

JUDICIAL TRAINING AND JUSTICE REFORM

August 1998

**by Linn Hammergren
Democracy Fellow**

**Center for Democracy and Governance
Bureau for Global Programs, Field Support, and Research
U.S. Agency for International Development**

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ABOUT THIS SERIES

This study is part of a series of four papers dealing with practical lessons from USAID's experience with justice reform projects in Latin America. These papers are intended to assist with strategic design and, in particular, with the integration of specific activities that most reforms involve. As such, they are directed at reform managers, evaluators, and other participants. The other three papers in this series are: *Institutional Strengthening and Justice Reform* (PN-ACD-020), *Code Reform and Law Revision* (PN-ACD-022), and *Political Will, Constituency-Building, and Public Support in Rule of Law Programs* (PN-ACD-023). These documents can be ordered from USAID's Development Experience Clearinghouse (e-mail: docorder@dec.cdie.org or fax: 703/351-4039).

ABOUT THIS PUBLICATION

This paper outlines how training is a widely accepted vehicle of judicial development under USAID's Latin American projects, accounting for up to 25 percent of project budgets. Training is common to most assistance projects because it transfers new skills, procedures, and technologies. In administration of justice (AOJ) programs, training is also necessary when judicial personnel lack the knowledge and skills for their existing jobs. Its introduction and institutionalization are an end as well as a means of justice reform in developing countries. Training is best used when treated like any other development intervention: It should respond to a concrete problem, be based on a needs assessment, have specific objectives that determine the actions to be taken, and be subject to periodic evaluation.

The views expressed in this document are those of the author and do not necessarily reflect U.S. Government policies. Comments regarding this study should be directed to:

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ABOUT THE DEMOCRACY FELLOWS PROGRAM

Since 1996, USAID's Center for Democracy and Governance has provided funding to World Learning, Inc., to implement the Democracy Fellows Program. To date, Democracy Fellows have been placed in a variety of locations including the U.S., Indonesia, Chile, Eritrea, the Czech Republic, and South Africa. Objectives of the program include (1) providing field experience to individuals committed to careers in international democracy and governance, and (2) promoting the development of democratic institutions and practices in developing countries and transitional or emerging democracies.

SERIES PREFACE

This volume is one of a series dealing with practical lessons derived from USAID's experience with justice reform¹ projects in Latin America. The works were originally called "manuals," but I suspect that is a misleading title. They are not intended as blueprints or guides for designing or implementing projects. They offer some of that, but will be a distinct disappointment to anyone expecting step-by-step instructions for setting up a judicial school or revising a procedural code. I think of them more along the lines of those self-help books, often entitled something like "So you're thinking of (buying a car, becoming a veterinarian, or moving to Alaska)..." As such they begin with basic questions like why one would want to undertake an activity, what objectives have most often been pursued, and what major problems and obstacles most often encountered, and proceed to a discussion of major variations in interventions and their planned and unplanned results. Although the series is organized by types of activities, paralleling those laid out in USAID's strategic paper,² a principal theme in all of them is the necessity of embedding each activity in an overall reform strategy. If these works serve no other purpose, they may reverse a recent tendency to think that code reform or judicial training is *the* answer.

The papers' intended audience is project³ designers, managers, evaluators and other reform participants. They are directed at those with little or no experience in justice reform, but it is hoped they will also be helpful to individuals who have worked in reform projects in one or two countries, or whose participation or background is limited to a more specialized aspect of reform. Justice reform is an expertise learned through experience; there is no single discipline or

¹The agency's preferred term for these reforms has changed over time. In Latin America they were called "Administration of Justice" projects. In the early 1990s, the term "Rule of Law" was introduced; more recently, those working in other regions have suggested "legal reform" as a more appropriate title. Although the shifts are intended to denote different emphases, I believe these are vastly overrated. All "justice reforms" target the same set of institutions and utilize similar mechanisms regardless of the specific problem (e.g. increasing access, reducing impunity, curbing human rights violations, or handling commercial disputes more efficiently) addressed. Furthermore, wherever they started, reform objectives have converged over time; Latin American projects which began with criminal justice have expanded into commercial and administrative law, while those in the ENI countries have moved from commercial into criminal areas. Whatever the political utility of the constant relabeling, it has tended to exaggerate methodological and technical differences and discouraged the exchange and accumulation of knowledge.

²Blair and Hansen.

³Because these are also intended for an audience beyond USAID, I will speak of projects and programs, not results packages and strategic objectives, on the assumption that the former terms are more widely understood.

profession that covers all the angles. Moreover, each legal tradition or individual country always poses new problems and challenges. Undoubtedly some of the generalizations offered here are already being disproved, perhaps even in the countries used as examples. The lessons, it should be stressed, are generalizations. They are not intended to make novices into experts in any of the areas covered, but rather to make them more educated consumers of expertise. USAID staff, and most contracted project managers (myself included) are not expert court administrators, prosecutors, or code drafters. However, they must oversee projects where these and many other expertises must be selected and coordinated. I believe they can only do their job well if they have an understanding of how all the pieces fit together, and the part played and limitations and problems posed by each one. In this sense, project managers are like a motion picture producers; they can't act, direct, do stunts, design costumes, or feed the crew, but they have to ensure that those who can are the best available and that they perform to their maximum abilities without interfering with each other.

As a final note, I would offer a brief explanation of the methodology used. The basic framework is institutional analysis, not as USAID understands it, but as more commonly used in the social sciences. This is an approach where one gets inside an organization (or a project) to understand how and why it functions as it does.⁴ Getting inside, it should be stressed, also means understanding the influence of external constraints and pressures, the environment in which the organization operates. Although only one of the papers deals with institutional strengthening, this institutional approach informs all of them. In as much as justice reform or even justice systems are not yet a hot topic for academic research, there is little else in the way of scholarly theory to guide the analysis.

In collecting the data and case studies, I have relied on observation, informant interviews, USAID documents, and general academic studies of justice sectors (but not of their reform). Thanks to a fellowship from the Global Center for Democracy and Governance, I have been able to enrich my own on-the-job experience with field visits to almost every USAID project in Latin America. I have also benefitted from continued contacts with many participants, some of whom also made available their own published and unpublished work. Except for those who probably would prefer to remain anonymous I have tried to cite all contributors in the footnotes. If justice

⁴The term first originated in economics where its proponents offered an alternative to the mainstream "predictive" approaches, emphasizing understanding and "storytelling" instead. Its emphasize on low level generalizations which are difficult if not impossible to falsify made it unpopular there, but in the softer social sciences it may well be the most appropriate approach. See Blaug, pp 126-7 and Mercurio and Medema, Chapter 4 for discussions. More recently, the institutional approach (what Mercurio and Medema call neo-institutionalism) has had a comeback in economics thanks to the work of Douglass North and others. It should be noted that all these approaches differentiate "institutions" (the rules of the game) from organizations (groups of actors pursuing a common objective), a conceptual distinction I flagrantly violate, as does USAID.

reform is learned on the job, it is also a discipline that requires continual education and evaluation. Many informants have been particularly generous in offering criticisms of their own past work. We are all learning together and I hope that these volumes, rather than being accepted as an attempted final word on the subject, are the beginning of a longer discussion and debate.



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EXECUTIVE SUMMARY

Background: After some initial resistance from local judiciaries, judicial training has become a widely accepted vehicle of judicial development in USAID's Latin American AOJ projects, accounting for up to 25 percent of the assistance budget. Training is common to most assistance projects because it is required to transfer new skills, procedures, and technologies.

However in the AOJ programs, training has also been necessary because judicial personnel often lack the knowledge and skills for their existing jobs. Its introduction and institutionalization are often an end as well as a means of reform. Although the idea is novel even in the developed world, a modern judiciary requires training as a permanent function.

Still, in Third World countries, two critical differences should be kept in mind. The most obvious is resource scarcity, making it harder to mount training programs and putting a premium on cost effectiveness. The other is the different functions of training in a stable system and in one undergoing a simultaneous reform process.

Purposes of Judicial Training: Regardless of its form, development and cultural context, a judicial training program is normally intended to improve judicial performance by:

- Preparing newly appointed judges for their duties
- Guaranteeing greater uniformity and predictability of decisions
- Up-dating judges in new methods, laws, and related areas of knowledge required in their work.

A fourth function, more common in civil code countries, is as a means of screening candidates to the judiciary. While generally not used to this end in common law systems, successful completion of entry level training may be used to screen other judicial professionals and support staff.

In reform programs, training may have additional purposes:

- To build a reform coalition within the judiciary or overcome resistance to reform
- To introduce new methods and practices
- To introduce new values, outlooks, and attitudes
- To identify problems which may have to be resolved by other reform interventions
- To build solidarity and a sense of common purpose.

There are still other reasons for the popularity of training program which have little to do with any of these functions. Donors like them because they are easy to mount, almost infinitely flexible in size and resource requirements, and highly visible. Local leaders like them because they demonstrate a commitment to reform, are less intrusive than other interventions, and offer the opportunity for patronage and contact with lower level personnel. None of these additional motives need conflict with the primary objectives, but they can complicate program design and

divert funds from more productive uses. While it is relatively easy to set up a training program, it is much more difficult to do it well.

Variations in Training format: While the Latin American programs have stressed centralized judicial schools, with permanent staff giving short courses to personnel who are usually brought in from the field to take them, there are many other possibilities. Training may be long term or short term, full time or part time; on-site or off-site; voluntary or compulsory; utilize specialized trainers, outside experts, or peers; use classical lectures or more participatory methods; and focus on single occupational groups or mix them. Content may include general legal knowledge, specific legal skills, non-legal skills and knowledge, or attitudes and values. The choice of alternatives theoretically corresponds to an objective appraisal of their relative merits, available resources and existing needs. In reality, it is often set by cultural or contextual factors, or sometimes by a failure to envision the options.

The Latin American Model: Many Latin American judiciaries would probably prefer a "Bordeaux model" -- with long-term, in-residence, centralized, entry or pre-entry training by a permanent specialized staff. Their own limited resources and donor preferences have dictated some variation -- while centralized schools predominate, training is usually short-term, is not linked to recruitment, and often uses foreign or local experts, some of the latter on loan from judicial office. Schools often, but not always include judges, their administrative staff, and other sector professionals. Courses are sometimes mixed, although there is a tendency to prefer specialization by job type.

All of the schools have been created in the context of broader sectoral reforms, and consequently have a short and long term focus. These are usually not adequately distinguished, but the more developed programs suggest that training passes through three different modes:

Emergency programs -- short, mass oriented, and usually emphasizing simple messages and information. These are commonly used to increase understanding of and generate enthusiasm about a reform

Remedial programs -- mass focused, but emphasizing a broader range of basic skills and knowledge transfer. Their goal is to improve average performance, usually in conjunction with a global reform.

Stable or permanent programs-- introduced after a minimum level of average performance has been achieved (or where it already exists, and remedial training is not needed), these are more selective in their focus and clearly separate entry-level, in-service, and specialized courses.

Results: The schools have been important in advancing their respective reform movements and in improving specific aspects of judicial performance. Nonetheless, their impact on overall performance has been disappointing. Explanations include a failure to link course content to

specific reform goals, an over reliance on classroom training and insufficient field follow-up, an absence of evaluations, and a failure to introduce complementary changes which would allow/encourage participants to apply their new skills and outlooks. Donors and participants have begun to examine them critically and to explore ways to enhance their impact and reduce their costs.

Designing and Implementing Better Training Programs: It is often forgotten that a training program is like any other development intervention. It should respond to a concrete problem, be based on a needs assessment, have specific objectives which determine the actions to be taken, and be subject to periodic evaluation. One of the largest obstacles to effective program design is a premature determination of need; training is identified as a solution before the problem is adequately understood. This leads to an inadequate or inappropriate statement of objectives, complicates program design, and makes impact evaluation nearly impossible.

Predetermination of need has caused training to focus on filling in all the gaps in judges' knowledge and thus becoming remedial law schools. While ignorance of the law or inability to apply it are common phenomena, observers have suggested that this focus is too broad. Instead they recommend targeting specific behavioral problems and combining training and other reform interventions to produce their resolution. This requires a different kinds of needs assessment (one which focuses not on what judges don't know, but rather on what they do or don't do) and different training methodologies. It also means a greater emphasis on follow up to reinforce and evaluate impact, a clearer differentiation between emergency and remedial programs, and a better coordination of the training element with the rest of the reform strategy. Many program have become stuck in the emergency mode, generating enthusiasm for new methods without giving participants the more specific skills and knowledge needed to implement them. Finally, although donors usually finance the start up costs and the initial mass programs, these are not sustainable models for permanent training.

Regional Variations: Even within the dominant model, there are some significant variations. Costa Rica and El Salvador are examples of the model in its purest form, an institutionalized, mass based program which trains thousands of participants a year. Panama and Guatemala have attempted to follow suit, but their training programs are marginalized both from the reform and the institutions they are supposed to serve. As a consequence, the most interesting training in both countries has taken an alternative tack; it is field based, on the job training which is closely integrated into pilot reform units. While it is unlikely that this mechanism could be replicated globally, it may be a means of designing better courses for universal application.

In Haiti USAID has financed a centralized school as part of its effort to "stand up" the justice system. Unfortunately neither the school nor its impact may be sustainable and even with continued donor support, a longer term reform and training strategy is required. USAID projects have also introduced two mass training programs without schools (Colombia and Bolivia). They demonstrate that emergency training does not require a host institution, although a permanent training program or even a sustained remedial one will need a different design. It is not clear that

either the local participants or the expatriate advisors have thought about this, but as the emergency training reaches its limits, their ability to make the transition will be critical.

Although most of the training programs surveyed have made solid contributions to the larger reforms, their impact could be improved. Less costly, and more targeted alternatives also need to be explored. Countries beginning a training effort may want to study the options more carefully at the start to avoid large investments in institutions whose long range utility may offer diminishing returns.

INTRODUCTION

If there is one constant in donor assisted Rule of Law projects, it is the use of training, and where these projects are with governmental entities, of judicial training. In USAID's Latin American projects, after some initial resistance from local judiciaries, training programs have become a widely accepted vehicle of judicial development,⁵ accounting for up to twenty-five percent of the assistance budget.⁶ Training, of course, is a familiar element in most assistance projects because it is required to transfer new skills, procedures and technologies. However, in Latin American ROL programs its introduction and institutionalization are as often an end as a means of reform; judicial modernization implies the acceptance of training as a permanent function. Training has also proved necessary because judicial personnel sometimes lack the knowledge and skills *required by their existing jobs*. Many judiciaries resisted this idea. Even today, training is often limited to lower level judges and administrative staff because the upper ranks of the hierarchy claim to be adequately prepared. This is unfortunate, whatever the claim's validity. Where the upper levels of the bench don't participate, their decisions and actions can undermine the effects of an otherwise successful training program.

Judicial training is hardly a Latin American or Third World phenomenon. Most developed countries provide entry-level or in-service training for their judiciaries, or encourage judges' participation in external programs. Still, if the developed countries provide interesting models and points of comparison for Third World efforts, two critical differences should be kept in mind. The most obvious is resources. Most Third World judiciaries are resource poor, making it harder to mount training programs and putting a premium on making them cost effective. The other difference relates to the functions of training in a more or less stable system, as opposed to one undergoing a simultaneous reform process. In the latter, training's objectives are more diverse and in constant flux. These factors when combined with the substantial place held by judicial training in external assistance programs (and often in internal reforms) suggest the need for a closer look at what is being attempted and what in fact has been accomplished.

⁵Unless otherwise noted, "judicial training" is used to refer to all judicial actors -- judges, prosecutors, public defenders, where they exist, and administrative staff.

