributed.
- Bench Book – In conjunction with a working group comprised of administrative court judges and Project expert retired US Court of Appeals Judge David Ebel, assistance was provided in the drafting of a bench book. The bench book is a quick reference "guide" containing both procedural and substantive information as it relates to administrative cases. The bench book is now utilized by both judges and other administrative decision-makers in conducting their daily business, and is especially helpful to new members to the bench and court associates. Approximately 200 copies of the bench book were distributed.
- Summary Publication of Administrative Court Decisions of 2005 – The Project published 80 of the most important administrative court decisions for 2005. Approximately 2000 copies of the publication were distributed.
- Publication of Decisions 2005 – The Project published all of the Administrative Court decisions for 2005 for use by judges and ministry and agency officials. Approximately 100 copies of the publication were distributed.
- Summary Publication of Decisions 2006 – The Project published 80 of the most important administrative court decisions for 2006. Approximately 1000 copies of the publication were distributed.
- Publication of Decisions 2006 – The Project published all of the Administrative Court decisions for 2006 for use by judges and ministry and agency officials. Approximately 200 copies of the publication were distributed.

The publication of Administrative Court decisions was a major accomplishment and the first of

its kind in Montenegro. The publication of these court decisions opens the entire administrative decision-making process to public and institutional view. This increased transparency has a positive impact on the overall quality, uniformity and consistency of judicial decisions because legal rationales are subject to scrutiny by institutional actors.

d) *Renovation, Equipping and Furnishing* – The Project was tasked with renovating the entire Supreme Court building in order to create appropriate space for the Administrative and Appellate Courts as well as the Administrative Office. This renovation commenced in July 2004 and was completed in January 2005. Though time consuming and expensive, the renovation work did allow the Administrative Court to initiate its work almost immediately upon being formed. Without this Project assistance it is unlikely that the court would have been able to operate within a reasonable period of time after its formation, causing the backlog of administrative cases to increase at an even greater rate. This ultimately would have impaired the government's implementation of its judicial strategy according to the Courts Act of 2002.

The Project also provided 22 computer work stations to the Administrative Court together with servers and other supporting equipment. In order to ensure full and competent utilization of the equipment, a training program was established in September 2005 for all court personnel, with a focus on basic, practical computer skills. Along with the computer work stations, the Project provided the Administrative Court with all furniture necessary to support the 28 staff members that work at the court, as well as a court room to be utilized for public hearings.

e) *Study Visit to the United States* – The Project sponsored a study visit to the United States in March 2005 for the newly appointed judges of the Administrative Court. The event was held at the International Law Institute in Washington DC with the purpose of acquainting judges with practice and procedure of US administrative agencies and courts, particularly those that handle a high volume of cases. The trip was also intended to demonstrate the importance of transparency, openness and accountability in the administrative judicial process. In advance of the trip, the President and members of the court signed letters of agreement to implement a number of activities as follow-up to the study visit, including establishing a training plan and curriculum for first and second level administrative agency personnel (see above).

f) *Administrative Law Conference* – One of the more significant events held by the Project was the Administrative Law Conference in February 2007. This event brought together Project advisor Professor Tom Ginsburg (STTA) from the United States, regional experts from Slovenia and Croatia, Administrative Court judges from Montenegro, and a host of top level officials from various Montenegrin ministries, including the Minister of Justice. Approximately 50 participants attended the event, coming mainly from state agencies that handle administrative disputes. The purpose of the Administrative Law Conference was to educate participants on international and regional “best practices” through expert presentations and to raise the visibility of the work of the Administrative Court to both the Government of Montenegro and the public at large. (Every major media outlet in Montenegro attended.) The Administrative Court has struggled to obtain sufficient operational resources, and this is due in part to the executive branch not being fully cognizant of the scope and importance of the court's work and its impact on fundamental issues surrounding “good governance”. In addition to the expert presentations on comparative administrative law systems, there were lectures on judicial review of administrative action, violations of administrative procedures, extraordinary legal remedies, and temporary measures in administrative procedure, public hearings and execution of decisions. The discussion at the event was very lively and led to consensus on some concrete recommendations on revising the Administrative Procedures Act and other relevant administrative laws. These recommendations will be submitted by the President of the Court to Ministry of Justice for review.

- 2) Appellate Court: The Courts Act required that a new Appellate Court commence work no later than July 1, 2004. However the Government of Montenegro did not meet this deadline, and subsequently issued an amendment that permitted an extension of the deadline until December 31, 2004. Unlike the Administrative Court, which was operational shortly after the December 2004 deadline, the Appellate Court was not able to become fully engaged until approximately spring 2005. Due to this late start date and after discussions with the President of the Appellate Court, Vukoman Golubovic, it was decided that the Project would forego any extensive backlog reduction work in the court. The Appellate Court did not inherit a heavy caseload as with the Administrative Court, and thus faced less of a management hurdle.

*a) Study Visit to the United States* – The Project supported a study visit to the United States for the Appellate Court judges in September 2005. The main purpose of the trip was to introduce the Appellate Court judges of Montenegro to the practices and procedures of the US appellate court system. The Montenegrin delegation visited the Supreme Court of the United States, US Court of Appeals, Federal Judicial Center, Maryland Court of Appeals and other US institutions relevant to the US system of appellate justice. During these visits the delegation learned about topics specific to appellate court judges, including decision-writing, standards of review and the role of an appellate court judge, statutory interpretation, the relationship between appellate and lower courts, and proper organization and structure of an appellate system.

It should also be noted that the Minister of Justice (and current Prime Minister) Zeljko Sturanovic participated in the study visit with the Appellate Court judges. Minister Sturanovic was put into a separate programming sequence, with a focus on establishing and building contacts with US governmental counterparts. The minister met with several high-level officials from the Department of Justice (DOJ) in order to discuss US assistance to Montenegro for prosecutorial development, organized crime and human trafficking. He also met with the DOJ's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), the State Department's, Balkans Desk, and various officials from US government agencies that handle organized crime and racketeering issues.

*b) Renovation, Equipping and Furnishing* – As mentioned above, the Project renovated the Supreme Court building, allowing the physical space for the Administrative and Appellate Court and Administrative Office to be created. The Project also provided commodity assistance to the Appellate Court, including a number of PC stations, scanners, printers and a photocopier. Appellate Court personnel attended a comprehensive computer training course in order to familiarize themselves with proper utilization of the new equipment.

- 3) Administrative Office: Established under the Law on Courts, the Administrative Office (AO) was an entirely new innovation to the Montenegrin court system. The AO was intended to operate under the direction of the Supreme Court and carry out a variety of tasks for the courts, including information system development and support, budgeting, statistical analysis, record keeping and other appropriate functions. One of its primary purposes was to administratively support the operations of the Judicial Council, and thereby act as the implementing body of judicial policy. The AO was not operational until November 2005.

The establishment and operations of the AO was one of the Project's top priorities in 2006. Unfortunately since it was not constituted in a timely manner by the Government of Montenegro, the Project did not have an opportunity to engage the new institution in a full range of programming. By the time AO personnel (department heads) were seated in their positions, there was only six months remaining in the Project's original three-year contract. As of March 2007, the AO had yet to receive approval for their "systematization" act (providing for AO staffing) from the government. Considering these hurdles, the Project elected to focus on concrete activities that would strengthen the visibility of the AO, while fostering long-term sus-

tainability of the institution. In view of the modest time in which to implement these activities, the Project was able to achieve some modest success with this new institution.

a) *Drafting Precepts/ "Policy" Paper* – The first step the Project took in assisting the Administrative Office was to draft sample “precepts” that offered guidance and a overall strategy for the establishment and future operations of the institution. The precepts were written in a “policy paper” type format and done in connection with the Court Management and Caseload Processing Assessment (see subsection C.1.a) that was completed in January 2004. The AO precepts focused on seven distinct areas: overall strategy, transition and training, directorate for the AO, executive department, human resources department, budget and finance department and information technology department. Thereafter the Project worked closely with the Director of the AO in reviewing content, and recommended that a working group be established for the purpose of adopting, amending, or conceptualizing an entirely new precept framework. The precepts were also sent to the Chief Justice for review.

It was hoped that this process would eventually lead to a work product that would allow the AO to take “ownership”. Unfortunately, due to both the lack of institutional support from the Supreme Court, as well as the inability of the AO Director to take a leadership role at the organizational stage, AO precepts were never officially adopted. Although the “systemization” act does contain many of the concepts outlined in the Project precepts, the implementing provisions of the act are not sufficient to provide the AO with strong organizational structure or operational direction. It is possible that once the “systemization” act is adopted and additional personnel are hired by the AO, the precepts will become a functional necessity, and hence quickly adopted.

b) *Train the Trainer Program and Curriculum Building* – One of the AO’s primary functions is to ensure that the courts are being adequately staffed with competent personnel. With this in mind, in November 2006 the Project developed a training program focused on improving the professional capabilities of judges and staff from the basic court system in those areas vital to a court’s operation: case management and administration, budget and finance and informational technology support. An important part of the plan was the utilization of trainers from the Project’s “pilot” court in Kotor in the case management component. This diffusion of practical experience to other courts proved to be a valuable asset to the program.

The first step took in the process was to put potential trainers through an intensive “train-the-trainers” (TOT) workshop. The Project cooperated with a local counterpart, the Center for the Development of NGOs (Center), in formulating an agenda and designing the scope of the workshop. The nine trainers selected to attend the event were drawn from both the “pilot” Court of Kotor and the AO. These individuals worked hand-in-hand with the Center for three days in developing a suitable training methodology and tools for designing, conducting and presenting their future training events.