⁶Although the initial amount budgeted for training may be less, training funds are easier to spend, and training needs often expand as a project continues. In El Salvador, in 1992 and 1993, annual expenditures of about \$4 million a year included at least \$1 million spent on the judicial school and related training programs. The US Department of Justice's initial proposal (mid-1996) for the training portion of Haiti's Administration of Justice Project came to \$5.2 million for eighteen months; this included funds on other activities, but training represented over half of the budget. It followed earlier expenditures of roughly two million dollars for emergency training and the development of a judicial school. As of mid-1997, approved funding for the entire USAID project was \$18 million.

Judicial training is an increasingly universal phenomenon, but its objectives, primary and secondary purposes, content, organization, and dimensions vary widely. Its impact can be assumed to vary as well. "Assumed" is a key word here. As discussed below, adequate assessment of impact continues to be an obstacle to program design and implementation. Furthermore, the popularity of training is more than a consequence of impact. There are many reasons why training figures prominently in technical assistance efforts. Several of them are related neither to its presumed purpose nor its proven results. Projects designers should be aware of these secondary motives and their possible conflict with or displacement of the primary ones. Finally, and especially in a developmental context, training is not an isolated activity. Coordination with other reform interventions is important. Just as training may reenforce their effects, they may also magnify or diminish its influence.

A Short Historical and Cultural Note: On a world-wide basis, formal judicial training is a phenomenon of the post war period.⁷ Earlier, both common and civil law systems expected their judges to learn on the job. Civil code countries often had an informal internal apprentice system in which aspiring judges entered the career as semiprofessional staff. In the common law tradition, recruitment from among the practicing bar served a similar purpose. In the past decades, changing recruitment patterns, increasing workloads, and more complex laws and legal issues have made reliance on these traditional mechanisms less satisfactory. While the underlying problems are similar, differing legal traditions and practices have produced somewhat different responses.

European civil code countries placed an earlier and greater emphasis on entry-level training. Common law countries adopted training programs later, putting equal if not more emphasis on in-service training. The difference is a logical consequence of the civil code tradition's tendency to treat the judiciary as a career and to recruit judicial professionals from among recently graduated students of what are in effect undergraduate law programs.⁸ Here entry-level training, in addition to preparing judges, is often a part of the selection process. Despite the initial advantage of more rigorous legal education and later recruitment, the United States and other common law countries have been forced to introduce more entry-level programs in recent years,

⁷Although the dates are somewhat arbitrary, a list provided by Correa (p. 278) is interesting, crediting Spain with the first modern judicial school (1944), followed by France in 1959 and the U.S. in 1963. In Latin America, Venezuela (1980) and Costa Rica (1981) are the first examples cited. See also articles in Bascuñán and Guatemala, Supreme Court.

⁸Germany is an exception to this rule; its six-year university programs with rigorous entrance and final examinations are a source of more highly qualified candidates to both the bench and the bar. Since the programs include internships, this eliminates much of the need for separate entry-level training. Interestingly, the program has been criticized for its bias toward judicial training as opposed to that of the private bar. See Jacob, pp. 264-268.

although these are never as elaborate or lengthy as in Europe.⁹ Factors encouraging this change include their own trends toward earlier recruitment, and increasing demands, both qualitatively and quantitatively, on judges and other sector professionals. In the United States, an additional factor is the greater politicization of the recruitment system and the consequently lesser emphasis on actual courtroom experience. Candidates may be skilled professionals but not in the areas (like criminal justice) most relevant to their new positions.¹⁰ However, despite an increasing adoption of compulsory entry-level or in-service training, common law systems generally do not use it as part of their recruitment and selection process.

Given its civil code tradition, Latin America might have been expected to adopt judicial training earlier. Its absence until very recently is explained by several factors, some of which affect other Third World regions. First, although Latin American legal education, like that in other civil code countries, is only an undergraduate program, in countries where professional degrees are rare, it confers a relatively high status. In some countries, a law graduate is still addressed as "doctor." In this sense, the region and its judiciaries are enjoying, or suffering, a cultural lag.

Second, political intervention in judicial appointments made professional qualifications and performance far less important than partisan contacts and loyalties. Always present to some degree, these tendencies intensified with the emergence of competitive, mass-based parties in the post war period. Thus, just as Europe's civil code countries were further professionalizing their judiciaries, Latin America was incorporating its courts into a political patronage system.¹¹ The trend would eventually clash with demands for better service from the growing middle class and newly mobilized masses, but not before further undermining the judiciary's human resource

⁹As one comparison, Stanga (1996, pp.100, 155) cites Canada's annual budget of \$1,500,000 for its judicial training program against France's \$27 million for its national judicial school. Canada offers short courses (with a goal of ten days of training annually for each judge); France provides thirty-three months of course work and internships.

¹⁰Atiyah and Summers make this point in their comparative discussion of the American and British judiciaries. They note that judicial appointees in the U.S. tend to be recruited from civil law practice -- those being the individuals most likely to have political connections -- and that even these candidates may have left their courtroom experience far behind. Another difference is the far greater size of the US bar which allows and encourages a degree of specialization absent in England.

¹¹The extent and timing of this development varies widely. It first emerged in Argentina in the 1940s, but in the majority of countries appears in the 1960s and after. Some countries, like Chile, avoided the rampant partisan colonization of their courts almost entirely, usually through pacts among political elites. Costa Rica, Colombia, and Uruguay are other examples. Significantly, these countries are considered to have a higher degree of judicial professionalism (whatever their other problems) than most of their neighbors.

base.

Third were the minimal budgets assigned to courts and other sector institutions. This has only become a problem as the effects of the cultural gap disappear, demands for services increase, and the declining quality of the politicized judiciaries' performance becomes intolerable. Despite regional trends to expand judicial budgets, most training programs have to rely on external financing. Once the latter disappears, they frequently find themselves in trouble.

Finally, Latin America's earlier independence eliminated educational alternatives which encouraged judicial professionalism elsewhere. Unlike judges in former French colonies who might aspire to training at the Bordeaux School, or those in former British colonies who were sometimes educated in England or in other Commonwealth nations, Latin American judiciaries were in some sense cultural orphans. Individuals able to finance their own studies abroad were less likely to seek public employment. Significantly, as Latin Americans embrace the idea of training and other kinds of reform, they have looked less to their former colonial homelands than to other European countries or to the United States for ideas.

GENERAL CHARACTERISTICS OF JUDICIAL TRAINING PROGRAMS

Purposes of Judicial Training: Regardless of its form, developmental and cultural context, or its additional explicit or implicit objectives, training is normally intended to improve judicial performance by carrying out the following functions:

To prepare newly appointed judges for their duties

To guarantee greater uniformity and predictability of decisions and to ensure that the seated bench has an adequate command of laws and procedures to carry out their jobs

To up-date judges in new methods, laws, and related areas of knowledge required in their work

A fourth function, more common in civil code countries, is screening candidates to the judiciary. While generally not used to screen *judicial* candidates in common law systems, successful completion of entry-level training may be a pre- or post-selection requirement for other judicial professionals and/or administrative staff

In connection with reform programs, training may serve a number of additional purposes:

To build a reform coalition within the judiciary or overcome resistance to reform

To introduce new skills and practices -- even without a separate training component, training is likely to be required in conjunction with its other activities

To introduce new values, attitudes, and perspectives

To identify problems to be resolved by other reform interventions (in classroom discussions, judges may reveal problems, common practices, or impediments which might not be uncovered in other ways)

To identify additional problems to be addressed by training and help develop their solutions.

To build institutional solidarity and a sense of common purpose

Most if not all of these additional functions are short-term and might not figure in a permanent training program. However, they constitute as important a contribution to reform as the more conventional objectives, and in fact, may facilitate the latter. Although many of them have been accidental rather than intentional effects of past training programs, they are sometimes the most visible immediate results. This suggests that program designers focus on these secondary purposes more explicitly so as to optimize their direct and indirect benefits.

There are additional reasons for the popularity of training programs which have little to do with these primary or secondary functions. Donors favor training programs because they are relatively easy to mount, are almost infinitely flexible in terms of size and resource requirements, are highly visible with a potential for reaching a large number of participants, require simple, familiar technologies, and, as compared to many other kinds of assistance, are less likely to incur political resistance or be diverted to unintended ends. Although the popularity of training sometimes leads donors to disagree over who will control it, training is usually an area where donor collaboration is easily accomplished. Individual donors may finance different parts of a program's operating or infrastructural costs, or may pay for different courses or programs. Such arrangements allow them recognition for and control over their individual contributions and require only a minimal consensus on overall objectives. Finally, training has easily measurable, uniform, incremental outputs, if not impacts, which facilitate reporting program advances.

From the standpoint of local institutional and political leaders, as well as training participants, many of these attractions also hold. Additionally, a training program or judicial school can be an important symbol of a dedication to improved performance and modernization. It offers leadership a chance for public ceremonies and contact with lower level personnel. It also creates prestigious new jobs and gives members of the bench the opportunity to show their academic skills as lecturers and course designers. It allows participants an escape from their routine activities, and may be a way of accruing credits toward promotions or salary increases. It may enhance participants' self image and contribute to a sense of professional exclusivity. Furthermore, except for the necessity of releasing personnel for in-service programs, training is less disruptive of on-going operations than many other kinds of assistance. While most of these benefits need not detract from the primary and explicit purposes of training, they can divert

attention or encourage investments having little to do with targeted objectives.¹² They can also complicate efforts to redesign programs for greater impact or cost reduction.

These considerations anticipate an important lesson from the Latin American experience and an underlying theme of this report: *while it is relatively easy to set up a training program, it is much more difficult to do it well.* This is especially true of judicial training because of the variety of interests it may serve, the complexity of the substantive skills and knowledge to be transferred, and the difficulty of arriving at a consensus on more precise objectives. From the tactical standpoint, a certain vagueness about objectives may enhance cooperation. However, where those entrusted with program design and implementation are not sure what ends are being pursued, it is difficult to envision how they will achieve them.

Variations in Training Format: Just as purposes vary, so do training modalities. Although the current paper focuses on the institutionalized, permanent training programs or schools which have become the dominant model in Latin America, training can also be ad hoc, impermanent, and responsive to specific tasks (i.e. training in use of computers, or to introduce new legislation or practices). Among other common variations even in permanent programs are the following:

Course and program length -- permutations are almost infinite, but the usual choice is between short (up to two weeks) courses and multi-course programs lasting months or even years.

Full-time or part-time courses -- many subjects can be taught effectively after hours, on week-ends, or in half-day sessions, thus eliminating the need to remove participants from their normal jobs. Full-time courses may ensure higher attendance rates, fewer distractions, and more positive participant attitudes.

Systematized sequences of courses or random ("cafeteria") offerings -- a systematized sequence can incorporate longer programs without keeping participants out of service for months at a time. Scheduling problems may make random offerings more practical.¹³

Voluntary or compulsory participation -- this is a continuum, not a dichotomy; voluntary training can be made more "compulsory" by linking it to promotion systems and salary

¹²In this sense, training programs demonstrate a well recognized rule of organizational development and politics: that cooperation often depends on the "side-benefits" participants derive from common activities. Eliminating such side-benefits is probably neither desirable nor possible, but they can become all consuming.

¹³Another variation, attempted in Panama, is to establish a multi-course program but not require that courses be taken in sequence. Participants must take all courses within a given period of time.

scales.

Specialized permanent trainers, outside experts, or training by peers, temporarily seconded from their usual jobs.

Training methodology -- classical lecture, case study, workshops, clinics, etc

Off-site, on-site, or distance training -- while cost is often the determining factor here, the different methods may also be more appropriate or more effective depending on the subject matter, the capabilities of the students, and the specific objective sought.

Classroom training versus "mentoring" -- the latter has become very popular recently, although there are few examples in practice and considerable debate as to what it really means. It is discussed in more detail below.

In-house program or use of another training/educational institution (i.e. universities)

Cross training (mixing different types and levels of personnel) or specialized courses for each type of employee

The list is not intended to exhaust, but only to suggest the options available in designing a program. It is also not intended to imply that any of the alternatives are inherently better than others. Ideally the choice of modality follows from the the program's objectives and intended impact and from existing knowledge about the relative efficacy of different methods and the situational factors affecting it. As objectives and conditions change, modalities may also shift.

Lack of clarity or disagreement on objectives and methodological uncertainties usually make the choice less than clear-cut. Furthermore, as the case studies demonstrate, there are additional determining factors. Available resources are probably the most important. While judicial leaders often prefer long term, resident, comprehensive programs (the French or Bordeaux model), and donors have begun to discuss a "mentoring" model, cost usually precludes the adoption of either, even as temporary, remedial measures. The quality of existing officials and potential recruits, uncertainties as to their permanence, simultaneous legal reforms which imply substantial changes in curriculum, and questions about the long term commitments of host officials may also discourage such high investment programs. Hence, although resource scarcity often makes the choice between short and long term training a moot point, there are other contextual reasons for preferring the former.

Additional cultural and contextual factors exercise a similar influence, often forcing a choice of the feasible rather than the optimal design. Part-time or after-hours training is practical and cost-effective, but trainee resistance often makes its adoption impossible. Where upper level judges object to their own inclusion, arguing, however accurately, that they don't need training, programs will of necessity focus on their lower level colleagues. Where there is strong hostility

between occupational groups and/or a strong sense of rank and privilege, it will be difficult to realize "mixed" classrooms, even though this is the situation which most requires them. While peer training is often most effective, a strong preference for academic instructors and/or permanent training staff may force their use. Systematized sequencing of courses outside of long term programs is difficult even in developed systems, and may be defeated by the greater logistical and organizational problems in less developed ones. In short, a mix of such "exogenous factors" usually has as great an impact on program design as an objective needs assessment. Nonetheless, choices need not be permanent, and over time, needs and preferences can change. Program designers are simply cautioned to not make a vice into a virtue, and so to leave options open for a later adoption of more appropriate mechanisms.

The Latin American Model: Although one purpose of this discussion is to lay out alternatives, for Latin American training programs, there is one dominant model, with a number of lesser variations. The model of preference is the judicial school-- a permanent organization offering classroom training composed of short courses for existing personnel and, to a lesser extent, orientation courses for new professional and administrative staff. Despite an inclination to equate the school with its physical plant, some "schools" do not have their own facilities. Evidently, it is the organization that is more important. Still calling it a school and giving it a physical location can lend an aura of permanence that is *for the most part* advantageous.

There may be separate schools or programs for each major institution in the sector (courts, prosecution, and defense) or a single school may serve all these groups. Where they exist, the investigative or judicial police¹⁴ usually have their own training facilities. In Costa Rica, where the investigative police belong to the judiciary, the judicial school is also responsible for their training. Numerous countries in the region have discussed the introduction of longer term, entry-level programs,¹⁵ but so far none has been able to establish one. A few countries (El Salvador, Guatemala) have begun to use training as a filter for recruitment. Students are evaluated and ranked on completion of the course. The best performers become the pool from which new judges are chosen. On-going discussions in several countries suggest that they may follow suit, although the impact on judicial performance remains untested.¹⁶

¹⁴Latin American codes often provide for a separate body of investigative police (as opposed to the far larger "administrative" or public security forces). Few countries actually have them, tending to give investigative duties to all administrative police, or increasingly, to a specialized body within them. Costa Rica and Panama are two exceptions.

¹⁵See Bascuñán V et al. for Chilean discussions. Costa Rica has taken an alternative route with the introduction of a separate year-long post graduate program. Recruitment is highly selective, but may include aspirants as well as seated judges.

¹⁶One criticism is that the courses and examinations overemphasize theoretical knowledge, putting a premium on skills less relevant to courtroom performance. Costa Rica, while it does

The school is usually a semiautonomous entity, which belongs either to the Judicial Branch (under the direction of the Supreme Court or an internal committee), or less frequently, the Ministry of Justice or a separate Judicial Council. The central school may offer training in the field. This usually means transferring the classroom format to outlying regions. Only occasionally (Costa Rica, Haiti) has there been an effort to do true on-site training (i.e. in judicial offices) as a means of reinforcing what is learned in the classroom. To date, the most interesting experiments with on-site training (Panama, Guatemala) have been mounted as alternatives to an existing central school, as part of integrated pilot reform projects. Whether their methodology can be incorporated into the schools or take some other permanent form remains to be seen.

Most schools have a small permanent staff to handle administrative and logistical matters, curriculum design, and training of trainers. They usually draw most of their instructors from the judiciary itself, or use local university staff and foreign experts, some of whom also have experience on the bench. Training is invariably short term. Some schools have experimented with course modules, allowing students to alternate off-site classroom training with their normal jobs. There are important variations in how students are selected, in the compulsory or voluntary nature of the program as a whole (or specific courses) and in the relationship of the training program to the selection and promotion of personnel. Size of the program and percentage of the sector personnel covered also vary. Finally, a few schools incorporate other activities -- most notably sponsorship of research, a publication program, or outreach to the nongovernmental legal community or the public at large.

All of these schools were created in the context of broader sectoral reform programs, and consequently have a short term and long term focus. The short term goals, those most relevant to the overall reform objectives, are to improve the quality and thus performance of the sitting bench, introduce new procedures and practices, and prepare them for the changes to come. With the possible exception of Haiti, none of these reforms has contemplated a radical replacement of existing officials; entry level or orientation programs have thus been less important than in-service training. Because most of these reforms are still in progress, the longer term goals and organization of permanent programs have received less attention. The shift to a permanent program will necessarily be gradual, since it hinges on a series of related changes ranging from improvements in university education/and or the quality of judicial candidates to the final shape and organization of the judicial system. It is not evident that all participants have recognized this distinction. There is a frequent tendency to confuse short and long term goals, or more concretely, to envision the content and format of an emergency program as the basis for a permanent curriculum.

As further elaborated below, the more developed programs suggest that training passes through

not require candidates to attend courses, has introduced examinations for entry into its new judicial career system. Among the candidates already holding nontenured positions, this has increased the demand for "in-service" training.

three quite different stages:

Emergency programs -- often linked to the introduction of new procedures, they are also used to introduce training, or as in Haiti, to "stand up" the existing system. They are short, mass-oriented, and usually convey simple messages and information. They are commonly used to increase understanding of and generate enthusiasm about a reform.

Remedial programs -- these may follow or merge with an emergency program. They are also mass focused, but emphasize a broader range of skills and knowledge transfer rather than just announcing a change. The goal is to improve average performance, usually in conjunction with a global reform.

Stable or permanent programs -- once a minimum level of performance has been achieved and reforms have been completed, training can become selective in its focus and clearly separate entry-level, in-service, and specialized courses. Where stable systems introduce training, they begin and end here.

These program types are only implicit in the Latin American model. Some of the current dissatisfaction with its results stems from a failure to distinguish among them. Although presented as a sequence, their order may vary or run in cycles as new reforms are introduced. Stages may also coexist. This poses no problem so long as their distinct objectives are recognized.

The Latin American model's popularity is, as suggested, less a consequence of its obvious success in "improving justice" than of a variety of exogenous factors ranging from resources available to cultural-organizational biases toward judicial ownership of any training facility. Still the schools have been important in advancing their respective reform movements and in specific cases, with improving aspects of judicial performance. The case studies (annexes) provide examples. Nonetheless, both donors and participants have begun to examine the schools more critically and to explore ways to enhance their impact and reduce their costs. The questions they raise do not constitute a condemnation of the schools' past performance. It is possible that the schools' contributions in the early stages of reform fully justify an initial investment that does not make sense on a permanent basis. However, if there are more cost-effective ways of attaining the same results, they are worth consideration. For countries facing an end to donor support and possibly to the need for massive, remedial training programs, this is a convenient time to reassess the role of training in the context both of future reforms and more "normal" judicial operations.

DESIGN AND IMPLEMENTATION OF TRAINING PROGRAMS: A GENERAL OVERVIEW

A training program is no different from any other kind of intervention in terms of its design and implementation process. Problems must be identified, needs determined, objectives set, actions selected to meet them, and impact assessed to allow further readjustments. Ideally, the identification and prioritization of problems precedes a decision to initiate training, which is only one of a series of alternative solutions. In fact, one of the largest obstacles to effective program design is a premature definition of need; training is defined as the solution before the problem is fully understood. A premature definition of needs is likely to produce an inadequate or inappropriate statement of objectives, complicates program design, and makes measurement of impact difficult if not impossible. Fortunately, a training program can serve a variety of purposes. If its initial objectives or promised effects are inappropriate, they can be readjusted once this is recognized. Furthermore, even where it does little to advance its official purpose, it may serve a number of shorter term ends -- most notably the generation of interest in reform, identification of potential allies, and the accumulation of information on the state of the judiciary. Such secondary purposes hardly justify a permanent program, but they can help develop one.

Sector Assessment: Training, like every other aspect of a judicial reform program, is best organized on the basis of a comprehensive sector assessment. This assessment will give an overview of sector operations, identify problems, weaknesses, and opportunities for intervention, and make recommendations for specific reform activities, which most probably will include training. Political leaders, institutional counterparts, and donors themselves often resist doing an assessment, claiming it unduly delays and diverts funds from "real" reform. Operating in ignorance is never advisable, but where the initial investment is small or preliminary activities can be structured to include an information gathering component, it may not be necessary to do the kind of full-blown sector assessment conducted for the early Latin American projects.¹⁷

Where there are already ample studies, and problems are well known and understood, a consensus on a reform program and the place of training in it may derive from their reanalysis and discussion.¹⁸ A comprehensive sector assessment is also less relevant in situations where a judiciary is being replaced or rebuilt from scratch. It is important to know the errors of the past so as not to repeat them, but here it is more important to reach agreement on the shape of the

¹⁷Conducted jointly by ILANUD and Florida International University, each assessment took at least six months, cost upwards of \$250,000 and generated hundreds of pages of text.

¹⁸While this is an unlikely situation for most countries where USAID operates, there are exceptions. Several Latin American countries have a wealth of available data on their judicial systems (Chile is the best example; Colombia's data base was expanded by USAID financed studies). Here an assessment can be a desk-exercise, drawing on studies already available.

new system. Still, such situations are rare. Even in Haiti, which is the only Latin American country to approximate them, the turnover in personnel has been more drastic than the change in institutions. This places a premium on understanding the latter's formal and informal operations, internal culture, and the role of elite and popular expectations in shaping them.

Occasionally, sector assessments include a training component. Since training is always recommended, this probably recognizes the inevitable. Still one advantage of a prior *sector* assessment is the possibility of identifying and prioritizing problems separately. Where this does not occur, recommendations emerging from a simultaneous training needs assessment or component may not coincide with overall reform goals. Arguably, emerging complaints about the irrelevance or limited impact of several Latin American training programs find their source here. Furthermore, a sector assessment, by identifying other causes of problems, can provide the means to coordinate training with the rest of the reform package.

A sector assessment, no matter how comprehensive, is only a first approximation. Over time those involved in reform will develop different appreciations of problems and their causes. For example, it is not uncommon for sector assessments to conclude that judges make "bad" decisions because they don't know the law. Closer observation and training programs themselves, often reveal that the problem is more complicated. Judges may "know" the law in an abstract sense, but be unable to apply it to concrete cases, the law itself may be flawed, external pressures or lack of controls may encourage judges to apply it inappropriately, or its adequate application may require other kinds of knowledge which judges lack.¹⁹ Such findings imply changes in the objectives and content of training while suggesting additional interventions to optimize its impact.

Support and Constituency Building: Justice reform activities require broader political or public support. For training, the members of the target institutions are critical. As a general rule, Latin American judiciaries have favored the creation of training programs, especially when donors offer to fund them. In a few cases (Ecuador, Peru, Argentina), opposition even to donor supported programs has delayed their creation. Usually the resistance is personal rather than institutional, and an eventual change of leadership brings a more positive response. Delays are more frequently caused by intra-institutional disagreements over how the program will be organized, who it will teach, and what type of programs it will offer. The prospect of external funding may elicit grandiose visions of multi-year, academically oriented programs. These sometimes have been encouraged by donors, although usually not the ones expected to pay the bill. Even here, a final resolution usually comes with a change of leadership and some further negotiation of details.

¹⁹Traditional Latin American legal education, however poorly it conveys an understanding of the law, is even worse as regards other kinds of knowledge. Thus, judicial decision making is often hampered by a failure to understand substantive issues -- economics and finance, sociology, psychology, probability theory, or even simple mathematics.

The larger problem is maintaining active involvement of leadership once the program has been established and securing host country support not only for the training program but also for complementary actions required to enhance its impact. Institutional leaders often have a limited view of the role of training, seeing it as a way of enhancing institutional and individual prestige, not as a tool for effecting broader change. In many cases, their notion as to the need for change is equally limited. Hence, when donor funding declines, the training program is cut back proportionately. Assistance projects sometimes feed these tendencies by separating their training efforts from the rest of their reform interventions; training is for the trainers while the technical experts handle the real reforms.²⁰ A part of the solution lies in how donors conceptualize their own programs and especially in their choice of training advisors. Unless advisors can maintain their credibility as jurists as well as training specialists, institutional and professional prejudices will marginalize both them and their programs.

The Design and Implementation Team: A critical first question is who proposes, plans, and oversees the implementation of a training program. Obviously, the identity of this group is a major determinant of the shape and results of the effort. Where a school or a legal base for its creation already exists, the answer may be predetermined; where the donors propose, they have more ability to shape the outcome. There are further limitations, however. One of them is the judiciary's own sense of proprietorship vis-a-vis its training programs. At most it may be willing to entrust the program to a university, but it is unlikely to accept the notion that judicial training is everyone's business and thus subject to the guidance of ordinary citizens. The sense of ownership may work against the establishment of a common program for all judicial officials. In most Latin American countries, economics have prevailed, but there is still a tendency for separate, specialized programs to crop up for each organization in the sector. Despite the financial disadvantages and the lost opportunity for coordination, such separatist movements are not entirely negative. They may be the only way to incorporate innovative approaches and methodologies which, if successful, can later influence all programs.²¹

Professional and institutional biases may also dictate who in the judiciary should be responsible. Generally the director of a school or program and most members of any oversight board or council will be high ranking judges or other sectoral leaders. With luck they will have an enlightened approach toward training, or be willing to leave the real work *and authority* to those

²⁰This is not limited to judicial schools nor is it always a matter of donor preference. The Salvadoran Peace Accords mandated that the new Police Academy be independent of the police. This produced an unfortunate disjuncture in donor assistance to the two and may account for the failure of the National Civilian Police to perform up to the standards set in the training programs.

²¹In Panama and Peru, the judiciary's less than full support to training led to separate programs for the Public Ministries, allowing both entities to move ahead on their internal reforms.

who do. Donors have more ability to influence the choice of the latter, or to place an advisor who can train them while effectively exercising their functions. Unenlightened leadership is a problem, but it is no worse than an absence of higher level interest, in which case, the “workhorses” will be severely limited in what they can actually accomplish. Panama and Guatemala’s judicial schools and Guatemala’s school for prosecutors are cases in point. Haiti seems to be another, although its is currently carried along by donor willingness to do all the work and pay all the bills.

When judicial officials plan and supervise their own training programs, the arrangement can distance the results from citizen needs and demands. This has been a criticism of France’s own judicial school, with claims that judicial ownership has produced a closed caste of judges.²² Schools’ governing councils or boards of directors may incorporate various judicial officials, members of the private legal community, and other individuals presumed to bring different insights to the task. Where schools are run by external judicial councils (El Salvador, Colombia), they already incorporate wider representation, although more often from the legal not lay community. Unfortunately, these representatives often substitute their own equally narrow, traditional view of training for the judicial perspective.

Program design can be a several stage process, in which representative views are incorporated when general problems are defined and general objectives set, and more technical, specialized knowledge enters at the later level of details. Judges may not adequately appreciate citizen demands, but they are often better qualified to design responses. Thus the challenge is to find ways to insert other perspectives, rather than ignoring them or insisting that they always be present. Experiments in Costa Rican with “regional” conferences and community outreach, or Haiti’s efforts to form local groups of NGOs to address concerns at the community level bear watching. Other approaches include the incorporation of outreach activities within the judicial school, funding of related research and discussions, observation trips to model programs, and the use of foreign and local instructors and advisors with less traditional views on the judicial role. Over the longer run, training may have to leverage the attitudinal changes which in turn will shape its future design.

Training Needs Assessment: It is rare to find a training program of any size that was not preceded by some sort of needs assessment. An emergency program often does not require an assessment. Its content is dictated by the changes it announces. However, needs assessments are critical for the remedial and stable programs which follow.

As noted, these assessments are often inadequately coordinated with broader inquiries into reform needs. The problem is exacerbated by the methodology used by most training needs assessments in Latin America. These are usually based on questionnaires aimed at judges and informed observers. They either ask respondents what training is needed (or what kinds of

²²Jacob, p. 200-06.

knowledge judges lack), or less frequently, ask them to define "profiles" of the real and ideal judge. Both methods are essentially opinion polls, based on respondents' perceptions; thus their validity hinges on these perceptions' coincidence with "real needs."²³ Furthermore, the questions are usually formulated to elicit types of training as a response. If they allow respondents to mention other obstacles to improved performance, the only in-depth questions correspond to training. Respondents who believe training is less important have little chance to express this view.

Not surprisingly, the assessments inevitably identify a long list of training needs. These are often documented in dozens of charts and tables broken down by types of respondents and types of potential trainees. The results run to hundreds of pages, but the sophistication of the analysis far exceeds that of the data. Most of the stated needs are rather general -- training in criminal procedures, training in substantive criminal law, training in administrative techniques, etc. In short, they often define the entire universe of what a judge might be expected to know. True, the areas are usually ranked by importance (based on how often they are mentioned or priorities assigned by respondents), and sometimes respondents are asked to define types of knowledge required (abstract, practical, etc). Despite the length of the resulting documents, the amount of information they convey is not very great, and certainly not very detailed.

Recently, those involved in designing Latin American programs have begun to question this methodology and seek substitutes which might identify training needs more exactly and better coordinate them with the overall reform agenda. The alternatives shift from a focus on what judges don't know to the areas where their decisions or actions are most problematic, attempting to determine how training might work specific improvements. The concerns are remedial. The findings target both very concrete issues (e.g. a failure to base arrests on warrants or to disallow incorrectly collected evidence) and more general attitudes and skills (inability to apply abstract laws to concrete cases, faulty logic and analysis). This information may be generated by other reform interventions (focusing on problems encountered in effecting certain kinds of change) or derive from separate analyses. For the latter, two important sources are written judicial opinions

²³It is worth asking whether potential trainees are the most accurate sources of information as to their own training needs. Their perceptions are important indicators of something, but that something may not be a precise identification of the real gaps in their knowledge or, more to the point, of those which actually affect their performance. External observers, while offering a different perspective are also limited by their understanding of what judges actually know or how specific kinds of knowledge might improve their decisions. Both participants and observers are often influenced by disciplinary fashions. Once computers are introduced, judges must learn computer science; a discussion of administrative modernization requires the latest management techniques. These topics are very broad and what judges "need" to know may be only a small part or something entirely different. Judges or prosecutors suddenly faced with the problem of using scientific evidence often want to know how to develop (e.g. lift fingerprints, do DNA analysis) rather than how to appreciate it (i.e., an understanding of its uses and limitations).

and appeal court decisions. The method is not limited to judges; work with prosecutors and police in Panama looked at case files to identify irregular or inadequate procedures. Other sources include observation and informal focus groups, where participants discuss how they handle certain issues. Clearly this rather painstaking analysis requires some hints as to where to start. Where these new methods are being attempted, analysts have relied on their own knowledge of system problems. Those lacking sufficient background could identify critical areas through the general sector assessments or modified training needs questionnaires (where the question is not what judges need to know but rather what kinds of actions or decisions produce the most complaints or problems).