After completion of the TOT, the trainers drafted a permanent training curriculum with a concentration in what is considered the premiere issue facing the basic courts’ operation; civil case backlog reduction. (There is a general recognition in Montenegro that public disaffection with the judiciary stems from the backlog of civil and commercial cases.) Members of the AO lent valuable assistance by utilizing statistical analysis and information gathered from phone interviews to provide the trainers with proper background data. When completed, the permanent training curriculum contained a detailed outline and attachments that could be incorporated by judges and court staff into the preparation of their own civil case backlog reduction program.

The focus areas of the curriculum included:

- The Role of the AO in Administering the Courts
- Gathering Statistics and Defining the Case Backlog
- Preparation of a Case Backlog Plan
- Backlog Reduction and its Relation to the Civil Procedure Code
- Implementation of the Case Backlog Plan
- Techniques and Skills for Settlement of Cases
- Interaction Between Judges and Court Administrators
- Importance of Establishing a New Filing System
- Court Management and Administration Principles

c) *Training Events on Court Administration, Budget/Finance and Information Technology* – As a follow-up to the TOT program and development of a training curriculum, the Project conducted a series of training events in three broad areas that correspond to AO duties.

*Court Administration:* The Project held three separate training programs for judges and court administrators, covering the entire country of Montenegro, from approximately December 2006 – March 2007. The first event was held for court members from the “southern” Basic Courts of Montenegro, including Ulcinj, Bar, Herceg Novi, Kotor and Cetinje. The second event was held on behalf of those coming from the “northern” courts, including Pljevlja, Berane, Zabljak, Plav, Rozaje and the Superior Court and Commercial Court of Bijelo Polje. The final training session was held for the “central” courts, and included a full contingent of judges and staff from the Basic Courts Niksic, Danilovgrad, Kolasin and the Commercial Court of Podgorica. In total, 60 judges and court administrators were trained at the three events.

The feedback from the trainees to the programs was very positive as indicated by the Project’s detailed post-training questionnaires. In sum, the participants rated the events with a score of 4.71 out of a possible 5.00 (94% of participants were satisfied with the event). Nearly all participants commented on the usefulness of the training content with a typical comment coming from a judge from Podgorica, “the practical aspect of the information presented in the program was extraordinary and will be very useful.” Another judge from the northern courts commented that “we now have a better understanding of what our court needs to do in order to reduce the civil case backlog.” The Project was also able to gauge the overall level of interest in implementing a civil case backlog reduction program in the targeted courts. Prior to the event, when asked whether they were “willing to organize a case backlog reduction program in their respective court,” approximately 63% of judges answered “yes.” After the training programs were completed and the judges and court administrators realized the efficacy of such a program, 83% stated that they deemed such a program useful and would seek to implement it within the next year. Finally, the Project tested participants’ knowledge level of utilizing various techniques to reduce the civil case backlog. Due to the training events, there was a 22% increase in this knowledge level.

*Budget and Finance:* Another focus area for the AO training events was in the area of budget and finance, an essential component of a court’s operation and critical to judicial efficiency. Though the AO’s Budget and Finance Department was not fully staffed as originally projected, the Project was able to draft a modest training plan with the Head of the AO’s Budget and Finance Department, utilizing Ministry of Finance (MOF) officials as trainers. The training plan incorporated the paramount issues that court accountants face in administering their budgets, including preparation and execution of a judicial budget, budget organization and structure, financial procedures for compensating court experts, use of new accounting software, etc. The event was scheduled (contingent on SOW approval and agreement of the MOF) to be held on March 9<sup>th</sup>, 2007 with the Project expecting a full contingent of 35 accountants and budget and finance staff from every basic court in Montenegro. Detailed material that outlined proper ac-

counting procedures in the court system was to be presented to the participants at the beginning of the training session. The Head of the AO's Budget and Finance Department has stated that further training will take place based on the training plan and program implemented by the Project.

*Information Technology:* Information technology is an important tool in supporting the operations of the court system and can dramatically raise the level of court performance. As with the other court staff, IT personnel in the Montenegrin courts had never received any operational guidance until the Project stepped in and engaged the AO. The Project conducted a bidding process in order to select a local firm that could provide the training services and, as a preliminary matter, researched the IT capabilities of personnel in the courts through face-to-face interviews and short questionnaires. It was determined that due to the low level of technical capabilities existing in the basic court system; the Project would have to essentially create IT specialists.

As with the court administration trainings, the Project created a program that divided the county into segments, one covering the northern section of the country and the other combining the central and southern regions. A total of 35 participants were trained in the two training events, with each program lasting five to six days. The Project analyzed the proper scope of the training sessions in advance and requested that the training providers develop hand-outs, training manuals, and other appropriate information. The Project also distributed a CD-ROM that covered the basics of the training sessions. This material will be invaluable to the IT specialists because it will act as a "how to guide" for maintaining and servicing the computers. Some of the topics covered at the event included computer safety, PC hardware and tools, disassembly and reassembly of computers, preventive maintenance, utilization of printers, Windows installation and upgrades, configuring and troubleshooting Windows, diagnosing problems, etc. All subjects were tailored to have practical, "hands on," application.

At the end of the IT training programs, the Project submitted a detailed exam that requested the participants to answer 100 questions pertaining to IT subjects. This item was an important measure of the effectiveness of the training program and the results were very encouraging. In the first training session conducted on behalf of the northern courts, the participants' average score (passing rate) was 72%. In the second training session conducted on behalf of the central and southern courts, participants' averaged a 91% score. Considering that many of the participants were IT novices, these scores represent a remarkable achievement.

d) *Renovation, Equipping and Furnishing* – Renovation that was done on the Supreme Court building included infrastructure work on behalf of the AO. The Project also provided basic IT equipment and furniture to the Administrative Office that permitted the current staff to commence operations. However, when the "systematization" act is finally adopted by the government, it will be necessary for the Supreme Court to provide additional equipment and furnishings.

## **B. ASSIST IN THE DRAFTING AND IMPLEMENTATION OF NEW LAWS**

The Project's approach to assisting the Government of Montenegro in the drafting and implementation of new laws was to provide technical guidance and demonstrate best international practices to local drafters, permitting them to craft better laws that take into account and improve on the legal framework in Montenegro. Consistent with this drafting theme, the Project generally served in the role of facilitator and supporter to working groups organized under the MOJ, not as primary drafter. As may be expected, this practice resulted in draft laws that, while not perfect, have local ownership and are better understood. Whenever possible, the Project included private sector representatives at implementation events and facilitated inclusion of the private sector in discussions regarding the leg-

islative drafting process. This was done primarily through roundtable discussions held throughout the country on the several laws the Project helped facilitate.

- 1) Law on Criminal Responsibility for Legal Entities: The Ministry of Justice formed a working group in August 2005 to draft legislation that would address the rise in corporate crime in Montenegro. The effort was led by Zoran Stojanovic, Professor of Law from Belgrade University in Serbia. It also included supreme and commercial court judges, the Deputy State Prosecutor and advisors from the MOJ. The Project reached an agreement with the ministry to act as primary drafter on the legislation by providing technical expertise from the United States. In order to carry out this task, the Project retained Richard Shine (STTA), an experienced international corporate crime expert and former Justice Department specialist. The Project commenced its work on the legislation in September 2005.

Over the course of more than one year, the Project worked diligently to produce a piece of legislation that would meet international standards and provide Montenegro with the legal “muscle” to handle corporate criminal conduct. In doing so, the Project emphasized three key concepts taken from the US system of justice: federal prosecutorial discretion in deciding whether to level criminal charges; the doctrine of *respondeat superior* as the basis for holding corporate leaders responsible for the acts of their employees; and establishing effective compliance programs that would permit corporations to “self police”. The US concepts were problematic to several members of the working group, but eventually the Project was able to convince these individuals of the effectiveness of such legal measures. Throughout the drafting process the Project held meetings with the MOJ to inform the ministry of the progress of the working group, and to lobby for those provisions of the law that were supported by Mr. Shine and Professor Stojanovic. Fortunately, both Mr. Shine and Professor Stojanovic were in complete agreement concerning the technical details of the legislation and had a uniformed approach to drafting. The Parliament of Montenegro adopted the legislation in December 2006.

With the enactment of the legislation, the Montenegrin criminal justice system was equipped with the legal tools needed to deal effectively with corporate criminal conduct, not only by domestic entities, but also by major multinational corporations that can be expected to increasingly engage in business activities in Montenegro. Most importantly, the legislation is structured to prevent corporate criminal conduct by providing incentives to corporations to police themselves and to prevent crime through corporate compliance programs. Thus the greater resources of the corporate community in preventing crime and enforcing the criminal law will supplement the limited law enforcement resources of the Montenegrin government. In the last meeting conducted with the Ministry of Justice concerning the legislation, the minister described the legislation as “the most advanced in Europe”.

- 2) Commentary to Law on Criminal Responsibility for Legal Entities: As a follow-up to drafting the Law on Criminal Responsibility for Legal Entities, the Project drafted a detailed commentary to the law. The two Project experts that collaborated in drafting the legislation, Richard Shine and Zoran Stojanovic, provided the bulk of the input on the commentary. Due to the complexity of the law, the Project had to painstakingly translate and review each line and provision in order to ensure that the experts were providing the proper conceptual context to the commentary. Due to the length of the work product, the Project divided the commentary into two parts, with Part I completed in September 2006 and Part II completed in February 2007. The commentary will be extremely useful as it will not only provide a practical, comprehensive analysis of the law to the targeted audience, but also will act as an instructional legal guide to following the law. The Project officially presented the commentary to the Minister of Justice in March 2007. Thereafter, 1000 copies were to be distributed to judges, ministry officials, attorneys and the broader business community.