The impetus for this shift originates in several longer term observations drawn from Latin American programs. One of these is the complaint that despite often massive investments in training over several years, improvements in performance have been disappointing. A partial explanation is that many training programs have become remedial law schools, covering areas that should have been treated in basic legal education. The need is real, but the emerging conclusion is that they are trying to do too much, and to resolve problems more appropriately addressed by law school reforms and, where possible, the selection of better candidates. However, the most important conclusion is that training needs cannot be addressed outside the context of overall reform goals. The question is not what judges should know in the abstract, but rather what specific kinds of knowledge and skills are required to produce the desired changes in behavior. This has implications for the content of curriculum and for the way courses are taught.

This problem or results-oriented approach to identifying training needs is especially appropriate for on-going reforms where the immediate concern is to improve the performance of the existing bench or prepare replacements rapidly. In these situations, visions of the ideal judge have to take a back seat to the short term goal of eliminating the most serious systemic weaknesses. However, a grounding in real problems is not a bad idea in designing permanent programs. It provides the connection between the overly ambitious goals expressed in general discussions and the planning of concrete courses, which all too frequently falls back on traditional content and methods for want of practical alternatives. As professionals, judges, prosecutors and other sector officials obviously benefit from continual training and education, but from the standpoint of customer satisfaction, certain kinds of knowledge, skills, and attitudes are more important and thus warrant greater emphasis. Open-ended discussions of training goals often ignore this point, and thus provide little practical guidance for program design.

One point often lost in the enthusiasm over assessment design is that training needs will evolve with the advance of a reform program and the consolidation of the training component within it. Needs change even in relatively stable judicial systems. In a system undergoing reform, the changes should be more drastic. Obviously new rules and procedures alter course content, but it doesn't take an assessment to see that. Reforms also require training that quickly identifies and eliminates major bottlenecks and transforms more fundamental skills and orientations -- the difference between teaching a judge to discard evidence based on a warrantless search and improving her ability to analyze what evidence remains. More advanced reforms also require

separate entry-level, in-service, and specialized programs. Such distinctions are more easily and more realistically made once it is determined what the judiciary will do, and who its members will be. Design will also be shaped by such critical factors as program costs, likely available resources, and the evaluations of initial efforts. Just as a premature focus on these long term issues may dilute the impact of a first generation program, a successful emergency program may distort long term planning. Its often superficial treatment of proposed changes, intended as much to sell as to explain them, can prepare personnel to do things differently, but offers insufficient guidance for their actions. Furthermore, emergency and remedial programs often absorb more financial and other institutional resources (including participants' time) than is feasible on a permanent basis. Once the crisis has passed, training methodologies have to be altered as well.

Thus, needs assessment is not a one time task. Ideally a permanent assessment exercise should be institutionalized. A few schools (Costa Rica, El Salvador) have attempted this by creating permanent advisory committees, but with less than satisfactory results. Needs assessment quickly devolves to the old practice of elaborating lists of courses and themes for inclusion in the curriculum. Although discarded by Costa Rica, El Salvador recently introduced the use of judicial profiles -- a participatory exercise producing descriptions of the real and ideal judge. The experience encourages institutional members (judiciary, prosecution and defense) to think about their roles. Its inclusion of a wider range of advisors, not just those working on training, has also been beneficial. Their participation allows more detailed discussions of common practices (a variation on the problem-oriented approach)²⁴ and of ways to focus the curriculum on their improvement. Costa Rica's less systematized effort to combine needs assessment with on-site training and evaluation of courtroom practices has identified problems for concrete treatment. It has been less successful as a means of orienting the curriculum as a whole.

It is disturbing that the Costa Rican school, the oldest in Latin America, is now questioning its ability to identify and respond to training needs. This does not invalidate it as a model for countries at an earlier point in the process. Conceivably Costa Rica is a victim of its own success. Having skipped the emergency stage (except for periodic reversions occasioned by the entrance of new legislation), it developed a remedial program using profiles and advisory committees to devise a core curriculum. After ten years, it has met the goal of standardizing judicial performance at a satisfactory level. With improved judicial candidates and recruitment practices, and the law schools' adoption of some of its methods, the second stage training program has outlived its utility. Costa Rican judges certainly know and apply the law, although their analytic skills sometimes need sharpening. In a hypothesized third stage, the school may abandon its mass courses, focusing on specialized problems and individualized concerns, and using a variety of methods including self-study modules and decentralized study groups. The shift will require assessment techniques which are more sensitive to variable rather than average

²⁴Contrary to the usual abstract discussion of ideal types ("judges who can apply the law to cases"), the analysis for example asks participants what a defender should ask a client in the first interview. At this level of detail it may provide a concrete focus to remedial training.

needs. For most programs, even in Latin America, this transition is a ways off.

Setting Specific Objectives and Designing Programs and Curriculum: Changes in the notion of how to assess needs are producing changes in how training objectives are defined and programs designed. Not surprisingly, until recently the methodology for both worked around the list of topics generated by the needs assessments and focused on giving judges basic and more detailed backgrounds in each of the targeted areas. Objectives were often expressed in terms of "giving judges a better understanding of substantive and procedural law" in each area or of the general principles of other topics. Overall goals were frequently stated as "helping the judge to do his job better." Curriculum and course design often duplicated university courses, featuring reading and analysis of relevant laws, supported by doctrinal writings. More specific planning was either in the hands of a small group of advisors and local training staff or advisory committees composed of working judicial professionals. However, the content of specific courses was most often left to the individual instructor.

A shift to a problem-solving approach requires changes in the overall objectives of training and in the goals of individual courses. The thematic list often remains the same, divided into types of law or specialized themes -- e.g. civil or criminal evidence, conduct of a trial. Rather than promising a "better understanding" of the materials covered, the aims are an improved ability to apply concepts, knowledge, and skills, both in post-course examinations and in the work site, and visible changes in how work is done and with what consequences. Despite occasional suggestions that skills like judicial reasoning be treated separately, most observers believe this is less likely to encourage their carry over into practice.

For still greater precision, course design could incorporate a list of targeted changes in behaviors -- for example a reduction in the use of preventive detention and its application only in certain legally defined cases, greater use of physical evidence, more effective examination of witnesses, greater/more effective use of pre-trial settlement mechanisms. Such indicators are harder to develop and require more coordination between curriculum planners and instructors. They also require more preparation and forward planning by instructors and may lead to greater reliance on the same individuals. However, the exercise can be structured to involve more members of the judiciary in planning and evaluating courses. Examples of such training and performance indicators and their use to evaluate impact are discussed in the section on Panama and Guatemala.

The new definition of needs and objectives will require changes in how courses are conducted. The direction of change is clear; the problem is how to effect it. As explained by one proponent,²⁵ in its most radical form it means the elimination of all lectures, the assumption that students read course materials (laws or other documents) before class, and that the class period

²⁵Interview, Luis Pásara, UN advisor in Guatemala, July, 1996.

focus on applying this knowledge. This is in short the case study method²⁶ whose introduction within the region's law schools was attempted, with varying degrees of success, during the Law and Development Movement of the 1970s.²⁷ Less radical proposals would retain some lectures, especially for the introduction of new materials and laws, but increase the time allocated to case studies, individual and group exercises, and practice of new skills.

Training Methodologies: If training objectives have received short shrift in Latin American programs, the same cannot be said of methodologies. Teaching methodology and training of trainers is frequently stressed, and a great emphasis usually laid on the fact that this is adult education and thus presumably different from that offered to university students. Training advisors and some judges turned trainers have produced a series of manuals²⁸ and studies on the dynamics of learning, learning styles, practical advice for trainers, and educational strategies. Although like the needs assessments, this sometimes seems to over technify common sense, much of it is useful and should be required reading for program instructors and designers. Nonetheless, there is a down side to this endeavor.

On the one hand, while the principles²⁹ cannot be faulted, they have had far less impact in practice than might be imagined. There are several explanations. First, even practitioners drafted into teaching courses, often don their professorial hats in the classroom. A greater familiarity with the lecture giving modality is hard to overcome, especially where it coincides with student expectations. Second, participatory, practically oriented techniques require more work from students as well as instructors. Students' lack of other basic skills, most notably an ability to read critically and analytically, or their simple failure to read assigned texts before the class, also worked against the new methods. Finally, a tendency to use a variety of instructors, often for short periods, whatever its other benefits, has impeded methodological innovation. This is especially true where the invited instructors are prominent jurists who feel no need for

²⁶It should be noted that the case study method is not "case law" -- it means applying principles to concrete examples. It emphasizes deductive reasoning, whereas case law (and case studies as used in the US) is inductive, attempting to pull the principles out of the cases.

²⁷One problem (see note above) may be that it combined case studies and case law. For a critical discussion of the movement, see Gardner. Although characterized as a failure, it changed the format of legal education in several countries. The Costa Rican judicial school's use of the case study methodology was clearly influenced by its earlier introduction in university programs.

²⁸See for example Silvana Stanga, "Dime como enseñas...."

²⁹These include a preference for practical as opposed to theoretical content, the use of a variety of means to get a point across, and efforts to tie lessons to participants' on-the-job experience. The overriding themes are that adults, unlike younger students, are less intrigued with learning for learning's sake, want training that is relevant to their work, and will challenge an instructor's statements if they do not coincide with their own experience.

further lessons on how to teach a class. Even those who are receptive to the new methods will require more than a few hour briefing. Thus, although most programs have attempted innovative teaching techniques, observation of courses suggests that traditional methods still prevail. This is not to suggest that the efforts be abandoned, but rather that their success is hardly automatic.

The second disadvantage of the methodological emphasis is more speculative, but potentially more disturbing. This is its possible contribution to the programs' tendency to define success as what happens in the classroom and not impact on subsequent behavior. The two are without doubt related, but the dominant impression in interviewing training staff is the scant time devoted to what is being accomplished and the inordinate amount spent on how it is done. Several factors seem to be at work here. Perhaps training advisors as trainers care (and know) more about techniques. Perhaps impact was never adequately defined or is too dependent on exogenous factors. Perhaps the new methodology's intrinsic fascination is to blame. This last explanation should not be discounted; when professional trainers are paired with or replaced by judges, the latter often become still more enamored of the new perspective. This is an improvement over the assumption that judicial training is just university education in a different locale. It still misses the point. The effective adoption of appropriate teaching methodologies is critical. When this becomes the crux of a training program, it loses sight of its larger purpose.

Additional Methodological Changes: Concern with the inadequate impact of training programs has led to other types of methodological experimentation. These are interesting innovations, but may be still more important in reintroducing impact to the equation. Classroom training, even under the best circumstances, can be expected to have a limited and diminishing effect on behavior. Innovative training methods may increase retention rates for new information; they cannot compensate for the artificial classroom environment's inhibiting effect on the transfer of this information to practice. Once participants return to their jobs, the factors, apart from poor preparation, that encouraged their customary behavior will be back in full force. This realization has led to an interest in such alternatives as taking training to the work site, encouraging mixed courses (either in a formal or work-site setting), and sequencing courses to reinforce their impact over time.

On-site training can complement or substitute for formal classroom methods. It may involve decentralizing the classroom approach or introduce a variety of less formal techniques. Examples of the latter include Costa Rica's visiting advisory teams, Panama and Guatemala's *centros de enfoque* (integrated pilot projects utilizing on-site training in which participants themselves function as instructors), or on-site advisors or mentors who combine ad hoc courses with day-to-day advisory services. Significantly, ICITAP has also begun efforts at on-site follow-up for its police training, arguing that without it, classroom impact is quickly lost. Most of these experiments combine training with other reform interventions. While they demonstrate a more immediate and potentially lasting impact on participants' behavior, they are costly and difficult to replicate on a large scale. Furthermore, the initial successes may be linked to special circumstances, not the least of which is the sense of being in the vanguard. One way to attack all three problems is to use participants in the initial pilots as trainers in the expansion phase.

Such on-site programs are the closest the Latin American experience has come to actual mentoring. Despite the term's popularity, real mentoring programs (the assignment of an advisor to each judge, court or judicial district), have not been attempted in Latin America.³⁰ In Cambodia, where they have been utilized by USAID and the UNDP, the results are not remarkable.³¹ In its pure form, mentoring may be too costly to justify its impacts, and these in any case, depend on a special set of technical and inter-personal skills and knowledge that many would-be mentors do not possess. An alternative, Costa Rica's use of itinerant teams of advisors as a back-up to formal centralized training, may be more cost-effective, especially if local judicial personnel can be recruited for this role. The Costa Rica program is more structured than pure mentoring since the teams' time in each court or office is limited. They thus have specific work plans and assignments for their visits, although they can also deal with whatever issues come up. Such itinerant teams, like mentoring, are a good source of feedback and information for designing or readjusting courses and curriculum. They can provide the link between needs assessment and evaluation, and replace a formal program in either or both.

One further advantage of on-site training is the opportunity for cross training or mixed courses. Here police, judges, prosecutors, defenders and staff who normally work together can be exposed to the same programs, and argue through their problems of coordination. Mixed courses have also been tried in centralized programs. Where inter-agency rivalries do not preclude the attempt,³² they are very popular. It is not clear whether they are as effective as the on-site

³⁰Haiti introduced a few judicial mentors in 1997; it is still too early to assess results. Since cost and the peculiarities of the Haitian justice system discouraged the use of outsiders, the program relies on retired Haitian judges. Two obvious obstacles, which may have been overcome, are the long tradition of judicial corruption in Haiti (in which many retirees doubtless participated) and the question of how these mentors would handle efforts to introduce unconventional (by Haitian standards) practices and outlooks.

³¹Aside from cost, the main obstacle is finding appropriate mentors. Of the dozen or so used by the USAID Cambodia program, only two stayed for a second year. Some abandoned their posts in favor of other tasks, or resigned and left early. Most of the younger (less costly) mentors, were viewed as too inexperienced by the Cambodian judges. Even the more experienced group had difficulties establishing working relationships with judicial personnel. The UNDP mentors encountered comparable problems. Although Cambodia presents an extraordinarily difficult situation, the amount of real change fomented even by the "successful" mentors was not great, and conceivably could be (perhaps was) produced by other types of interventions, including formal training, the introduction of a public defenders program, or support to NGOs to monitor human rights abuses. See Hammergren, Scott, and Sung.

³²Informants in several countries commented that mixed courses were easier to conduct outside the capital city because inter-agency hostilities were less pronounced in the provinces. Those in the trenches often had learned to work together and were less preoccupied with

variations. In both settings, course work has been enriched with role-playing, practical exercises, group discussions, and assignment of officials to counterpart agencies.

Another means of reinforcing classroom training is the use of sequenced courses. This approach allows participants to apply their lessons on the job and bring their questions back to the classroom. While not necessarily less expensive than long term programs, it can avoid the added cost of hiring substitutes for the officials in training. It also is less likely to overtax students' capacity to absorb new information. The obvious problems are logistical; it may be hard to get participants or instructors back for the next course in the series. It is not uncommon for relatively inexperienced trainers, and especially those unfamiliar with the judicial milieu, to design extremely complicated schemes requiring extraordinary and probably unrealistic levels of cooperation and organization from institutional partners. One option is the use of a course modules which can be taken at the students' convenience, in no particular sequence. This eliminates some logistical obstacles, but lacks the other advantages of true sequencing.