- 3) Law on the Training of Judicial Authorities (Support of JTC): The Judicial Training Center of Montenegro (JTC) was founded as a non-governmental organization in June 2000 and operated independently through November 2004. The institution was primarily funded by the Open Society Institute of Montenegro (OSI), with additional grant money coming from the European Agency for Reconstruction. During this period of operation, the JTC adopted a plan for the implementation of training programs that included a curriculum in five core areas. Although this plan was partially implemented by the JTC, there were simply not enough training programs conducted to provide the level of support needed to effectuate changes in the level of judicial education and professionalism in Montenegro. Regardless, the Project did its best to identify and support those training programs that fit under its scope of work, giving priority to those new pieces of legislation that had a direct impact on the operations of the judicial system.

Unfortunately, the JTC was absorbed by the MOJ in December 2004. Although the Project argued vociferously against the executive “model”, it was unable to have any impact on the final decision. From December 2004 through April 2006, the Project supported the JTC with specific programs dedicated to the implementation of new laws. But due to the MOJ’s decision, programming support was limited until April 2005, when quasi-independence of the institution was established with the adoption of the *Law on the Training of Judicial Authorities*. This legislation provided an entirely new structure to the JTC and permitted it to operate under the direction of the Supreme Court as of January 2007, with management support to come from the new Administrative Office. With this new reality in mind, the Project endeavored to create a new comprehensive JTC curriculum in the core subject areas of civil, commercial, administrative and criminal law.

In the fall of 2006, the Project contacted various international and regional experts in order to identify candidates that could work with local experts in drafting the judicial training curriculum. It was through this process that the Project identified Edmond Miletic, an expert from Croatia in the design and drafting of judicial training curricula. Mr. Miletic had previously assisted both Serbia and Croatia with starting their judicial training centers, and was willing to assist the Montenegrin effort. The first step in the drafting of the curriculum was to produce an *Annual Program for the Education of Judges & Prosecutors*. This document provided the structure and outline for the detailed curriculum that was to follow. In order to ensure proper compliance with Montenegrin legislation, the Project worked closely with civil and criminal law experts from the Supreme Court, Judge Vesna Begovic and Judge Petar Stojanovic. Upon completing their work in January 2007, the Project’s curriculum “team” provided the JTC with a comprehensive work product capable of delivering a structured plan and professional judicial training program to every judge in Montenegro. In addition to an outline of the core subject areas for training, the curriculum contained information on nearly every key procedural and substantive aspect to organizing and implementing training events, including:

- Timeline for implementation of training programs
- Number and structure of training events
- List of trainers – judges
- List of trainers – academia, specialized experts, etc.
- List of participants/target audience
- Training materials
- Training methodology
- Evaluation of programs – teaching methodology and trainers
- Evaluation of programs – organization and logistics
- Testing of judges

Upon its completion, the training curriculum was translated into English for review by the

Council of Europe. Once it has been reviewed and approved by the Council of Europe, it will be officially adopted by the Board of the JTC. Assuming that the Council of Europe approves by April 1, 2007, training programs will commence the following month with what is expected to be significant funding levels from the European Union. The Project's completion of the judicial training curriculum is a significant accomplishment. Over time it will have an enormous impact on the quality and professionalism of the Montenegrin judiciary.

*Regional Conference on Judicial Skills* – The Project co-sponsored a conference on the training of judicial skills with the JTC in May 2004. Judge Robert Payant, President Emeritus of the National Judicial College in Reno, Nevada, worked with approximately 50 Montenegrin and regional judges and judicial training specialists. The three-day conference brought together specialists and judges from Serbia, Bosnia and Herzegovina, Kosovo, Croatia, Albania, Macedonia and Bulgaria in an effort to strengthen judicial qualifications through training programs.

- 4) Law on Courts (Support of Judicial Council): The Law on Courts established the Judicial Council (Council) in 2002. The Council was to operate as the prime judicial policy-maker in Montenegro, but struggled to fulfill its mandate throughout the period of contract implementation, primarily due to a lack of coherency and structure in the Council's decision-making processes. Nevertheless, the Project did engage the Council in efforts to further its institutional goals and objectives through a variety of programming.

a) *Roundtable on the Role of AO and Judicial Council* – In December 2003 the Project organized a roundtable on court administration with a focus on different approaches to designing an effective AO, as well as the future role that the AO was to play in implementing the Council's policies. A U.S. delegation made presentations at the roundtable, including Judge Paul Magnusson, Senior United States District Court Judge from Minnesota; Peter McCabe, the outgoing Chairman of the International Relations Committee of the Judicial Conferences of the United States; and Keith Rosten, Senior Manager of Checchi programs for Europe and Eurasia.

b) *Study Visit to the United States* – In April 2004 the Project organized a study visit to the United States for the President of Montenegro's Supreme Court and Judicial Council members. The purpose of the study visit was to visit US federal and state courts and their respective administrative offices in order to introduce the delegation to how the US system of courts organizes its work with respect to the AO. The US judicial counterparts provided information on judicial-AO relations in terms of financing and budget, facilities, information technology, and general functions of the AO in supporting the work of judges.

c) *Study Visit to Poland* – The Project sponsored a second study visit for members of the Judicial Council in July 2005, this time with a delegation going to Warsaw, Poland. Unlike the first study visit to the US, this trip was designed to provide the Council with specific guidance in a critical areas of judicial reform, such as the practice of developing written criteria for the nomination of judicial candidates to the bench and standards for the disciplining and dismissing of judges. The delegation had the opportunity to visit with top Polish officials from several judicial institutions, including the Supreme and Administrative Courts of Poland as well as the MOJ of Poland. This study visit established the groundwork for follow-up work with the Council in amending the regulations on the Law on Courts

d) *Amending Regulations to the Law on Courts* – In May 2006 the Project conducted a roundtable (*Operation of the Judicial Council*) on behalf of members of the Council and AO. The roundtable was the Project's first opportunity to work directly with both institutions in furthering a key reform goal; putting procedural and substantive changes into place that strengthens the Council as the primary developer of judicial policy. Judicial Council members in attendance included Chief Justice Vukotic, Justice Stojanovic from the Supreme Court and Judge

Rakocevic, President of the Commercial Court. Also present were Darko Radulovic, Director of the Administrative Office and the Head of Legal Department, Nada Djurovic. Critical to the success of the program was the attendance and presentations of retired Judge David Ebel from the United States Court of Appeals, 10<sup>th</sup> Circuit, and Ales Zalar, President of the District Court of Ljubljana, Slovenia. Keith Rosten, Checchi's Senior Manager to Eurasia and Eastern Europe acted as the moderator at the conference.

The experts at the event presented US and European comparative perspectives relevant to the operation of the Montenegrin Council and answered questions from the Montenegrin participants. Specific presentations covered at the workshop included: *Judicial Conference of the United States; Council of Europe Standards on Organization and Powers of Judicial Council; Slovenian Judicial Council - Past Experience and Future Challenges; Functions of the Judicial Council; Committees of the Judicial Council; Meetings of the Judicial Council; Application Procedure, Selection Criteria, Disciplinary Proceedings - US Experience; Removal from Office - US Experience*. The roundtable resulted in some very progressive steps that could form the basis of a complete revamping of the Council and its day-to-day operations. First, the conference furthered a number of concrete recommendations that dealt primarily with the establishment of working commissions, such as legislative, budget and finance, disciplinary, appointments and judicial administration. The recommendations detailed the specific duties and responsibilities of the working commissions as well as offering a "vision" of how the council should function in promoting the independence of the judiciary and developing sound judicial policy, and in particular how to increase authority over the budgeting process. Second, steps were taken at the conference to proffer amendments to numerous articles to the *Rules of Procedure for the Judicial Council*. These suggested amendments pertained to the Council's organization, working sessions, decision-making, etc. At the end of the event each participant signed a document in their official capacity supporting the reform measures. This document was then submitted to the full Council for review and approval.

Although the Project held numerous meetings with Council members as follow-up to the roundtable, the measures adopted by the participants were not implemented prior to the expiration of the Council's mandate in December 2006. Evidently there were serious discussions within the full Council, with most members supporting implementation of the recommendations. This was substantiated by follow-up events in which Council members had the opportunity to endorse the outcome of the roundtable. But until such time as a replacement Council is in place (although nominated, the new members have not been approved by parliament), it will not be possible to adopt the recommendations. Although informal discussions with the proposed candidates to the Council have been positive, it is too early to determine if the measures will ultimately be implemented as adopted by the previous Council.