Instructors in all these alternative programs rarely talk about techniques of adult training, but apparently fall into them naturally. Where courses are taken to the field, focus on participants' real jobs, or encourage them to bring problems back to the classroom, they automatically emphasize practice over theory. Whether because of self-selection or the effects of a less formal environment, the instructor/advisors tend to become members of a team, inviting discussion of ideas and relying less on their professorial authority. Different learning styles have to be respected because otherwise, practical exercises won't work. For similar reasons, "students" have to participate. How many of these new practices are transferred back to formal training environments is debatable, but the potential is interesting.

Coordination of Training with Overall Reforms: Better definition of training objectives and improved teaching methodology increase the impact of training programs, in the sense that participants better understand and are able to apply new knowledge and skills. However, a further obstacle remains -- the continued presence of an institutional and extra-institutional environment which does not encourage new behaviors. If judges make "better" decisions only to have them overturned on appeal, if prosecutors and police find their evidence discarded by judges who don't understand it, or if elites and the general public still believe bribes, threats, and pressure are the only way to get a favorable decision, retrained officials are unlikely to keep the faith for very long. Lack of equipment, abysmally low salaries, and promotion systems based on political and personal contacts also discourage improved behavior. Many complaints about training failures might as well be directed at these other elements, and at the fact that training programs are usually working with a less than adequate human resource base. Because organizing a training program is easier than other types of reform interventions, it tends to get out ahead. This can prepare the groundwork for more difficult changes. It can also take the pressure off leadership to effect them and turn the initial enthusiasm of converts into a

institutional turf wars.

counterproductive cynicism.

Seen from this angle, the problem is far more difficult than the task of adjusting training's objectives to fit overall reform goals. In recognizing that the attainment of those goals also rests on advances in other areas, we are confronting the dilemma of systemic change and the inherent limits of working on only one element of the system. A well-mounted training program could produce sufficient pressures to force broader change, but we have no examples of situations where that has worked. As for why those other changes don't occur, there are any number of explanations. There may be a lack of political will, implying that training is allowed to advance because no one really believes it will have much effect. Conversely, political and institutional leaders may place too much faith in training, assuming that nothing else is necessary. Finally, there may be an insufficient understanding of the factors reenforcing the unreformed system or an inability to develop satisfactory change mechanisms.

This last explanation deserves more consideration than it usually gets. As others have commented, the desire for change is no guarantee of results. Political will is only one part of effective reform. In Latin America, there is a growing consensus on the need to improve systems for selecting and evaluating judges, replacing political contacts with objective criteria related to on-the-job performance. However, defining and implementing these criteria has not been easy. Most of the systems introduced to date are unduly complicated and frequently of dubious relevance. They are further frustrated by inadequate implementation mechanisms and a continuing failure to attract better candidates because of low salaries, a less than illustrious professional image, and longstanding inadequacies of university education. Political resistance might be an obstacle if any one came up with a significantly better approach. The point is that no one (including foreign assistance programs) has. Without better selection systems, training's impact will necessarily be constrained, first by the human resource base with which it works, and second by the human environment in which its graduates must operate.

If not in this specific area, Latin America's experience does offer a variety of potentially useful mechanisms for effecting other types of sectoral reform -- ranging from law revision to improved courtroom administration and legal defense. It doesn't offer many solutions to the larger problem of coordinating the adoption, content and timing of these elements with the training program. The more successful cases are conditioned by a variety of special circumstances. One strategy is to strengthen the linkages between the reform movement and training, using the school as a forum for discussions of reform, and inviting outsiders with an interest in reform to participate in planning and giving courses. In Costa Rica, this happened by accident, because the current Chief Justice, who has been promoting judicial modernization for the past nine years, initiated his efforts in the judicial school. The Costa Rican reform thus began in the school and many of its graduates, instructors, directors, and advisors have been involved in reform planning on a larger scale.

Another option is to take training to the reform program, making it a part of integrated reform projects, as in the case of Panama or Guatemala's *centros de enfoque* (focus centers). In

countries where this has been tried, it has undercut the institutionalization of a judicial school over the short run. Still, methods developed in field training could be reincorporated later, producing a stronger overall program. Opening up the school to non-institutional participation -- legal NGOs, the private bar, or community groups -- is another option. It has not been tried systematically in any of the cases reviewed. The logic here is to encourage the formation of a larger reform alliance that could lobby for changes developed through discussions and forums sponsored by the school. In El Salvador, public fora sponsored through the training program aided passage of new legislation and maintained interest in further reforms.

Finally, the El Salvador program has also attempted to induce broader change by forcing the application of some of the training lessons, using its institutional advisors to help trainees submit habeas corpus and appeals based on new legislation. The targets are the appeal court judges who have resisted both training and the new laws. It is too early to assess the effects. They also depend on a special set of circumstances -- the prior introduction of new procedures, a Supreme Court presumed willing to force compliance or overturn illegal appeal court decisions, and the presence of an advisory staff which can encourage the maneuver. As in the other examples, the key is the forging of links between training and the broader reform program so that the various elements inform and reenforce each other. The links may be structural, programmatic, or personal. Unless they exist, a training program, no matter how large or generously financed, runs the risk of being more symbolic than functional.

Impacts and Impact Evaluations: A reform intervention's impact does not depend on its evaluation. This is fortunate for Latin America's judicial training programs since their non-evaluation is the rule. Still, without adequate impact evaluations, it is difficult if not impossible to improve programs, make them cost effective, or determine where non-training elements may be obstructing progress. At critical junctures, evaluation data could well determine a program's survival or prevent the adoption of ill-considered modifications. Less formal observation, familiarity with justice systems and training components, and anecdotal evidence do allow some educated guesses as to what works and what doesn't. However, in the face of resource scarcity, and the likelihood that in training as elsewhere, the relationship between level of effort and impact is not strictly linear,³³ an understanding of its mechanics is critical. Cutting back a program by ten or even fifty percent might make no difference or might be tantamount to its elimination. Where one makes the cuts may be still more important. Without data on impacts, prediction of these consequences is extremely difficult.

³³The concept of critical mass or "tipping point" is potentially useful in this kind of reform program. This is the point at which cumulative interventions which seemed to produce no broader impact suddenly take off -- because, in the tipping point analogy, the mathematical relationship between the number of directly affected individuals and the rate of secondary transmission dramatically increases the multiplier effect. The concept comes from epidemiology, but is applicable to social change as well.

Latin American programs have survived without true impact evaluations. Diminishing resources and questions about cost-effectiveness make a continuation of that practice less tenable. Interviews with school officials suggest that many don't understand the concept; those who do usually admit that real impact evaluations have never been done in their programs. The problem does not begin with these evaluations themselves, or with the intrinsic difficulty of assessing training's effects. Instead it has its origins much earlier, in the design stage. Training's impact can be measured, but only if objectives are adequately defined and the choice and formulation of activities guided by them. Once this is done, results or impact indicators pose less problem; they will be obvious from the start. Without this prior definition, evaluators have to invent the indicators after the fact and hope that they coincide with what actually happened.

Latin American programs have not gone to that extreme, but have instead substituted output indicators -- numbers of trainees, course evaluations, or student examinations. The evaluations, with varying degrees of reliability and validity, indicate whether students felt the course was useful, the instructor effective, and the environment conducive to learning. In some cultures, this kind of evaluation is virtually meaningless; in others it identifies the most popular professors and subjects. Student examinations are another way of getting at the efficacy of instructors and methodologies, but only insofar as they relate to the students' initial absorption of the course content. Another examination several weeks later might indicate how well they retained this knowledge, but not the real question and the real point of training -- whether they applied it on the job and whether that improved their performance. These questions remain unanswered, except in the occasional follow-up interview asking students which of their new skills they have found useful. Anecdotal evidence may be offered (stories of one student who applied her lessons to improve courtroom practices) or observable systemic change may be hypothetically linked to training programs. However, self-reporting has widely recognized limits and there are usually alternative explanations for systemic change. The present paper makes some generalizations about impact, but much of this is speculative --because the programs do not provide the necessary evidence for greater certainty.

Significantly, many of those involved in the Latin American programs have reached the same conclusion and are currently exploring ways of better determining impact. Their initial reactions coincide with the recommendations made here --- desired impact must be more precisely defined from the start, and program activities designed to achieve it. Thus, rather than search for ad hoc indicators, the effort is tied to improving the entire design process. Perhaps a part of the problem is that many trainers do not think of themselves as change agents -- their normal function is to impart knowledge and skills. However, in the context of a reform program, training is one link in the causal chain aimed at transforming system performance. Training may represent an almost independent link, but usually a desired impact has training as only one of its pre-conditions. In either instance, the objective is behavioral change, not just increased knowledge. Since judges may also find this an alien concept, pairing them with trainers often reinforces a perspective which excludes this longer range vision of impact.

Sustainability and Transfer to Local Support: Two kinds of sustainability are relevant to training programs. The first involves training impact; the second is the sustainability of the training program itself. The distinction is important, although it is often ignored. Depending on the circumstances, one objective may be more essential to the short or medium term success of a reform. Pursuing both simultaneously may not be feasible because of costs or because of the different and potentially contradictory conditions required for the success of each. The strategic choice between producing an immediate change and institutionalizing a change process is not unique to judicial training; it is inherent in any development assistance program.

If a choice is necessary, the initial training program usually emphasizes the first kind of sustainability. Its objective is to produce the behavioral and attitudinal changes required by a variety of reform interventions. Depending on the problems identified, the aims may be very targeted and rapidly achieved or may evolve into a multi-year effort to bring average performance up to some minimal level. While often expensive, these programs are different from what is required over the long run. Whether described as remedial or emergency training, they are best understood as a quick fix to eliminate the most egregious problems, introduce new methods and skills as quickly as possible, and set the stage for continued development. If the reform succeeds, the quantities (very high) and quality (very low) of trainees will never be repeated.

El Salvador's judicial school, for example, trained 4,000 participants (those taking several courses are counted several times) in its first year of operations and can expect to maintain this level over the next few years. If Haiti goes through with the proposed replacement of its lower level judiciary, it will have to provide basic three- to four-month courses to several hundred individuals. Whether it takes this tack or retains most of the existing bench, raising performance to an acceptable level will require additional mass training, most probably in series of short courses conducted over two to three years. Colombia's adoption of a new criminal procedures code in 1991 required training thousands of judicial employees. Even for them the process is far from complete. On the other hand Costa Rica has allowed eighteen months to provide every member of the court system with a short course on its new Criminal Procedures Code. Once this emergency program ends, further mass training may not be necessary. Significantly, both Costa Rica and Colombia went outside the school context to accomplish these goals; the other two countries used their schools and expanded facilities accordingly.

If the circumstances are exceptional, requiring extraordinary budgetary allocations or donor financing, the desire that the impact persist is not. However, here sustainability is more a question of having the rest of the reform in place. It does little good to train hundreds or thousands of individuals in new laws, practices, and outlooks, if the incentive system and external pressures remain unchanged when they go back to their old jobs or assume new ones. Thus, for a donor financing this exercise, the question is not whether the costs will be assumed by the host government (since the costs are short term), but rather whether the latter will make and enforce the other changes guaranteeing that the investment is not wasted. The "emergency" program, once completed, could disappear without diminishing its long range impact, but if the

rest of the changes are not made, the training investment will most probably be lost.

Emergency and remedial programs are not good models for permanent training. Their objectives, costs, content, and format are conditioned by the need to produce change rapidly. Procedural shortcuts, the extensive use of external advisors, a mass mobilization that cuts into normal activities, and an abbreviated agenda are the order of the day. There will be little time to transfer training know-how, and it may be inappropriate for whatever program follows. When attention shifts to or begins with the institutionalization of a training *program*, the objectives and priorities are necessarily different as are the factors determining their achievement. Concern with the immediate quality or sustainability of training becomes less important than the creation of an effective and sustainable process for its delivery. This means greater effort to prepare and involve local staff, more room for experimentation with planning and delivery systems, an emphasis on holding expenditures to levels that the host government can and will support, and a more cautious and limited use of external advisors, keeping them as far as possible out of operational roles. Whereas an emergency program can be run by a foreign advisor, this should be avoided at all costs in establishing a permanent training facility.

Both aspects of sustainability pose enormous and often seemingly insoluble challenges. For donors, setting up a permanent program is conceptually and operationally more difficult, and not only because of its content. It is usually easier to do something oneself than to teach someone how to do it. The skills required for each task are different, and the second set is harder to identify. When the same external advisors are used for both phases, they may find it difficult to switch gears, especially if this results in what they perceive as a lower quality output. If they can resist the temptation to retain control, transferring more of program design and operations to local staff, their advice may still be tailored to the short-term, high impact approach required when training is first introduced. The transition to longer-range, career oriented planning, whether entry-level or in-service, has yet to be made successfully in Latin America. One obstacle may be that the advisors don't know how to do it either. As judicial training programs are also grappling with this issue in developed countries, the difficulties are hardly surprising.

For local staff, the shift out of the emergency mode is also difficult, as indicated by the ease with which schools return to it. The Costa Rican Judicial School, currently perplexed by the problem of how to upgrade its permanent program, easily shifted to its current emergency campaign. Because this sort of task force planning is easier to conceptualize and implement, its vestiges may remain long after it has served its purpose. This can lead to a ritualistic, routinized curriculum which loses the interest of both instructors and trainees. It is one thing to prepare students for an inevitable change that will require that they do things differently. It is another to improve normal performance especially if incentive systems have not been changed to reflect this objective. Thus, another part of institutionalizing a training program is the forging of links with career planning, personnel systems, and supervisory, evaluation and monitoring mechanisms. Where this does not happen (Panama), the training program may be increasingly marginalized. To avoid this, and make sustainability more than a question of mere persistence, training directors and advisors may have to sacrifice some control over the program to allow the

incorporation of other members of the institution. Training's goals must be institutionalized in the sense of becoming those of the institution and not just of the training facility.

Given these uncertainties, the increasing concern with financial sustainability, and the strong likelihood that permanent programs will be smaller and differently focused, donors should be cautious about the size and type of investment they make or encourage counterparts to make in a permanent institution. Clearly, a physical locale has certain advantages. In some countries, there is no other place to hold classes. Creating a physical location with permanent staff also guarantees some sort of continuity. However, establishing a sizable physical and functional capacity early on can direct excessive resources to its maintenance. It can also discourage recognition of and adjustment to changing needs or the exploration of alternative mechanisms. It may be tempting to provide permanent staff and infrastructure in line with the demands of the initial mass program. As real needs change, the program may continue to be driven by its organization and infrastructure. Most Latin American programs have successfully avoided the worst of this phenomenon by holding core staff and infrastructural investments to a minimum. It nonetheless bears mentioning as this is often not the preference of their local partners.

A WORD ON REGIONAL CONFERENCES, WORKSHOPS, AND SEMINARS -- ILANUD AND OTHER HOST INSTITUTIONS

There is another kind of training which deserves a brief discussion since it is also widely used by USAID and other donors. This consists of seminars or courses, usually held regionally or subregionally, in which a select few representatives of national institutions are invited to participate. USAID's entrance into judicial training took this form through its use of ILANUD, the United Nations Latin American Institute for Crime Prevention and Treatment of the Delinquent. Over its ten year program with ILANUD, USAID funded hundreds of short courses and seminars with thousands of participants. Although ILANUD also conducted national courses, much of its work was multinational in focus. Currently, USAID sponsors a lesser number of such activities through a variety of other entities, as do other major and minor donors.

Admittedly, some of these activities are not intended as training. Especially at the start, ILANUD's role was to awaken interest in justice reform and build regional and national reform constituencies. Despite a lack of systematic evidence, it can be credited with a large measure of success in this area. The expanding interest in and accelerating adoption of new criminal procedures codes, based on a mixed modern system, oral trials, and enhanced procedural and human rights was visibly fed by these efforts. The ILANUD program also set the base for bilateral reform projects in a number of countries, encouraged reform activities even absent donor assistance programs, and established networks of reformers who now work together with or without donor involvement. The success in these promotional aspects of the program recommends a broader adoption of this technique. Regionalizing a reform movement may be a way of by-passing national resistance and maximizing the use of scarce local talent.

As time went on, more of these programs were presented as training exercises, raising the

question of their efficacy in this sense, or whether this was just reform promotion under another name. This involves more than ILANUD; USAID has used other service providers for this purpose as have other donors. The usual format is a short (two weeks or less) course on a specific theme with participants from a variety of countries. Often those invited are mid-level officials, not the Court Presidents or Ministers of Justice included in the earliest conferences. The official objectives resemble those of national courses on the same themes ("exposure to ideas about...", "basic understanding of...", "increased ability to do..."). Unofficially and more realistically, their purpose combines promoting interest in a theme and giving the participants a better idea of how to pursue it. There are problems with this combined approach. First, the instructors or program designers too frequently lack familiarity with local conditions and so may be recommending the impossible or at least the highly unlikely. ILANUD, despite its Latin American staff, more than once arrived in a country to teach a seminar on an inappropriate or irrelevant topic.³⁴ Second, most of these courses are organized without plans for follow-up activities. Thus, whatever interest they do arouse may dissipate before anyone can act on it. Third, national participation in regional activities is usually limited to one to five people, and it has been difficult to identify those best positioned to transfer knowledge and enthusiasms.

Like some national training programs, these events may be most important for their hidden agendas; as ways of rewarding local partners, forging regional links, or emphasizing USAID's interest in reform. If this is the case, some redesign might be in order to highlight these goals and eliminate any pretense of real training (unless that pretense is important to achieving the other ends). At the very least this might facilitate the selection of participants and make the nature of relevant follow-up less of a mystery. Nonetheless, inadequate follow-up is a problem no matter how the programs are conceived. If such events are to realize their potential, designers should give this as much attention as they do to immediate content.

A SUMMARY OF GENERAL CONCLUSIONS ON TRAINING

1. Training is an important tool for maintaining, perfecting, or reorienting judicial performance.
2. Training can also continue without serving any of these purposes or serving them very well. This outcome is encouraged by the host of secondary interests that may be met and inadequate or nonexistent impact evaluations.
3. The utility of training depends on the identification of the goals pursued and the choice of adequate means for pursuing them.
4. Training needs assessments should follow a prior identification of reform and training goals, and should be oriented by the latter, not by an effort to determine what trainees "don't know." If

³⁴For example, it arrived in Peru in the late 1980s to proselytize on the mixed modern system, only to be told by the Peruvians that was what they already had in place.

questionnaires are used, this means fewer questions on training needs per se and greater focus on problems experienced by respondents in carrying out their jobs or as system users.

5. Evaluation is not necessary for a program to have an impact, but without adequate impact evaluation, improving, adjusting or even defending it becomes impossible. Ad hoc evaluation can serve most of these purposes, but it encourages inefficiencies.

6. As with all change tools, the utility of training is enhanced by coordination with other reform components -- selection systems, incentive systems, follow-up.

7. The design of an assistance program and of its training component has a short and long term effect on this coordination. Choice of and relations among advisors may determine whether training is part of an integrated change effort, or simply an independent activity. Training advisors who do not understand judicial reform, or cannot convincingly discuss it with local counterparts may marginalize both themselves and their programs.

8. While training is costly, the most expensive programs are not necessarily the most effective, especially where funds are invested in large permanent staffs, buildings, and equipment.

9. Similarly, the relationship between the number of courses or participants and impact is mediated by many other variables.

10. Evaluation of impact is most telling when addressed to behavior some time after the course-- student evaluations of course quality, or even examinations of students to determine what they have learned are no substitute.

11. There is an important but often unrecognized difference between training as an activity and the creation of a permanent training program. The goals of the two are different and over the short run may be in conflict.

12. A permanent training program need not be a judicial school in the sense of a physical entity where most training occurs. Permanent infrastructure and staff do enhance the chances of survival, but can also discourage flexibility and creativity. As always a balance must be struck. It is thus advisable to keep permanent investments small or avoid expanding them prematurely.

13. Even in an institutionalized training program, needs, objectives, and appropriate methodologies will vary over time. Routinization is a constant threat to efficacy. However, models which are no longer appropriate in one country may still work in others.

APPENDIX: CASE STUDIES OF TRAINING PROGRAMS

The following case studies are provided for those wishing furthermore detailed information. They are based on data collected in late 1996 and early 1997. Where recent events affect the methodological conclusions, I have included additional explanatory notes. However, since I have not attempted to characterize programs as “successes” or “failures,” where subsequent *policy* changes (e.g. substantial differences in funding, content, or the institutional partners) altered both the format and outcome, I have not tried to update the case study. Funding levels are approximations as many projects do not treat training as an easily distinguishable category.

Costa Rica and El Salvador: Institutionalized Judicial Schools

Costa Rica:

Source of funding: regional and two bilateral projects (1989-1995)

Amount of funding: \$1,000,000 between 1989-1993 as principal contribution

Objective: Support for existing judicial school responsible for training judges, prosecutors, defenders and administrative support staff

Type of assistance: largely financial, for program development and implementation, with some provision of technical assistance

Type of training: short in-service and entry-level courses

Amount of training: multiple courses held year round, 2,000 participants annually

Major accomplishment: expansion of the school from a small program for administrative staff to one covering all professional and support staff

El Salvador:

Source of funding: two bilateral projects (1984-1997)

Amount of funding: principal funding roughly \$4,000,000 under second project (1993-97)³⁵

Objective: Creation of judicial school responsible for training judges, prosecutors, defenders, and administrative support staff; support for on-going legal reform

Type of assistance: some equipment and logistical support; most of funding used for long term advisors and short term (local and foreign) instructors

Type of training: short in-service courses; some short entry level courses

Amount of training: multiple courses held year round, 4,000 participants annually

Major accomplishment: creation of school and development of program exposing all of target audience to new legislation and procedures

General Background: Costa Rica and El Salvador represent the two best examples of the dominant Latin American model for judicial training. Costa Rica in fact has taken its school and other elements of its judicial reform program “on the road.” Initially as USAID advisors and now through a variety of mechanisms, members of its judiciary are providing technical assistance throughout the region. El Salvador’s school is newer, and thus by definition less institutionalized. Thanks to external funding and a sizable USAID investment, it has expanded

³⁵The final project report estimates training funding at \$7.5 million, but this includes advisors used outside the school and a variety of public fora to publicize the new codes.

the model even beyond the Costa Rican dimensions. Other countries with similar, if less massive programs include Honduras and Nicaragua, both of which like El Salvador received much of their technical assistance from USAID-financed Costa Rican advisors. Because USAID's role in Costa Rica was to provide financial rather than technical assistance, the Salvadoran experience is more useful for other projects. It thus is discussed in greater detail.

El Salvador's school existed on paper prior to USAID's entrance, as a constitutionally-defined body to be managed by the newly formed National Judicial Council. Since the council also has constitutional authority for screening candidates to the judiciary (presenting lists to the Supreme Court or the National Assembly for final selection), the school's placement seems to facilitate its linkage to the judicial career. The Costa Rican School's control by the Supreme Court encourages a similar linkage since the Court also manages the judicial career. However, as both cases suggest, and as is still more evident in Guatemala and Panama, having one entity manage the school and the career is no guarantee that training and recruitment will be coordinated.

During its first Judicial Reform Project (1984-1993, JRI) in El Salvador, USAID financed considerable ad hoc training, in the form of seminars, public fora, classes for judges on the proposed new criminal procedures code, and in conjunction with activities requiring mastery of new skills and methods (e.g. new court administration techniques). Foreign instructors were used extensively, most often drawn from advisors working on other elements of the project. This practice guaranteed close coordination between training and general reform goals. These goals increasingly centered on the introduction of new criminal justice procedures and a new criminal procedures code featuring enhanced due process guarantees, greater orality, and more adversarial practices. One of the principal drafters of the new code, for example, conducted several lengthy courses for judges on the principles informing it. However, it was only with the second project (1992-1997, JRII) that direct financing of the school and its training program began.

Organization: By law, El Salvador's Judicial School is responsible for training judges, public defenders, prosecutors, and administrative staff. Police are trained in a Police Academy assisted by a separate ICITAP program, in coordination with other donors. There has been some effort to include police in Judicial School programs and to train judicial personnel at the academy, but this has not been systematically pursued. Two obstacles are USG restrictions on support to the police (interpreted as precluding any but the most casual attendance at Judicial School programs) and ICITAP's own tendency to operate in relative isolation.³⁶ Since early 1996, USAID and ICITAP have attempted to increase coordination, and other donors have sponsored joint classes. Among new activities are student and instructor exchanges and the drafting of a common manual on police-prosecutorial coordination. Because the *Procuraduría General* (in charge of legal assistance to the poor and public defense) and the *Fiscalía General* (prosecution) are less

³⁶Although a part of ICITAP's funding comes directly from the USAID project, coordination has been less effective than in some other countries. As always, differences in organizational styles and professional outlooks pose obstacles.

generously funded than the judiciary, their sporadic interest in establishing their own training programs has not advanced far.

When USAID began direct assistance in 1994, the school's newly appointed director posed further difficulties. Because he was no fan of the due process reforms, this could have been disastrous. Instead, his political battles with factions within the Court and council meant he virtually abandoned his post for the entire year he held it. As a consequence, the long term training advisor, a Costa Rican judge and former subdirector of the Costa Rican Judicial School, took over many of his functions, and continued as de facto curriculum director for two years. When she returned to Costa Rica in early 1996, USAID proposed to eliminate her position in the belief it was no longer necessary. Resistance from the council, the school, and the Court brought the contracting of a second advisor for another year. Working with the school's administrative staff and a second, more involved Salvadoran director appointed in 1995, the first advisor did most of the curriculum planning, selection and preparation of instructors, and directed most of the logistical duties involved in running a program for 4,000 participants annually. Her replacement was not a lawyer, but rather an education expert, and was more absorbed in methodological issues. As in Costa Rica, a system of advisory committees was used to plan curriculum in each legal area (criminal law, family law, etc). However, it was up to the long term advisors to transform what was essentially a list of course titles into a full blown curriculum within a generous but still limited budget. Including the long term advisory services, production of materials, some equipment purchases, and remodeling or renting of locales, USAID's contribution came to about one million dollars a year over a four year period.

Much of this budget financed foreign, short term instructors, who were responsible for at least half of the training. Efforts were made to pair them with local instructors as a means of training the latter. The council covered its own administrative expenses and the remodeling of its principal locale. Because its locale was inadequate for the size of the program, courses were often taught in hotels or in the institutional contractor's offices which were remodeled for this purpose. USAID paid these expenses. Contrary to its practice in Costa Rica, USAID did not cover the costs of transporting students to San Salvador for courses, or that of hiring substitutes while they were in training. When expenditures for reproducing readings and for lunches and coffee breaks became excessive, they were also transferred to the council. While neither represented a large portion of total costs, donor financing probably led to unreasonable amounts being spent in both categories. Unfortunately, since most donors cover such costs, they have become an anticipated part of any course or seminar. In justification, it has been argued that the best way to guarantee full time attendance is to feed people throughout the sessions.

Curriculum and Course Content: The major impetus behind the Salvadoran training program was preparation for the new criminal procedures code (finally approved in late 1996 and

scheduled to go into effect in early 1998)³⁷ A large share of the overall project's budget went into the preparation and promotion of this code and the accompanying criminal and sentencing codes. As the project branched into rewriting other legislation (a new Family Code, a Juvenile Justice Law), this also became a focus for training. A second and increasingly important purpose was improving the quality of judicial personnel and their performance under existing law. Two related problems were addressed here. First, the poor quality of Salvadoran legal education, a highly politicized appointment system, low salaries, and a negative institutional image virtually guaranteed that most judicial employees were ill prepared for their existing jobs. Second, the existing codes and a series of recent constitutional amendments allowed, in fact required, much greater respect for due process and basic human rights than most judges recognized. Thus, in conjunction with the larger goals of the reform project, training was aimed at remedying deficiencies in judicial preparation and inculcating a respect for due process and human rights.

Both El Salvador and Costa Rica were subjects of the massive sector assessments conducted under USAID auspices in the mid-1980s. The assessments discussed general training needs and recommended the creation of permanent training programs. In influencing training content, their broader discussion of sector strengths and weaknesses was still more important. El Salvador also benefited from studies done in the late 1980s by CORELESAL, a donor-supported government commission set up to draft new legislation. Thus, while neither country did a massive preliminary training needs assessment, their programs were amply informed on general system problems and human resource deficiencies. This was augmented by additional analyses conducted by the training programs or in conjunction with other reform activities.

The quality of the studies varies considerably, but between them and classroom experience, the Salvadoran program (like that of Costa Rica) developed a fairly thorough knowledge of the gaps in student knowledge. In the Salvadoran case, these revelations have not been encouraging. It is now apparent that students lack not only the knowledge and skills most directly related to their jobs, but also such basic abilities as analytic reasoning, expository writing and the capacity to read critically. Most also lack familiarity with related subjects -- psychology, sociology, natural science, economics, mathematics -- which might help them understand the cases they are investigating, defending, or deciding. In short, twelve years of civil war and a prior ill-conceived educational reform have wrecked havoc with Salvador's educational system. Until this situation changes, the judicial training program must cope with a less than adequate human resource base.

Nonetheless, Salvadorans are interested in training. Seminars and fora open to the public attract large crowds even on a Friday afternoon or Saturday morning, and the demand for training in the

³⁷Drafting of the code began in the late 1980s. By mid-1995 it seemed on the verge of passage, but growing public concern with violent crime reawakened fears about its being soft on criminals. To facilitate passage, changes were made in procedural, substantive, and sentencing codes, introducing stiffer penalties and reducing the applicability of some forms of alternative sentencing. However these changes should not invalidate the training already done.

school has remained high. Unfortunately, interest seems to decline farther up in the hierarchy. It has been hard to attract members of the Supreme Court, the appellate courts, or their counterparts in the Procuraduría and Fiscalía although many of them are as needy as the lower level judges. Furthermore, training's impact, even as simple information transfer, has suffered predictable limits. Graduates of the short courses (usually one to two weeks) have problems passing the final exams. Standards had to be lowered so as not to fail them all. Finally, educational deficiencies make Salvadorans rather unsophisticated consumers of training. Observation of courses indicates that they find it hard to deal with inconsistencies and contradictions, may prefer more directive, less participatory teaching methods, and consequently, are less likely to attempt to integrate new information with their existing knowledge base.³⁸ A judicial training program cannot hope to remedy these weaknesses, which thus limit its impact on behavior on the job.

The definition of the curriculum was caught between these revelations as to the basic deficiencies and gaps to be filled, and the increasing demand that it cover more material. The compromise solution tends to sacrifice depth for scope. This has been necessary because of the ambitious legal reform agenda. Each new code or law requires another emergency program to train new staff or retrain those already in place. The result is a program focusing on familiarizing students with the basic legislation and the principles behind it. It has been longer on lectures and doctrine and shorter on practical discussions and exercises than might have been hoped. Given the nature and urgency of the task, it would have been hard to do otherwise.