- 5) Laws on Civil Procedure and Enforcement of Judgments: The Project made a substantial contribution to the drafting and implementation of the Law(s) on Civil Procedure and Enforcement of Judgments. No legal system can support a market economy without a legal framework that can fairly adjudicate and enforce civil disputes. These two laws considered at Project roundtables are critical to the ability of the Montenegrin legal system to accomplish these actions. The Project's main counterpart for this activity was the MOJ, and in total the Project supported five roundtables, workshops and conferences that discussed the legislation in detail for approximately 200 attendees from the judiciary, government and private sector. At all five of these events, the Project teamed with the JTC of Montenegro, ensuring that the institution received programming support while relieving the Project of administrative burdens.

a) *Technical Assistance in the Drafting of the Law* – In November 2004 the Project conducted a roundtable on the two draft laws. Former Minister of Justice Zeljko Sturanovic chaired the daylong meeting and participants included more than 50 judges from various levels of courts,

government officials, practicing lawyers, and representatives of the international community. The roundtable examined the drafts of the legislation, with each being introduced by the chairperson of the respective working groups. Professor Biljana Duricin, Chair of the working group, presented the Law on Civil Procedure while former Supreme Court Justice, Mrs. Emilija Durutovic, presented the Law on the Execution of Civil Judgments. All suggested amendments, recommendations and edits that were raised at the roundtable were incorporated into a synopsis for final review by the working groups. In most cases, the working groups adopted the amendments and recommendations generated at the roundtable and they were placed into the final version of the laws.

b) *Implementation of the Law* – After the Laws on Civil Procedure and Execution of Judgments were adopted in March 2004, the Project organized a series of two-day workshops during the May to June 2004 timeframe. The workshops were held at three separate locations: in Podgorica, the coastal city of Budva, and the northern city of Bijelo Polje. The workshops focused on how judges can best enable themselves to implement the two laws. More than 110 judges, 20 prosecutors responsible for civil law, and 25 private attorneys participated. In addition to the chairs of the respective working groups, US Professor Thomas Rice acted as the primary presenter at the events. The judges in attendance represented virtually the entire judiciary working in the civil law area, making this the first series of workshops to deliver information on implementing new reform legislation on a broad scale. The workshops focused on providing participants with clear rules and guidance for implementing the legislation with a focus on those provisions pertaining to:

- Initiation of a civil action
- A full hearing of all relevant facts
- Assuring the correct application of the law, including for speedy appeals
- Enforcement of the final judgment of the court

The final workshop held on the implementation of the legislation was in July 2005 in Podgorica and included 65 judges, lawyers, prosecutors, ombudsmen, representatives of the Central Bank and other legal professionals. The purpose of the workshop was to review the progress that the Montenegrin judiciary had made over the previous year in implementing the new laws. The participants reported a high degree of satisfaction with the legislation, but did point to several problems that needed to be addressed. These problems included the lack of consistency in the serving of process to litigants, delays by state institutions in providing timely information, court and evidentiary deadlines that are often ignored by parties or not enforced by judicial officials, and the lack of public awareness in the utilization of new mediation and arbitration proceedings. The overall lack of training of judges and court staff was also mentioned as a potential stumbling block in the efficient and professional operation of the new laws. The Project tried to address these weaknesses in follow-up programming activities, particularly with respect to the issue of inadequate service of process.

- 6) Law on Extrajudicial Procedures: In coordination with the JTC, the Project conducted a training event in January 2005 on the draft law on Extrajudicial Procedures. Extrajudicial Procedures legislation was of great importance to the development of the legal system of Montenegro because it introduced international standards on issues related to the trial process in matters of family law, inheritance, expropriation of property, etc. The event was attended by approximately 35 judges and legal professionals from throughout Montenegro. Former Minister of Justice Zeljko Sturanovic provided opening comments to the participants, and the event was covered by local news media. The lecturers included Biljana Djuricin, from the law faculty of the State University, Podgorica, presenting on a “*General Review of Extrajudicial Proceedings*”, Radojka Nikolic, Superior Court Judge of Podgorica, presenting the topic of the “*Status*

of *Extrajudicial Proceedings*” and Gavriilo Cabarkapa, Supreme Court Judge, who presented the topic of *“Inheritance as an Extrajudicial Proceeding”*.

- 7) Laws on Business Organizations and Secured Transactions: In July 2005 the Project organized a roundtable and discussion on the implementation of the Law on Business Organizations and Law on Secured Transaction for approximately 30 attorneys, judges, and representatives of private business banks and clerks of the Central Pledge Registry of the Commercial Court. This one-day roundtable included presentations by Mr. Savo Djurovic, USAID Private Sector Adviser, Slaven Scepanovic, Legal Team Leader of USAID’s Economic Reform Project in Montenegro, and Project short-term expert Yair Baranes. Commercial court judge Dijana Raickovic was also an active panel member, providing detailed answers to participants on problematic legal questions. Both pieces of legislation are very important for ongoing economic reform efforts in Montenegro as they seek to improve the investment environment in the country and encourage entrepreneurship. One very tangible result of the workshop was the list of detailed, specific comments that were generated pertaining to various flaws in the provisions of the legislation that act as hindrances to effective implementation. The comments were eventually condensed into an outline that was provided to the MOJ for review and distribution to key governmental actors.
- 8) Regulations on Court Rules: In coordination with the OSCE the Project conducted a workshop in November 2004 on the implementation of the new Court Rules with a focus on two issues: the random assignment of cases and the publication of case decisions. The event also touched on issues related to judicial accountability, transparency of court operations, and procedures for improving the current system to increase citizen access and awareness of legal rights. The target audience for the event consisted of judges, secretaries/administrators of the various courts, intake officers, and other court professionals.

As a follow-up to the Court Rules workshop, the Project worked with its international counterparts at the OSCE and JTC in preparing a questionnaire for judges, court secretaries, administrators, intake officers, and other officials connected to the court system. The purpose of the questionnaire was to better understand problematic issues arising from implementation of the court rules, and to utilize this information as the basis for improving court operations. The Project also intended to utilize the questionnaire in formulating its strategy for the implementation of its court administration program in the pilot courts. Although there were several sound ideas generated through this process that were later incorporated into Project programming, there were simply not enough detailed responses available to allow the Project to fully utilize the questionnaire content.

- 9) Maritime Law: Commercial maritime disputes are rapidly increasing in number in Montenegro and the commercial court system is coming under pressure to handle these cases, but without a sufficient number of trained professionals in maritime law. In order to meet this training need the Project and the JTC devised a two-day training program in December 2006 for 30 Commercial and Appellate Court judges as well as representatives of the MOJ and local companies that conduct international transactions involving maritime issues. Project short-term experts in maritime law, Anthony Rogers and Vivek Jain, examined the current status of Montenegrin law as it relates to international maritime legislation, and provided written comments for review by participants. A local expert retained by the Project also provided assistance to the participants in understanding the intricacies of maritime law as it applies to Montenegro.
- 10) Mediation Law: In 2005 the Parliament of the Republic of Montenegro adopted the regulatory framework for mediation in Montenegro, the Mediation Act. The Mediation Act serves as a legal ground for various steps that have to be taken in order to promote an amicable dispute resolution process in Montenegro. At the request of the MOJ, the Project engaged a regional

expert, Ales Zalar, President of the District Court of Ljubljana, to develop a comprehensive “communication” plan in order to promote general public awareness and build citizen trust and confidence in the mediation process. Judge Zalar’s communication plan for conducting a public awareness campaign was completed in early May 2006 and included an analysis of the current status of mediation activities in Montenegro (“situation” report), information on communication lessons learned in countries with advanced mediation systems (Slovenia and Netherlands), general conclusions and recommendations, and details on how to put the plan into place through a court-annexed system. It also included information for conducting public awareness activities that the Project could develop with the MOJ, as well as a matrix/timetable for the implementation of the plan. The work plan was presented and reviewed by the Deputy Minister of Justice on May 25, 2006, and after amendments were suggested and incorporated into the plan, a final product was turned over to the MOJ in June 2006.

The Project conducted follow-up activities during the extension period as well, including a large-scale public awareness campaign in its designated pilot courts. The public awareness campaign included distribution of pamphlets and brochures on the mediation process in Montenegro, as well as public service announcements through utilization of billboards in Kotor and Cetinje.

### C. IMPROVE COURT ADMINISTRATION AND MANAGEMENT PRACTICES

This Project objective addresses the need for expert advice, training and other assistance to improve the quality and timeliness of judicial decisions and the basic administration and management of the courts, with a special emphasis on creating “pilot” courts that could be utilized as the nexus for expansion of “best practices” to other courts in Montenegro.

- 1) Court Administration and Management Assessments: As a preliminary step to its work on court administration and management, the Project concentrated on developing a comprehensive analysis of the most critical aspects of court operations in Montenegro. This analysis established baseline data and provided the Project with a thorough understanding of the types of assistance that would be most effective in effectuating reform.

- a) *Caseload Processing and Court Management* – Project short-term technical advisor (STTA) Michael Bayne completed two assessments on caseload processing and court management in January 2004. The caseload processing assessment examined caseload and backlog issues throughout the court system and provided analyses of caseload management, data collection on several hundred cases, charts of typical civil and criminal case flows, form design and management information. It presented detailed recommendations in all of these areas, and included ideas pertaining to the development of training manuals for judges and staff.

The court management assessment examined the administrative duties and responsibilities of judges and court personnel in Montenegro, and provided recommendations for the AO to use in allocating future resources. Organizational charts for both existing courts and the proposed new institutions were provided as well. Both assessment components were translated into the local language and presented to the SWG with approved recommendations to be implemented through pilot activities during Project years two and three. Mr. Bayne also reviewed the “precepts” policy paper that the Project prepared to describe the role of the Administrative Office in court management, and presented his findings to the SWG.

- b) *Court Financing Assessment* – The court financing assessment established a complete framework from which to understand and address one of the essential mechanisms of judicial reform, that of strengthening the judicial branch’s role in the budgeting and financing process. The assessment was conducted by Project STTA Joe Bobek in two phases. The first phase was

completed in mid-November 2003 and concentrated on analyzing the judiciary's 2004 budget submission. The second phase was completed in January 2004 and culminated in a roundtable with the SWG on specific court financing issues. Copies of the assessment in the local language were furnished to roundtable participants a week before the event to enable discussion of the detailed data and recommendations presented. The court financing assessment documented how the entire judicial budget was prepared and approved, and offered 14 concrete recommendations on the various mechanisms that the judiciary could utilize to improve the budgetary process. It also stressed the importance of the judiciary taking an active role in ensuring that the process was independent from the executive branch, and included detailed comparative data to assist in determining what should be an appropriate level of funding for the Montenegrin judiciary.

- 2) Court Administration Manuals: Based on the results of the assessments, the Project created two court administration manuals that are utilized by the courts as desk references for following step-by-step procedures for the operation and management of the most important internal activities of the courts. The manuals brought uniformity and consistency to court processes and vastly improved their day-to-day management. A major success was the Project's presentation of the manuals to the Supreme Court of Montenegro, which resulted in the court officially adopting the documents as the "working" manuals of the court system. The manuals are now in widespread use in the Montenegrin courts.

a) *Court Facilities Manual* – The Project's STTA Gerald Thacker developed a detailed manual for the courts that outlined procedures for court personnel in the following areas:

- Emergency contact numbers
- Building profile
- Fixing building problems
- Requesting additional space
- Continuity of operations planning

b) *Budget and Finance Manual* – The Project's STAA Joe Bobek and local expert Blazo Jovanic produced a manual for the financial operation and internal controls of the court system. This manual is utilized by the courts in presenting their annual budgets to the government, a significant step in furthering judicial independence. The manual outlined procedures for court personnel in the following areas:

- Process of creating the budget
- Execution and control of the budget
- Management of the budget
- Reporting and internal controls

- 3) Establishment of Pilot Courts: One of the Project's primary objectives in Montenegro was to establish pilot courts that could be utilized to develop and then expand new reform measures in the areas of court administration and management. This utilization of "best practices" allows local judicial institutions to take ownership over developing their own reform programs, tailored to the realities and environment of the particular court. One example of this type of activity was the Project's training program for judges and court administrators in backlog reduction (see subsection A.3.b) that encompassed the entire team of judges and court administrators from the pilot program, working directly with their colleagues from other courts.

The Project's introduction of the pilot program commenced with the approval by USAID of the Project's selection of the Kotor and Cetinje Basic Courts as the pilot courts. This decision was based on proximity of the courts to the Project office in Podgorica, as well as an effort to

select courts with diverse problems and constituencies. The Project achievements with the pilot courts were exceptional, and especially notable was the successful implementation of a civil case backlog reduction program. Throughout the period of implementation, priority was given to ensuring that Project experts spent significant time on-site at the pilot courts.

a) *Workflow and Caseflow Analysis* - During March through May of 2005 the Project conducted workflow analysis in the Registry Offices of the pilot courts. This analysis was necessary to identify inefficiencies in the clerical or judicial processing of work that unnecessarily impeded or complicated the flow of work through the court, and to help prepare the courts for the introduction of integrated case management software (see section 4. F). This effort required numerous fact-finding visits to the courts to interview staff of the respective Registry Offices, and observe, review and document each step in the workflow process. Following the initial visits, Project staff returned to the courts to discuss and validate the data collected with the respective Registry Office staffs, and to prepare for the development of a detailed, comprehensive report and corresponding flowcharts that accurately depicted the situation in each court. Upon completion, the report and flowcharts were presented to the presidents, judges, court administrators and staffs of each court for their review, comment and discussion with the Project's SCAA.

As the analysis revealed, many of the step-by-step procedures followed by the judges and the courts' Registry Office staffs are codified in the Rules of Court or in various articles of the law in excessive procedural detail. In order to maximize the effectiveness of the Project's workflow recommendations, the Project sought the permission of the MOJ to "relax" the Rules of Court and provide the pilot courts with greater operational freedom. After numerous meetings with the MOJ, this permission was granted, setting the foundation for full implementation.

During this same time period, the Project was also conducting caseflow analysis in the pilot courts of Kotor and Cetinje. As with the workflow analysis, it was necessary to identify inefficiencies that were leading to delays in the processing of cases. In order to accomplish this task the Project designed numerous data collection tools that would provide a "snapshot" of each stage or "event" of a typical civil case as it moved through a pilot court. In order to carry out the data collection, the Project trained legal interns for the task and had them periodically submit the information to the SCAA for quality control and random accuracy checks. In order to magnify the "picture" of the pace of litigation in the pilot courts, a representative sample of pending cases was randomly selected using the courts' registry (or docket) books.

Once the results of both analyses were compiled, analyzed and summarized, the data was reported to the respective court presidents, judges and administrators for their review, consideration and comment. The results were also shared with USAID, the Ministry of Justice and representatives of other key courts in Montenegro in several meetings held at the Project's office. This ongoing interaction with counterparts built confidence in Project expertise, and was a major factor in the Project attaining its ambitious reform agenda in the pilot courts.

b) *Implementation of Recommendations & Backlog Reduction* – After the Project had sufficient data available from its workflow and caseflow analyses to analyze the specific problems that were leading to the civil case backlog in the pilot courts, detailed reform recommendations were issued and a backlog reduction program was put into place. All recommendations were approved by Project counterparts in advance.

*Implementation of Case Management and Administration Recommendations:* The crux of the Project's work on case management and administration was 35 detailed reform recommendations issued to the presidents and judges of the pilot courts. These recommendations were specifically tailored to the problems that the pilot courts were encountering in their day-to-day op-

erations. Among others, they included increasing the utilization of court associates for procedural tasks; curtailment of the use of delivery or other auxiliary recordkeeping books; exploring the cost-benefit alternatives for improving service of process; dispatching of documents using computers; implementing the new color-coded, terminal digit filing system; and assigning cases to judges in consecutive/data order to ensure that the oldest cases receive the court's attention. Actualization of the recommendations took place over a period of months as the courts, through a trial and error process, slowly integrated the reform measures into their court operations. Project experts tracked the implementation of the recommendations on a weekly basis and, when necessary, encouraged counterparts to strictly abide by their earlier commitments.

By the close of the Project in March 2007, 95% of the case management and administration recommendations had been fully implemented in the pilot court of Kotor. In Cetinje, the numbers were equally impressive, with 84% of the recommendations implemented. Combined with the civil case backlog reduction plan, the recommendations had a dramatic impact on the timeliness of judicial decision-making in the courts. The pilot court of Kotor went from having the dubious reputation as a "failing" court, to being recognized as a truly quality institution. While the pilot court of Cetinje was already considered to be a reasonably well-run venue, it is now considered to be exceptional for its efficiency, and has been repeatedly praised by the Government of Montenegro.

*Backlog Reduction Plan:* Another critical component of the Project's work on improving court management and administration was the creation of a Backlog Reduction Plan (BRP). When completed in February 2007, after several months of intense work and detailed refinement, the BRP created a simple, sustainable methodology for reducing civil case backlog that could be applied to any basic court in Montenegro. Though the plan did vary slightly in the two courts, (Kotor experiences a much higher caseload, and backlog is more deeply rooted), the principles and concepts contained in the plan were basically the same for both courts. The BRP included several components that addressed both procedural and substantive issues in the pilot courts. There were several "themes" that were considered crucial elements of the BRP, especially as they apply to the unique situation encountered in the pilot court of Kotor:

- Promoting Leadership – It was emphasized to the presidents of the pilot courts that strong leadership was required if the BRP was to succeed. In the case of the pilot court of Kotor, the Project approached President Vučković and requested his personal involvement in the BRP by serving as a member of his court's readiness and settlement conference team. In addition, the President participated in regular meetings with the other members of the BRP team, Judges Ranko Šćekić, Sveto Stanišić and Andrijana Boreta, wherein BRP statistics, charts and graphs prepared by the Project were systematically reviewed. Leadership was also encouraged through constant interaction and communication with team judges, promoting an open discussion of the problems encountered and successes achieved;
- Creating a Time Standard – The Project recommended and the President agreed that there must be a "disposition time standard" for civil cases. In this case, it was decided that three years would be the standard, and therefore the "universe" of cases that were to be part of the BRP included all civil cases filed in 2002 and earlier;
- Assessment of Backlog – President Vučković and Judge Šćekić, President of the court's Civil Division, assessed the respective pending inventory and determined which cases were to be included in the BRP "universe";
- Institutional Support – In accordance with Article 9 of the Court Rules, President Vučković and the Project sought and obtained the approval of Chief Justice Ratko

Vukotić for implementation of the plan. In addition, after several meetings, support of the President of the Montenegro Bar Association, Dejan Vujanović, was provided;