These emergency "survey courses" on existing and proposed legislation should now be giving way to remedial courses more concerned with skills and practical applications. There have already been experiments with techniques like moot courts and classes on the drafting of resolutions (justifying sentences in bench trials and other judicial decisions) and other basic documents. This trend should continue, targeting areas considered most critical to real change in courtroom practices. By allowing participants to apply new skills and knowledge, these exercises are an excellent means of identifying and resolving problems before they are carried over into real life. One by-product of the courses is the development of bench manuals and collections of models forms for drafting basic documents.³⁹ Although they can be criticized as an overly mechanical approach to the judicial arts, given the prevailing skill deficiencies, they may

³⁸Students often complained, for example, that instructors contradicted each other, apparently expecting a more authoritative approach to the "truth." They seemed to prefer instructors who presented new ideas simply and schematically, over those who dwelt on conflicting details drawn from real cases. In fact, when they evaluated instructors, practical experience appeared to count for far less than an advanced academic degree from a prestigious school no matter how green its holder. This is in interesting contrast to reactions from Cambodian judges who wanted instructors with "grey hair" and time on the bench.

³⁹ILANUD developed similar manuals for training programs in Honduras and the Dominican Republic where they were also extremely popular.

be the most practical way to improve and standardize performance. There have also been efforts to develop series of courses through which the same participants can alternate time on the bench with a cumulative learning process. This is a practical response to an appreciation of trainees' limited time and absorptive capacity.

The most outstanding characteristic of the program remains its size. During the three years of USAID funding, up to six four-hour sessions were held daily -- two in the morning, two in the afternoon, and two in the evening. Virtually all of the trial court personnel, including administrative staff, received at least one course annually. Many participated in two or more. Despite the emphasis on criminal justice, when the new family and juvenile jurisdictions were introduced, the school trained all of their personnel. Courses were also held for NGOs, joint sessions were held with police, and public fora and seminars were sponsored. Although most sessions were held in San Salvador, the school also scheduled courses in provincial centers, and visiting instructors donated time to give lectures and seminars in local universities. Advisors working in other parts of the USAID project collaborated with the school, and its instructors also worked on these other components. In short the school was more than a training center. At least for this period, it was an active element in advancing an entire program of judicial reform.

Given the numerous obstacles it is unclear how much the initial training program could have been improved. Local partners actively resisted suggestions that it be more selective in its aims, covering fewer topics more intensively. The reliance on a veritable army of imported instructors was more controversial, especially because of their higher salaries.⁴⁰ It also had its counterproductive side. Few of them really know the Salvadoran reality, many are unfamiliar with Salvadoran legislation, and some lack courtroom experience even in their own countries. This undoubtedly encourages a more theoretical approach to course content, and may contribute to a divorce between what is covered in class and what is done on the job. The foreign instructors add a certain cachet to the program, and have been justified because of an argued lack of qualified Salvadorans, but the practice has been carried to extremes. With as many as a half dozen foreign instructors arriving every two weeks, it has been impossible to screen, prepare, or supervise all of them. Experience allows a culling process, and only the good ones are invited back, but sometimes it took several trips for the ineffective instructors to be identified.

Impact: Students do come out of the week or two-week courses with a basic understanding of the laws that will guide their professional actions and with a comprehension of the main points in which they differ from past practices. This has helped reduce some institutional and extra-institutional opposition to reform, and served to identify individuals who will work as active allies. Real changes in some behaviors -- especially the application of those due process

⁴⁰While Salvadorans generally liked the foreign staff, resentments over their salaries led to suggestions they be eliminated or local professors be paid the same rate. The issue was more complicated, but salary discrepancies between local and foreign staff, and even among the latter, were a constant headache.

guarantees receiving most emphasis in class -- demonstrate that the courses are having an effect. However, subsequent evaluations of progress in applying new laws or simply of courtroom practices also indicate that many lessons are only half learned, that the translation from abstract principle to concrete application remains a problem, and that graduates are often confused about new rules and guidelines. Flaws in the legislation itself, delays in complementary institutional reforms, contradictory pressures from the public and political and institutional leadership, and the students' broader educational deficiencies continue to obstruct more fundamental change.

Aside from its incipient use in screening candidates to the judiciary, training's linkages to the personnel system have remained weak. Egregious cases of nonattendance or poor performance were reported to the council or institutional leaders; the results were minimal. The use for screening candidates has advanced furthest within the courts, in part because they tend to attract more candidates, in part because their final selection is based on lists forthcoming from the council. The Procuraduría and Fiscalía have trouble drawing sufficient candidates to fill new positions, making screening fairly pointless. Even for the courts, efforts to select candidates on the basis of classroom performance and examination grades have been less than satisfactory. To ensure adequate numbers to fill the lists, standards had to be lowered repeatedly. Over time the judiciary may attract higher quality candidates, but one of the fundamental problems is the still unreformed university system. So far neither the donor community nor the Salvadoran government has been willing to tackle this major obstacle to judicial reform.

Despite a new formal emphasis on merit appointments, patronage and personal and political contacts remain important in getting and holding a position. This is especially true of the Procuraduría and Fiscalía whose appointments are made by their respective institutional leadership with no required input from the council⁴¹. Budgetary inequities also complicated efforts to link training to the selection of new professionals. Because of the Procuraduría and Fiscalía's relative poverty, their professionals earn far less than judges (in fact often earn less than judicial administrative and support staff); thus, the best trainees from these two institutions often migrate to the courts. This doesn't mean that training is lost. It does mean that its benefits disproportionately accrue to the courts.

Future of the Program: USAID's concerted assistance to the Salvadoran school ended in mid-1997. At that point, the Judicial Council became responsible for running the program and for most of its expenses. Since other donors are already contributing technical assistance and courses, and the school's budget comes out of the generous budgetary earmark for the judiciary as a whole, survival is not an issue. Undoubtedly, the school will suffer organizationally with the elimination of the full time training advisors provided by USAID. Even should other donors assume this responsibility, they seem unlikely to handle the logistical burden as well. Efforts to develop a Salvadoran staff capable of managing planning and implementation have been fairly

⁴¹The USAID project also supports the development of career laws for both institutions. They should introduce more transparent personnel systems.

successful, but sectoral and school politics will prove more of an obstacle to them. One advantage of the transition will be a necessarily greater reliance on local instructors and the elimination of some of the unnecessary frills encouraged by the use of someone else's money.

Thus, with the impetus provided by the USAID program, the school's continued existence appears guaranteed. If the level of activity subsides slightly, this should not be a cause for concern. The more important questions are whether it can continue as a dynamic player in an integrated reform process, extend its experimentation with new forms of training, and evolve beyond the current mass indoctrination, emergency mode to a program producing real changes in behavior. Despite complaints about the school's failure in the latter regard, there have been few concrete ideas about a solution. It has been suggested that more use be made of on-the-job training through advisors assigned to each institution to assist staff in the application of new procedures and skills. The complaint has also revived an interest in separate training programs for the Fiscalía and Procuraduría. In all these cases, resources will be a major limitation. Also to the extent the proposals encourage political and inter-institutional rivalries they may have counterproductive results, fractionalizing rather than further integrating the training effort. Other donors are not currently a likely source of innovation; most of them conceive training as classroom lectures on principles and doctrines.

As regards these questions, the recent experience of Costa Rica's school is highly relevant. After over ten years of developing the model adopted in El Salvador, the Costa Ricans have begun to question its adequacy, relevance, and cost.⁴² The last point is particularly significant since Costa Rica's school is funded through the Court's budget, one of the most generous in the region. However, even for Costa Rica, the costs may not be sustainable. The current system offers entry-level and in-service training to all judicial employees as a series of one to two-week courses covering the basic elements of their jobs. Courses are participatory and problem oriented. They are usually taught by practitioners temporarily seconded from their jobs and for the most part are conducted in the school's San Jose facilities. Since Costa Rica, like El Salvador, is a small country this level of centralization is less inconvenient than it might be elsewhere. The concern is that Costa Rica has pushed the model to its limits. Having raised the level of average knowledge and performance, it may have sunk into a routine that is no longer addressing real needs or even engaging the interests of its trainees.

Costa Rica's recent passage of a new criminal procedures code has postponed concerted attention to this issue. For eighteen months its training has been directed toward the mass familiarization of its judicial staff with the new legislation, and relies on the methodologies and approaches now being questioned. However, a search for new means of assessing needs, defining objectives, and measuring impact has begun, along with the exploration of alternatives to centralized, off-site

⁴²For a brief discussion, see Costa Rica, Supreme Court. Blanco, a participant in the Costa Rican, Salvadoran, Panamanian, and Bolivian (World Bank) programs, provides a more exploratory, if less official discussion.

training. If Costa Rica develops solutions, they will be of interest to all the region's judicial schools. Despite Costa Rica's dissatisfaction with its current model, most like El Salvador could profitably adopt it. However, knowing what follows will help them plan for the still longer term and avoid permanent investments driven by essentially impermanent needs.

Guatemala and Panama: Marginalized Programs and Alternative Experiments

General Note: These observations correspond to events as of early 1997. As of this writing (one year later), the situation in Panama has changed little. However, following the signing of the Peace Accords, Guatemala's training situation has been in constant flux. This should not invalidate the conclusions on the earlier problems, but may mean that they are being superseded.

Guatemala:

Source of Funding: regional project and two bilateral projects (1989-1992; 1994-)

Amount of Funding: Not available, but should account for half of the current \$6 million project (up to two-thirds if integration project is included), and at least another million under the prior efforts.

Objective: Currently, develop training program to implement new criminal procedures code; formerly general assistance to develop judicial training programs

Type of assistance: some operational support for Judicial School and Public Ministry's training program; long term training advisors, short term foreign and local trainers, development of training materials and bench books

Type of training: short-term in service and pre-entry; recent reorientation to on-site training as part of integrated pilot projects

Amount of training: varies considerably; in 1995, the judicial school taught 1,800 students (many of them repeaters) and was expected to continue at or above that level for 1996 and 1997; the program with the Public Ministry, beginning in 1996 focused on courses for 210 (70% of all) prosecutors.⁴³

Major accomplishments: both the Court and the Public Ministry have permanent training programs, although both are highly dependent on donor financial and technical support. Introduction of entry level training as a means of selecting new judges

Panama:

Source of funding: regional project, bridge project, and bilateral project (1991-1996)

Amount of funding: not available

Objective: establishing judicial school to provide training for judges, prosecutors, public defenders and administrative staff; also training as part of integration project in Public Ministry to produce new relationship between prosecutors and investigative police

Type of assistance: equipment, some operating expenses, travel and per diem for students, logistical support and long term advisors for school; long term advisors and related support for integration project

Type of training: sequences of short courses for in-service training

Amount of training: 180 courses with 7,000 judicial school participants from late 1992 to late 1996; integration project has provided on-the-job training to most prosecutors and investigative police

⁴³As Mudge et al. note, the decision to focus on the 70% outside the capital city was taken to avoid conflicts with training offered by MINUGUA (the UN Mission).

Major accomplishments: permanent training division (school) established for judiciary and Public Ministry; training of trainers methodology for prosecutors and their decision to set up their own training division to supplement judicial school.

General Background and Organization: Although both Guatemala and Panama, like Costa Rica and El Salvador, have legally mandated judicial training programs, neither of these has had anywhere near the same measure of success. The Panamanian school seems in danger of further eclipse; the Guatemalan programs were (and continue to be) financially secure, but over the period covered here (to early 1997) remained peripheral to the larger reform effort. In both cases, the reasons lie in problematic donor-counterpart relationships and a lesser interest on the part of local leadership.

The Guatemalan judicial school was established in the mid-1980s and by the mid-1990s had undergone at least three changes of form and organization. Under USAID's Regional Administration of Justice Program, it received some assistance from ILANUD, but difficult relations between the Court and USAID, the early termination of the first bilateral project, and subsequently rocky relations even after funding was resumed kept performance problematic. Relations were difficult both when Guatemala's Court (or its President) supported criminal justice reform and under the two succeeding Courts, whose interest was less enthusiastic.⁴⁴ Further complications stemmed from the existence of a separate training program for the Public Ministry, and the preference of both local training programs for permanent instructors, preferably donor financed. Neither trend coincides with USAID's own sense of how a training program best operates and may account for its lesser interest in giving either of them full support. On the other hand, neither of the Guatemalan training programs has gained the full support of institutional leadership.⁴⁵ They thus suffer from inadequate national funding and a certain marginalization from overall institutional planning. This has not prevented the Court's decision to use its school as a filter for new candidates to the judiciary; should the practice survive its experimental stage and become the main route of entry, this could give the school a central organizational role. However, any final determination will depend on the outcome of debates, within the affected institutions, the local legal community, and the principal donors (several of whom fund training), as to the direction of the ongoing reform and the place of training within it. In these debates, both training programs have only a marginal role -- commensurate with their lesser institutional importance.

The situation in Panama is slightly different. There too the judicial school, which in theory has responsibility for training all judicial personnel (including members of the Public Ministry), has

⁴⁴Much of this had to do with intra-Court politics and the usual resistance to supporting what a prior administration had introduced.

⁴⁵The head of the Public Ministry appointed in the first half of 1996 is apparently more supportive, and has been willing to cooperate with donor programs. See Mudge et al.

been less than central to reform planning. Since 1992, it has been almost entirely dependent on USAID for operational funding. With the departure of the USAID project, it is facing a wholly inadequate budget from the Court. Unfortunately for the school although arguably to the benefit of the overall reform, the USAID project's principal training advisor devoted most of her time to field training of prosecutors. USAID provided short-term technical assistance under the regional and bridge projects and from 1995 through 1996 funded a local advisor to work with the school's director on curriculum design and teaching methodology. The various advisors helped develop the school's capacity to organize and hold classes, but not to bring it into closer contact with the local institutions or with the rest of the assistance project itself. Two additional obstacles were the school's weak leadership and the fact that most advisors were not judges.

The school's marginal status is further emphasized by the means for recruiting professional and administrative staff. The Court's Human Resources Department applies its own entrance examination and recognizes participation in the school's courses as only one element in its system for evaluating applicants. The school is not involved in discussions of organizational and legislative change going on in the Court or the Public Ministry. The ministry in fact is creating its own training department to compensate for what it perceives as the school's inadequacies.

Curriculum: In both countries, there has been an emphasis on short courses, using a combination of local and foreign instructors. Both have introduced entry-level as well as in-service training, attempting to use sequences or series of courses which do not require personnel to be absent for long periods from their duties. In Guatemala, the presence of a variety of external advisors, and especially those from USAID, MINUGUA (the United Nations Observer Mission), and the UNDP, has encouraged the development of relatively sophisticated techniques and materials. They have not always been applied in practice. Preclass reading assignments and exercises, or efforts to use class time to discuss practical cases sometimes fail for lack of student cooperation. Moreover, although most of these advisors are lawyers by training, many lack courtroom experience. This does not facilitate a focus on practical applications.

While many of the Guatemalan advisors express a preference for participatory techniques, their classroom performance tends toward the *conferencia magistral* (professorial lecture). As one observer remarked, "training has only touched the intellectual aspects, as the accumulation of knowledge, but has forgotten the affective and social components."⁴⁶ There has been some effort to train local instructors. If, as the same observer complains, the results have been inadequate; this is not entirely the fault of foreign assistance. The Court and its school anticipated that participating judges would be paid by donors for their professorial services. When donors resisted this idea, the authorities found no way to make staff available. Nonetheless donor support has allowed a relatively intensive program; the school reports almost 1,800 participants in the events sponsored in 1995. With the signing of the Peace Accords and the influx of more donor funding, it is likely that the school will soon beat El Salvador's

⁴⁶Montes, p. 26.

attendance records. Whether it will have more impact is another question.