- Communication with the Bar – Correspondence, signed by President Vučković, describing the BRP and the court’s professional expectations of attorneys (and their clients) was sent to all attorneys who regularly practiced in the pilot court of Kotor, as well as to all litigants whose cases were part of the BRP “universe”. In addition, under Judge Šćekić’s guidance, the BRP team sent “lack of prosecution” letters to all attorneys of record whose pending cases had been inactive for one year or longer;
- Implementation – President Vučković and Judges Šćekić, Stanišić and Boreta formally launched the BRP on April 3, 2006. While the BRP quickly resulted in the disposition of a significant number of old cases, an array of problems also came sharply into focus. These issues required the judges to take a series of procedural “risks” to effectively control the court’s caseload, as well as the conduct of attorneys, expert witnesses and litigants. This included a dramatic restriction on the number and length of postponements permitted, the imposition of significant monetary sanctions for participants’ failure to appear or lack of preparedness, a requirement that parties and their attorneys speak with one another prior to the scheduled readiness and settlement conference, and that expert witnesses, other witnesses, attorneys and their clients be present and available during settlement discussions;
- Utilization of Settlement Conferences – The Project emphasized the necessity of utilizing the settlement process to dispose of old cases and incorporated the technical training (see subsection C.3.e) that had previously been demonstrated in earlier Project programming. The Project spent a great deal of time in educating the backlog team in how best to handle a settlement process;
- “Hands On” Approach – Project representatives were on hand for over 50% of the civil matters handled by the backlog reduction team in the pilot court of Kotor. This allowed the Project to engage team members on nearly a daily basis, pointing out weaknesses in implementation, suggesting alternative methods, and constantly refining aspects of the plan;
- Media Relations – Since the inception of the BRP, President Vučković and the Project COP conducted five press/media conferences to keep the public informed about the plan’s progress and its successes to date, to identify problems that clearly obstructed the court’s ability to function effectively, and to draw specific attention to individual attorneys, mayors of municipalities and directors of private businesses whose apparent indifference to the BRP was hampering the proper administration of justice. Media pressure was essential to ensuring that the program remained in the spotlight through the period of implementation. As word of the success of the BRP spread throughout the public, pressure increased on both judges and the legal profession to fully and efficiently comply with the provisions of the program. Moreover, the Project discovered that due to the publicity surrounding the BRP, Montenegrin citizens were requesting that the court permit extension of the program to include cases outside the case “universe” (i.e. newly filed cases).

By the completion of the initial three-month period of implementation for the “control” group (defined as the BRP implementing judges) in July 2006, the pilot court of Kotor had achieved an astounding 60% reduction of their universal civil case backlog. The pilot court of Cetinje also achieved a solid result, with 36.5% of the backlog eliminated. Information about the success of the BRP was widely disseminated throughout the court system in Montenegro, both through the AO court administration trainings (previously described above) as well as through the Project’s production and distribution of the manual *Justice Delayed – a Guideline for the*

*Implementation of a Backlog Reduction Program in Montenegro's Basic Courts* (see below for description.) In follow-up to the implementation of the BRP, the President of the pilot court of Kotor informed Project representatives that the court intended on extending the BRP to include the entire contingent of pilot court judges, as well so to implement it for an indefinite period of time. This decision not only reflects the success of the program, but also demonstrates a solid basis for long-term sustainability.

c) *Audio Recording Equipment* – In June 2005 the Project sent a delegation composed of Vlado Radulović, Judicial Inspector for the MOJ, Zoran Zivković, then President of Cetinje Basic Court, Biljana Uskoković, judge of the Kotor Basic Court, and Nada Rabrenović, Secretary of Podgorica Supreme Court, to visit the Basic and Appellate Courts of the Brčko District in Bosnia and Herzegovina. The primary purpose of this visit was to witness a demonstration of the *For the Record* (the “FTR”) digital audio recording system, which is in use in both courts in the Brčko District. The members of the delegation observed an actual hearing before the Basic Court of Brčko District and thus were able to see firsthand the benefits FTR’s digital audio recording system has in increasing work productivity and reducing time-consuming inefficiencies.

Shortly after the delegation’s return to Montenegro, the Project sought and received USAID approval to procure eight digital audio recording systems for the pilot courts in Kotor and Cetinje. Once the systems were installed in the pilot courts, comprehensive training was conducted on proper utilization of the equipment. Through time, the FTR systems have proved to be an invaluable tool, allowing the courts the possibility of quickly and accurately recording important judicial proceedings. The systems are also utilized to create an evidentiary database that can be reviewed by judges when needed. Due to the pilot courts’ satisfaction with the FTR equipment, the MOJ is now considering purchasing additional systems for widespread use in the courts.

3) Court Administration and Management Training: The Project carried out a broad range of training activities to address specific aspects of court administration and management reform in the courts. These activities were done in collaboration with the Administrative Office when applicable (see subsection A.3.c), and utilized the Project’s capable resources in the technical area, including supplementing the work of the Project’s SCAA with specialized short-term experts and US judges and court administrators.

a) *Court Administration Roundtable* – Together with the US Consulate, in October 2003 the Project co-sponsored a general information roundtable on court administration and the establishment of the Administrative Office. Presenters were US federal judges and court administrators from the Federal Judicial Center and participants included representative judges from all levels of the Montenegrin court system.

b) *International Conference on Court Administration* – In September 2004, the Project sponsored a delegation of judges and court administrators from Montenegro to attend an international conference on court administration in Slovenia. The event provided an opportunity to participate in discussion panels on a range of topics, including *Comparison of Court Administration Models, Utilization of Techniques of Automation Services, Budget and Financial Management, Ethics for Court Administrators, and Courts, the Media and Modern Case Management Techniques*.

c) *Court Administration Workshop* – In June 2005, the Project conducted a comprehensive workshop for Montenegro’s court administrators. It was the first time that an event had been organized solely for court administrators and every court in Montenegro was represented. In addition, court accountants attended a separate programming activity on finance, budget and

internal controls presented by the Project's local expert, Blažo Jovanić, Assistant to the Chief Justice of the Supreme Court. The Project presented its recently developed manuals on *Court Facilities* and *Finance, Budget and Internal Controls*, which were later promulgated by the Supreme Court for use throughout Montenegro. Participants also previewed the Project's new website for the Montenegrin courts, still under construction at that time. In subsequent "breakout" sessions, the Project elicited input with respect to the website's section on "frequently asked questions (FAQ)".

The event also allowed the Project to introduce the new concept of color-coded, terminal digit filing and to give an overview of recently conducted analyses of workflow and caseload in the Project's pilot courts in Kotor and Cetinje. Finally, participants learned of the development of integrated case management system software in Bosnia and Herzegovina from Emir Mehmedbasic, a representative of the Economic Restructuring Office of the USAID Mission. The ongoing efforts to reduce backlog and improve caseload in seven pilot courts in neighboring Macedonia were described by Gordana Stojanova, Pilot Court Manager for USAID/Macedonia's Court Modernization Project.

d) *Service of Process Roundtable* – The Project conducted a roundtable in September 2005 on the serious problem of inadequate service of process in Montenegro. Effective service of process is the first step toward efficient administration of justice; it reduces delay and contributes to the elimination of the courts' caseload backlog by ensuring that litigants receive timely notice of scheduled events or required documents necessary to prosecute a lawsuit or other legal matter. Montenegro's court administrators, presidents of several basic courts, representatives of the Ministries of Economics, Justice, and Internal Affairs, Montenegro's Postal Service, and USAID representatives participated in the roundtable. As a result of the intense discussions stemming from presentations at event, the participants produced an *Action Plan* that was to be implemented within an approximate 90 day time period. The plan consisted of many points, but it primarily was focused on three key aspects:

- Pursuant to Article 135 of the new Civil Procedure Law, the working hours of the courts' couriers will be changed to enable them to serve process during times when it is expected that most parties are likely to be at home (after 3:00 pm daily and on Saturdays);
- The court administrators will meet with representatives of the Postal Service in their respective municipalities to formulate a strategy for change and a methodology to monitor the impact of results, as well as inform the local media of these efforts; and
- Plaintiffs' private attorneys will be responsible for serving process on opposing counsel as well as the parties to their respective cases.

Shortly after the workshop, Project representatives learned that the Director of the Postal Service had voluntarily adopted a number of measures to combat ineffective service of process, including putting a training program into place that would educate Postal Service delivery personnel. The newly formed Montenegro Court Administrators Association (MCAA) assisted the Postal Service in developing this training program, which was conducted over a three-month time period in every region of Montenegro. At the completion of the training program, nearly every Postal Service employee involved in service of process in Montenegro was advised of the relevant legal procedures and methods that could be employed in improving the quality of service to the public and courts.

The Project monitored progress in the basic courts with respect to the service of process issue, and discovered that the courts' were in fact realizing a slow, but steady upward trend in the percentage of legal documents that were served in a timely manner. Moreover in interviews

with judges, the Project ascertained that there were fewer cases that were being delayed due to service of process problems. The workshop provided tangible results.

e) *Effective Readiness and Settlement Conference* – In November 2005, the Project conducted a workshop on conducting proper judicial readiness and settlement conferences in the Montenegrin courts. The presenters included two United States Federal Magistrate Judges, Elizabeth A. Jenkins (Florida, Middle) and the Virginia M. Morgan (Michigan, Eastern), who were joined by President Jadranko Grčević and Judge Selim Karamehić of the Basic Court of the District of Brčko and Judge Miraš Radović of the Supreme Court of Montenegro. The workshop brought Montenegrin judges together with their American and Bosnian counterparts to explore the concept of the mandatory readiness and settlement conference and its potential impact on delay reduction and the elimination of backlog in Montenegro’s trial courts. The Project elected to hold this event because its analysis of caseflow in the pilot courts in Kotor and Cetinje had revealed that an inordinately high percentage of cases go to hearing in Montenegro, resulting in significant delay and burgeoning backlogs, unduly burdening the entire judicial system.

At the *Effective Readiness* event the judges acquired new negotiation skills and learned techniques to facilitate settlement during the preparatory hearing stage of the proceedings. The presenters also sought to enhance the judges’ awareness of the importance of total case management and effective calendar control from filing to disposition. In addition to lectures and panel discussion, role-playing and group analysis played an important part of the workshop. After the event detailed workshop materials were mailed to all civil judges in Montenegro.

The Project later tracked the utilization of the new settlement techniques in the BRP at the pilot court of Kotor. Through the implementation period of the BRP approximately 23% of the cases were resolved through settlement, which indicated a marked increase in the utilization of this case management technique. Prior to the Project engagement in this area, a negligible number of civil matters would be settled prior to a final hearing.

f) *Building an Effective Court Management Team Workshop* – The Project presented a workshop in December 2005 on encouraging better court management interaction between judges and court administrators. Presenters at the workshop included Patricia Fawsett, Chief Judge of the United States District Court, Middle District of Florida, and Sheryl Loesch, Clerk of Court for the United States District Court, Middle District of Florida. The participants consisted of court presidents and their respective administrators (court secretaries and chiefs of registry) from Montenegro’s basic, superior, appellate and commercial courts. The workshop was designed to strengthen the administrative and managerial effectiveness of the courts through the promotion of an executive “team” approach, involving closer interaction between court presidents and court administrators. Subject areas that were discussed at the workshop concerned internal challenges faced by the courts and the ways that court presidents and administrators can approach them effectively, characteristics of an effective court president/court administrator relationship, leadership models for the courts and proper task delegation to court administrators.

#### 4) Additional Court Reform Activities

a) *Montenegro Court Administrators Association (“MCAA”)* – The Project fostered the establishment of the MCAA during the June 2005 workshop on court administration. With Project assistance the MCAA developed founding documents and was officially registered as an NGO in October 2005. The MCAA has appointed members to its Managing and Supervisory Boards as well as coordinators for the following areas of emphasis: service of

process, public relations, training and human resources, relations with court presidents, Registry Office operations, and information technology. Subsequent to its formation, the MCAA met to assess the training needs of court administrators, which were later addressed in the Project's court administration trainings with the AO. Overall, the members of the MCAA displayed a high level of understanding of current problems in court management, a willingness to be fully involved in the development of MCAA mission and vision statements, and the desire to provide a forum for the discussion and resolution of problems common to all courts throughout Montenegro.

- **FONDAS Training** – In April 2006 the Project worked with the Foundation for Democratic Alternatives in Society (FONDAS) to conduct a two-day training session in leadership skills development and to assist the MCAA membership coalesce into a “team” able to participate collectively and actively in the MCAA’s strategic planning processes. The Chief Justice of Montenegro, Ratko Vukotić, opened the event and the trainers discussed characteristics of situational leadership, decision-making, problem-solving, delegation of tasks and motivation. Questionnaires, case study analysis, active participation, “brainstorming” and group discussions were used to facilitate the learning process.
- **Canadian International Development Agency (CIDA) Grant Proposal** – Working in cooperation with the MCAA, the Project assisted the group in developing and submitting a grant proposal to CIDA for future funding of the NGO and its related activities. Though the MCAA did not ultimately win the grant monies, it is hoped that the skills learned in the process will assist the group in the future. If not, the ongoing lack of funds could lead to sustainability problems as MCAA members cannot pay for official travel to quarterly meetings or annual conferences, plan and conduct professional training activities or publish and distribute newsletters. Regardless of the dedication displayed by the members to the development of their organization, without funds to cover their most basic needs, the MCAA’s progress as a viable NGO will be painfully slow.

b) *Courts’ Enforcement of Utility Bills* – As in other Balkan countries, Montenegro's courts are charged with the responsibility of enforcing unpaid utility bills for water, electricity, and mobile phones as well as the typical judgments resulting from the adjudicatory process. To further complicate the courts’ work, the Government of Montenegro has not provided sufficient resources, human or otherwise, to manage this enormous, labor-intensive workload. Of the total number of enforcement cases analyzed by the Project, 73% were for the collection of unpaid utility bills. Expenses of the Postal Service in the enforcement of utility bills are €4,560 a month in the Basic Court of Podgorica alone. In order to offer some possible solutions to this problem, the Project brought USAID Fellow Angana Shah to Montenegro in May 2006 for the purposes of reviewing the courts’ enforcement of utility bills, interviewing representatives of the various utility companies, and developing findings, conclusions and recommendations on the subject. Subsequently, a summary of Ms. Shah’s analysis and recommendations was presented to representatives of USAID and the Project at a meeting scheduled for that purpose. As follow-up, the Project met with key counterparts, including the Chief Justice, to present the findings of Ms. Shah and to offer technical assistance to the judiciary in resolving the matter. The government’s approach was to first address the issue by amending existing legislation. As this process will first require the formation of a working group, no tangible results can be expected for at least one year.

c) *Montenegro Courts’ Website* – The Project undertook the development of a comprehensive website for Montenegro’s courts with the goal of providing the public with clear and vital information on the court system. When completed in September 2005, the website offered Montenegrin citizens an opportunity to learn about court functions, locations of courts, instructions for filing legal matters, sample documents utilized in proceedings, and general

information about the judicial branch of government. On September 14, 2005, the website was formally unveiled to the public and officially transferred to the Montenegro Supreme Court, which agreed to assume responsibility for its maintenance and further development. To date, the website has been extremely well received with more than 12,500 citizen “hits” and a significant amount of positive feedback and commentary. The website was also repeatedly recognized by government counterparts as being a quality source of information concerning the judiciary.

d) *Guidelines for Implementation of Backlog Reduction Program* – In order to further sustainability of its successful work on civil case backlog reduction, the Project created a comprehensive manual or “guidelines” for the proper application of a Backlog Reduction Program (BRP) in the broader Montenegrin court system. The document was developed with government counterparts in mind, and included details of the implementation steps that were so effective in the pilot courts. In addition to the substantive information provided in the guidelines, there were numerous sample documents and forms that could easily be incorporated into a court’s backlog reduction program. Also relevant were suggestions for how best to utilize the court rules in administering a BRP, as well as proposed legislative changes that would assist the courts with this matter. In creating the manual, the Project was attempting to ensure that its intellectual work product and ideas could be widely disseminated to a judicial audience beyond the life of the Project. As of March 2007 this process seemed to be progressing, as the manual has been translated into the local language and distributed at several court administration trainings conducted with the Administrative Office. Over 70 judges and court administrators representing every basic court in Montenegro have now received a copy of the guidelines.

#### **D. IMPROVE PHYSICAL INFRASTRUCTURE, PROFESSIONAL RESOURCES AND EQUIPMENT OF THE JUDICIARY**

When the Project was launched in July 2003 it was clear that there was a critical need for material and equipment in the Montenegrin courts. The Government of Montenegro simply did not have the budgetary resources sufficient to equip and modernize the courts and, as a result, the provision of professional and efficient court services was jeopardized. Moreover, many of the courts were situated in antiquated buildings with severe structural deficiencies, leading to crippling difficulties with court operations when weather conditions were severe. Based upon this situation, the Project developed a court facility improvement plan that included provision of professional resources, computer equipment and furniture, as well as a blueprint for renovating select courts. Implementation of the plan began in March 2004.

##### 1) Assessments and Court Facility Improvement Plan

a) *Court Facilities Assessment* – The Project was charged with inventorying all Montenegrin court facilities other than the Constitutional Court, recommending facilities upgrades for each individual court, and subject to USAID approval, providing commodity support to implement the most urgent upgrades, including establishing IT capacity in nine basic courts. Project STTA Gerald Thacker worked with a team of Montenegrin lawyers, judges, civil engineers, IT specialists, and the Project’s SCAA in preparing the background material for the assessment. The assessment team developed a complete inventory of courthouse property, prepared detailed drawings of each courthouse, provided designs for IT installations, and listed furniture and renovation needs. Project STTA Pedro Souss provided the expertise for the IT portion of the court facilities assessment.

Following the completion of their needs survey, Mr. Thacker and the Project’s Civil Engineer, Ms. Natasa Kopitovic, presented their draft assessment to the Project’s SWG and other officials in February 2004. The Deputy Director of Procurement and Public Works attended the

meeting. Several roundtable discussions were held concerning the findings of the assessment which led to some minor revisions to the plan. Overall, the assessment served as the basis for prioritizing improvements to the physical infrastructure of the court system, and addressed practical needs ranging from IT equipment to specific structural defects in the court buildings.

b) *Renovation, Equipping and Furnishing of Supreme Court Building* – In order for the Project to establish the Administrative and Appellate Courts as well as the Administrative Office, it was necessary to renovate the entire Supreme Court building (see section A.1.d). This massive undertaking commenced in July 2004 with the approval of USAID and was completed in January 2005. When completed, the Supreme Court building housed the entire contingent of judges and court staff from the three new institutions as well as the Supreme and Superior Courts, approximately 175 individuals in total. Over 30% of all Project resources expended in renovation, equipping and furnishing the courts were allocated to this undertaking. Project engineers and structural experts spent enormous amounts of time monitoring progress and ensuring that construction was according to the blueprints prepared in advance. The successful completion of this endeavor will permit Montenegro to divert resources to other infrastructure problems, including the many the Project encountered with the northern Montenegrin courts.

c) *Renovation, Equipping and Furnishing of Pilot Courts* – The Project’s assistance to the pilot courts of Kotor and Cetinje was done in conjunction with its work on implementing court administration and management recommendations and the backlog reduction plan. Prior to the Project’ work in the pilot court of Kotor, court staff was constrained in its ability to deliver court services due to severe infrastructure problems. Neither of the courts had IT equipment or modern furnishings. After the Project completed its work, the pilot court of Kotor stood alongside the Supreme Court building as one of the most modern and best equipped judicial institutions in Montenegro. (The building that housed the pilot court of Cetinje was not the property of the judiciary, and thus the Project avoided large-scale renovations.) Both institutions were provided with PC workstations, library shelves, record storage cabinets, copying and facsimile machines and complete sets of modern furniture for both individual offices and public courtrooms. USAID and the Project officially “opened” both courts after completion of the work. In addition to the USAID Mission Director (opening in Kotor), prominent government officials attended the opening events, including the MOJ and the Chief Justice.

d) *Renovation, Equipping and Furnishing of Seven Basic Courts* – The Project supported the improvement of professional resources, IT equipment and computer training in seven courts, including the Basic Courts of Herceg Novi, Rozaje, Plav, Pljevlja, Berane, Ulcinj and Bar. Depending on the condition of the court buildings, the Project also did either partial (Herceg Novi, Bar and Ulcinj) or complete (Berane) renovation of certain court premises.

e) *Renovation of the Podgorica Commercial Court* – The new premise of the Commercial Court Central Registry was renovated by the Project and officially opened in May 2006. Dragan Rakocevic, Commercial Court President, and Branka Lakocevic, Deputy Minister of Justice, welcomed guests and media and provided introductory remarks at the opening. Chief Justice Ratko Vukotic completed the ceremony with an official “ribbon-cutting”. The Central Registry is often the first “link” or contact between the business sector and the legal system, and thus its work is crucial to the overall image of the Montenegrin judiciary. The Project’s assistance to the Commercial Court’s Central Registry will not only improve the day-to-day working conditions at the Registry, but also ensure that a proper, professional environment is created for the business community to conduct transactions that are fundamental to their commercial activities.

f) *Computer Training in the Courts* – After the Project had fully installed IT equipment for the three new institutions, two pilot courts, and seven basic courts, a computer training program

was developed with a local IT service provider. The program focused on providing the judges and court staff a series of computer lessons that would allow a basic level of understanding of IT systems, with a focus on ensuring immediate functionality of the equipment. Approximately 81 trainees attended the courses over the months that were required to implement the program throughout the entire country. When the training was completed, the Project gathered detailed responses to a questionnaire that was prepared in advance. The results suggested a very favorable outcome. Only 33% of the trainees had ever received any computer training prior to the Project's program, none of which had initiated with a court. Of the approximately 67% of the individuals that had never received any prior training, 85% needed to utilize IT equipment on a daily basis. At the conclusion of the training lessons, 90.1% of the participants felt capable of handling routine computer matters in the courts, whereas only 31% were confident of doing so before the training program was in place.

#### **E. INCREASE PUBLIC ACCESS TO THE COURTS, IMPROVE COURT SERVICE AND INFORMATION DISSEMINATION**

The Project's judicial reform program in Montenegro included a public awareness component implemented by the Project's subcontractor, Mendez England and Associates (ME&A). ME&A utilized two public awareness experts on the Project, William Cleary from July 2003 through approximately April 2004, and Brenda Lee Pearson from May 2004 through November 2006.

The primary objective of the Project's work in this component was to carry out a series of activities designed to improve public use and understanding of the courts and their facilities. These activities included efforts to make court operations more open and accessible to the public and improve overall customer service. The Project's primary focus was in the pilot court districts; however, programming was later extended to the entire Montenegrin court system. In order to measure public reaction and impact of the public awareness programming in the pilot court municipalities, the Project commissioned a local NGO (CEED) to develop several surveys. The final survey in July 2006 sampled (201) respondents that had participated in a legal proceeding at one of the pilot courts, and was compared to a similar poll conducted in June 2005. As the chart below indicates, the results were tabulated on a 5.0 scale and indicated a clear upswing in both public knowledge of, and satisfaction with the Project's pilot courts.

	<b>CETINJE</b>		<b>KOTOR</b>	
	<b>2005</b>	<b>2006</b>	<b>2005</b>	<b>2006</b>
<b>Overall indicator of respondents knowledge</b>	<b>3.6</b>	<b>4.0</b>	<b>2.9</b>	<b>3.4</b>
<b>Overall indicator of respondents satisfaction</b>	<b>3.4</b>	<b>4.2</b>	<b>3.2</b>	<b>4.0</b>

In addition to the public awareness activities that focused on court operations, the Project also worked with ME&A experts in advancing judicial-media relations in Montenegro. The Project worked directly with local NGOs, the Media Institute, and the Public Relations Center in developing a series of activities that furthered this goal.

A full description of the Project's public awareness activities is contained in the attached *Short-Term Technical Assistance Communications and Public Education* Final Report submitted by ME&A expert Brenda Lee Pearson.

#### **IV. LESSONS LEARNED & SIGNIFICANT ISSUES AFFECTING IMPLEMENTATION**

This section provides a description of “lessons learned” and the most significant points affecting implementation and impact of development assistance in the judicial sector in Montenegro. Below is a list of those issues that USAID should be aware of and prepared to confront in the future if any follow-up judicial reform programming is contemplated:

##### **A. INSTITUTIONAL STRENGTHENING OF JUDICIAL COUNCIL**

The future of judicial reform in Montenegro will depend in large part to what role the Judicial Council plays in furthering judicial independence from the executive branch of government. The Judicial Council should be the institution that fosters a strengthening of the judiciary through clear, decisive policy-making. It can only do so if it is led by a forceful, engaged Chief Justice. Unfortunately, during the period of contract implementation the Project’s programming objectives were often stifled by a lack of Judicial Council initiative. The Judicial Council needs to establish clear, written criteria for the selection of candidates to the bench, as well as those pertaining to the promotion and disciplining of judges. The Judicial Council also needs to take a more active part in ensuring that judges are properly educated and trained and engaging the international community in issues pertaining to judicial reform.

##### **B. ADDITIONAL SUPPORT FOR ADMINISTRATIVE OFFICE**

The Administrative Office was established later than anticipated and thus was not able to avail itself of a complete range of Project programming and assistance. Moreover, both the Supreme Court and Judicial Council have seemed unable to fully appreciate the potential value of having an AO that is competent to implement judicial policy and manage the court system. Furthermore, the Administrative Office’s systematization act that provides for its entire staffing has yet to be adopted. The AO has neglected to take an active leadership role in furthering a plan that will give structure to its court support services in the areas of court administration, human resources, budget and finance, and information technology. In order for the Montenegrin courts to operate as modern judicial institutions capable of protecting citizen rights and handling the demands of a market economy, there must be effective administrative support from the AO.

##### **C. IMPROVE LEGISLATION IMPLEMENTATION BY MINISTRY OF JUSTICE**

The Ministry of Justice lacks sufficient capacity to properly implement new legislation passed by the Montenegrin parliament. This issue might decrease in relevancy as the Judicial Training Center takes a more active role on the implementation side; however, the MOJ’s weaknesses clearly impacted the ability of the Project to deliver judicial reform programming and will continue to hamper any project that pursues a legislative implementation agenda. The MOJ’s general tendency in implementation is to conduct a cursory, one-day conference or roundtable on a new piece of legislation that lacks substantive input from a wide spectrum of the judiciary, legal community and private sector. For the implementation of legislation to be truly effective, the MOJ will have to increase the level of engagement of these different sectors and dedicate itself to sustained follow-up. The almost complete lack of follow-up to implementation events is a clear indication of the lack of importance the MOJ attaches to ensuring that new legislation is efficiently and effectively meeting the intentions of the drafters and Montenegrin parliament. Ultimately, this issue will impact the confidence that the public has in government and, more specifically, in judicial institutions.

##### **D. FURTHER JUDICIAL TRAINING**

The Judicial Training Center of Montenegro has not been able to fulfill its institutional mandate to bring consistency to the training of Montenegrin judges. Current training programs are sporadic and

lack a coherent strategy. Although the Project's work on developing a judicial training curriculum will be a great asset, the JTC will have to ensure proper implementation of the plan. This can only be accomplished if the Supreme Court, and specifically the Chief Justice, takes an active role in the furthering of judicial skills in Montenegro. There is clearly an educational "gap" developing in the country in terms of the quality of judges, as experienced well-qualified individuals leave for the private sector. Any follow-up project that engages the judiciary will have to dedicate sufficient resources to this objective.

#### **E. IMPROVE PUBLIC ADMINISTRATION**

Montenegrin citizens and businesses need a more efficient and transparent system of public recourse against arbitrary or improper government decisions. The Administrative Court is inundated with cases that are improperly decided by first and second instance public servants at the agency and ministerial level. In order for the administrative system of justice to function properly, additional resources and training will have to go to raising the professional skills of public servants.

#### **F. FINALIZE CASE MANAGEMENT SOFTWARE**

Lack of case management software program (CODING) was a severe hindrance to effective implementation of case management and administration reform in the courts. The CODING software was developed by a local IT company and successfully tested at the Basic Court of Podgorica. But due to legislative amendments, parts of the CODING program needed to be adjusted, adding additional costs to the project. These costs were never paid by the Ministry of Justice. Without case management software in place, the Montenegrin courts will not be able to fully deliver quality court services to the public.

#### **G. INTEGRATE COURT COMPUTER SYSTEMS**

The Project faced many challenges in the installation of computer systems in the courts, and of one these was the inability of the Secretary of Development to set up central servers so that the court system could be fully interconnected. This failure prevented communication links between courts as well as the ability to transfer important data. A modern judiciary requires an integrated IT system, and one should be in place in Montenegro.