In Panama, funding shortages have forced a radical reduction of training; a loan being negotiated with the IDB aims at eliminating the financial constraints. The biggest problem, however, has been defining program purpose and thus course content. With the main thrust of the USAID project divorced from the school and directed to field training of prosecutors, the Court and Public Ministry focused elsewhere, and even the Court's Human Resources Department operating independently, the school has been left to do what it can with whatever resources are available. Human Resources' decision to count training in the ranking system for appointments and promotions has guaranteed a demand,⁴⁷ but this has also encouraged a host of ad hoc seminars organized by other local groups. The school claims these cut into its business and complains of a lack of quality control. The school is popular with some of the seated bench because it gives them a chance to lecture. Aside from this, support for its activities is fairly unfocused. As the USAID contractor's final report noted, the school has shifted from a "pot pourri of courses"⁴⁸ to five formal programs (pre-entry, and in-service courses for prosecutors and judges, and a course on professional writing). However, the content is less systematized than that of Guatemala, and for the most part depends on the instructors used for each section. As a consequence, the same section may have a radically different content each time it is taught, and the variations sometimes produce unpleasant surprises.

Instructors are also left to their own devices as to how they teach. As the last training advisor noted, the time available for preparing new instructors (each of whom conducts a week long section) was frequently only a few hours. The school has found it necessary to insist that instructors spend a certain minimum time in the classroom during their sessions. Apparently some had used group and individual exercises to nonproductive extremes and as a way of giving themselves an opportunity to attend to other business.

Impacts and the Future: Since neither program has evaluated impact,⁴⁹ assessing it is an exercise in speculative creativity. In both countries, the sheer quantity of trainees ensures that most judicial personnel are familiar with the basic legislation and some details of its application. The constant variations in advisors, instructors, and courses, the failure to plan and control participation, and questions about the quality of curriculum planning would seem to work against any more dramatic effect. Nonetheless, there have been continual efforts to overcome these weaknesses and improve content and format. Whether either country has finally developed

⁴⁷The final evaluation of the project cites 7,000 participants in four years, "at least one...[of whom] took 47 courses in different subjects." Leeth et al., p. 16.

⁴⁸Development Associates, p. 1.

⁴⁹Both have done project evaluations, and the Guatemala project ordered a separate training evaluation in 1996. These of necessity focused on process and methodology, not impact.

programs capable of changing the attitudes and actions of their participants is another issue.

Despite their earlier financial straits, the Panamanian and Guatemalan training programs can anticipate more generous external funding in the future. Thus the issue is less one of organizational survival than relevance and impact. Neither the Panamanian Judicial School nor either of the Guatemalan programs has graduated to a central role in their institutions or in their respective reform programs. Weak leadership and less than effective external advisory services are the immediate explanations; the underlying causes are more complex. For a variety of reasons neither USAID program has been able or willing to place a strong advisor within the school. In Panama, problems within the project team account for this failing. In Guatemala, difficult relations with the Court and to some extent, an excess of volunteers from a variety of donors were responsible. Having an external advisor direct a training program poses its own longer range problems,. Still, absent strong local leadership (as in Costa Rica), this may be the only way to activate a program. Training is often the repository for institutional misfits, a phenomenon all too apparent in both countries.

The programs have also suffered from the weaknesses or conflicts plaguing their overall reforms. Neither Court has taken an activist role. Only in Panama was the baton passed to, or more accurately, seized by the Public Ministry. Because Panama's school belongs to the Court, it did not benefit from this alternative source of energy. This situation, combined with weak leadership, has produced training programs with very limited visions of their role, and still more limited abilities to realize it. With the encouragement of its external advisors, Guatemala's school recently introduced a broader range of courses to overcome the educational deficiencies of its students, especially vis-a-vis a new procedural code. Under new leadership, the Public Ministry seemed ready to do the same. However, the programs have emphasized the transfer of knowledge, and to varying degrees of new values, with the apparent assumption that this is sufficient to change behaviors.

New Alternatives: The two USAID projects have shifted to an alternative form of training, linked to integrated pilot activities focused on the Public Ministry. This is hardly coincidental; the advisor who introduced this program in Panama and advanced it with great success is the new Chief of Party in Guatemala. The trade-off is a virtual abandonment of the judicial school. In Guatemala this may be compensated by a new UN sponsored program (and by USAID's improved relations with the Public Ministry). In Panama, the negative programmatic impact has not been overcome.

Both alternative training programs are linked to the broader goal of strengthening the prosecutorial role and enhancing cooperation with police and other judicial actors at the trial court level. The more specific objective in Panama, facilitated by a prior legal reform, was the integration of the investigative police into the Public Ministry to create an investigatory team. The Panamanian program began with meetings of police and prosecutors in the pilot district, where coordination problems were discussed, often quite energetically. Out of this grew a program which increasingly involved institutional members as trainers. ICITAP, which also had

a large in-country program, collaborated with technical investigative courses. Training was both participatory and results oriented. Once specific problems were identified, by the group or the advisor, project efforts and training were directed at resolving them. These involved such details as the better preparation of police reports (for example, pagination, inclusion of all required information), reduction of arrests without warrants, and better quality evidence. It should be noted that Panama, rather than rewriting its entire procedural code, had opted for a series of very specific revisions. Thus, the project could focus on making them work, rather than introducing an entirely new process. Still, the objectives were not entirely mechanical; participants speak of a resulting change in values and perspectives, including a greater respect for due process rights.

Once the project had concluded in the first pilot area, it was transferred to two of the remaining three judicial districts. Police and prosecutors from the initial pilot participated as trainers as the project expanded. The last and most difficult district, including the capital city, will be left for the Panamanians to implement with some ICITAP support. As noted, the project's long term training advisor worked closely with the prosecutorial advisor in conducting the pilots, leaving her little time for the judicial school. The methodological innovations will apparently be transferred to the Public Ministry's own training program. So far they have had little effect on the judicial school.

The process is only beginning in Guatemala where it faces greater challenges. This is a larger country, its Public Ministry is much weaker, the quality of the potential trainees arguably lower, and the police are as yet unreformed.⁵⁰ Guatemala also has an entirely new procedural code; thus, the extent of change will necessarily be greater. Since the 1940s, Panama is almost alone in the region in having a Public Ministry which controls a good part of the criminal process.⁵¹ The Court's greater inertia in responding to change, and virtual non participation in this "integration project" is thus less critical. In Guatemala, the judge enters the criminal process much earlier, makes more of the critical decisions, and consequently will have to be included if the pilot is to succeed. The Guatemalan pilots thus extend to judges and public defenders.

The process will be eased in Guatemala if MINUGUA can redirect the Judicial School along the lines preferred by its new principal advisor and coordinate these activities with the USAID pilots. The advisor⁵² has expressed an interest in a problem solving approach to training, focusing on an analysis of judicial decisions to determine where change is required. He is rabidly opposed to

⁵⁰The incipient ICITAP program in Guatemala is, however, already cooperating with the pilot programs, here called focus centers (*centros de enfoque*).

⁵¹The other exception is Mexico, whose Procuraduría General (and its state-level counterparts) was given all responsibility for investigation and prosecution of crimes in the early part of the century. As in Panama, it has its own investigative police.

⁵²Luis Pásara, interview, Guatemala, July 1996.

traditional methods, claiming that survey courses on new legislation are a waste of time. As he puts it, judges can read the law on their own; courses should focus on helping them apply it. In Panama, more positive change may result from competitive pressures from the Public Ministry's training program or from the Court's decision to attempt more fundamental institutional change, thereby requiring a dynamic training program. Panama's Court is considering revising its entire criminal procedures code and is also under increasing criticism for its perceived failure to take a "crisis" in the criminal justice system more seriously. Whether the Court can really be held accountable for a growing crime rate or prison overcrowding is highly debatable, but a sense of urgency in addressing these problems would not be amiss.

Haiti: Donor Financed Emergency and Remedial Programs

Haiti:

Source of funding: series of emergency programs and a bilateral project (1995-)

Amount of funding: roughly \$2,000,000 to mid-1996 with \$5.2 million authorized in a subagreement with the Department of Justice for the following three years

Objective: to produce immediate improvement in judicial capabilities, introduce a career system and permanent training program, and create a judicial school

Type of assistance: short and long term advisors, infrastructure, equipment and operational costs of training program/ school; living expenses of students; administrative support for school

Type of training: short courses for in-service training; development of entry-level program possibly of several month duration

Amount of training: target audience of 500 to receive two short courses by end of 1996; short or medium term courses to continue afterwards; additional courses for courtroom staff

Major accomplishments: school established but entirely dependent on donor funding; short courses produce some visible effects on performance, integration with pilot models, other donor assistance attracted

General Background: Of the countries covered here, Haiti represents an extreme in terms of foreign control over its school and the nature and quantity of the training required. Whether or not the Haitian government replaces the majority of its approximately 500 judges and prosecutors, the quality of the candidates for training is a major impediment to success. The other hardly insignificant impediments are the inadequate sectoral organization, virtual absence of administrative infrastructure; low and irregularly paid salaries, outdated legislation, and a popular and elite culture hardly conducive to a rule of law. Here no one is worrying about the ideal judge, but only about judges who have a rudimentary grasp of their duties and responsibilities, and sufficient incentives to perform them as best they can. Fortunately, local legal culture seems to reenforce a problem-solving approach. In this respect, Haitians appear more practical than many of their Latin American neighbors and some of their foreign advisors.⁵³

⁵³Thus although the French and UN missions have backed such strategies as creation of a Bordeaux style school and immediate rewriting of major legal codes, these have not so far attracted much support among the small local legal community. At least one Minister of Justice appeared enamored of the Bordeaux model, but meetings of local jurists, sponsored by USAID in late 1996, indicated most regarded it as unrealistic.

The existing organizational structure also precludes much sense of institutional identification. Both the courts and the prosecutors belong to the Ministry of Justice which provides whatever leadership exists for their members. Except for the minister, there is no Chief Prosecutor. The Supreme Court also serves as de facto judicial council; it does not provide institutional direction in either capacity. One consequence is that all parties have been willing to let foreign donors run the training program so long as they pay for it. Individual ministers have shown signs of abandoning this laissez faire attitude. Their rapid turnover, total dependence on donor support for reform implementation, and a host of other problems have discouraged a definitive change in policy. In Haiti, the ministry is the sector, responsible for the courts, prosecution, police, and prisons. As currently organized and financed, it would be overtaxed running just one of the four.

Organization: Although the school arose with the 1987 Constitution, no judicial training existed until 1995 when the USG began an emergency program. It used a handful of US state and federal prosecutors and judges to design and conduct two-day courses throughout the country. This eventually evolved into an agreement with the US Department of Justice for another short program of "interim training" targeted at all prosecutors, justices of the peace, investigating magistrates, and trial judges. The interim program was broadened to include creation of a training facility. In late 1996, it developed into a three-year program of essentially remedial training, preparation of new judges (in anticipation of possible mass replacements), and institutionalization of the Judicial School. Additional USAID-financed reform activities were implemented by the UNDP and USAID's institutional contractor. Other donors support training, but most technical assistance and financing has come through the US program.

As this three-year agreement was being signed, the school really was the US training program and the physical facilities required to support it. It is located in Port-au-Prince, adjacent to the Police Academy which is largely run by the US Department of Justice's ICITAP. Like the academy, it features a resident program with dormitories and food facilities to accommodate live-in students. USAID financed repairs to buildings donated by the Haitian government and covers operating costs. As of late 1996, conversations had begun with other donors to develop a cost-sharing mechanism. Whatever other factors promoted the choice of a centralized program, the lack of adequate facilities anywhere in the country was a primary consideration. Even major population centers usually had no place to conduct a class for as few as twenty trainees.

Unlike the Police Academy, courses have been short, usually lasting two weeks. The DOJ advisors are preparing a two to four-month entry-level course for the anticipated mass replacement of officials and/or for more intensive formation of the existing bench. The program will also feature specialized courses with an emphasis on criminal investigation. A corps of Haitian instructors is now in place; the US and other donors provide additional teaching staff to work with them and for specialized courses. Two permanent USG advisors (one federal and one state prosecutor) organized the course work, oversaw the training of new instructors, and coordinated with the Ministry on curriculum and the selection of students. Under the new three-year agreement, there are four full time advisors, three of whom spend most of their time on field training of prosecutors and other advisory tasks.

The USG hired and paid a skeleton administrative staff for the school as well as maintenance, cleaning, and food workers. The Haitian government supplied a full time director, but without a budget or his own support staff, his role has been minimal. He confers with the US advisors on curriculum and serves as one of the instructors. The cost of upgrading and equipping the physical plant was about one million dollars. Operating costs for 1996 were about \$600,000 plus the salaries and maintenance of the long term advisors. Students receive free meals and lodging while at the school. A brief experiment with paying their transportation costs proved too difficult to control. In 1996, estimated expenses averaged \$60 a day per student, an amount the government will never be able to support on its own. Still these first years represent a workload that should never again be duplicated. Once the Haitian justice system is "repaired" the school's role will be quite different and considerably less costly. What is not clear is whether anyone in the Haitian government, the project, or the other donors has given any thought to what it should be and what financial realities will permit. Although any but the most minimal training program will depend on donor support for years to come, the questions need answers.

Objectives and Curriculum: The planning of the school's curriculum was informed by a series of studies conducted by USAID, other donors, international NGOs, and the US Military Advisory Team as part of its judicial "mentoring"⁵⁴ program. The training program itself has been an important source of information on needs. Since the studies focused on sectoral operations and not just on training, they served as a sector assessment and gave a problem-solving orientation from the start. This is probably fortuitous. A training assessment would have revealed an impossible number of gaps. Many of the 350 or so justices of the peace have no legal training, some are illiterate, and those who are attorneys have not had to worry about actually applying the law for years, if ever. Support staff lack even the rudiments of office and administrative skills. Judges and prosecutors may have legal training, but have learned whatever skills they possess on the job, along with a host of vices.

Even for an emergency program, the training had to cover some unusually basic areas -- sectoral organization, the roles and responsibilities of individual officials, the basic criminal and civil procedures, and how to keep office records and files. Initially the Department of Justice hoped to set up a special unit to conduct politically sensitive investigations; the unit now exists, but efforts were redirected to training the bulk of officials handling routine matters. Course work for all professionals, and even for administrative staff, has remained fairly standardized. As the program shifts from an emergency to remedial mode, more course work, field training, and advisory elements will focus on investigation and on the prosecutors, investigating judges and justices of the peace. It is not clear how the specialized needs of trial judges will be defined or met. Other donors, or the USAID contractor may develop the relevant courses. In response to

⁵⁴While no mentoring was ever done, the name remains. Since most of the US lawyers on the team did not speak French or Creole and did not know Haitian law, they ended up doing an inventory of all justice of the peace and trial courts. Some question remains as to the inventory's accuracy, but it did provide useful information on how these offices actually worked.

criticisms about the appropriateness of prosecutors training judges, the Department of Justice has offered to use judges from the US or civil code countries.

The course work is organized around a loose-leaf manual adapted from one produced for the police. Unlike El Salvador's bench manuals or the collections of readings used in other programs, this is really an extended discussion of basic judicial roles and procedures. Along with copies of laws, also provided through the program, it often represents the only access trainees have to written descriptions of their duties and responsibilities. The advisors have tried to introduce innovative training techniques, using group exercises, discussions, role playing and mock investigations. However, the quantity and nature of the material to be covered and the preferences of the local instructors have encouraged a reliance on straight lectures.

During its first year, the training program developed a field component structured around the creation of basic administrative systems in six provincial prosecutors offices (the "model *parquets*"). Rudimentary filing and case management systems were developed, and materials (e.g. folders, filing cabinets, forms) provided for their implementation. A general course on administrative principles was followed by site visits where a multidonor, interagency team⁵⁵ oversaw the introduction of the new procedures in the pilot offices. One of the DOJ attorneys was assigned full time to continuing the visits and providing other on-site assistance. His efforts have been reinforced with the addition of Haitian personnel and a similar exercise introduced in Port-au-Prince. The institutional contractor has designed a comparable program of model courts. To date the effort has produced some improvement in the prosecutors' administrative handling of cases; at least there are now files in which to search for records. Some of the participants, especially the provincial prosecutors, have taken the course work further, actively coordinating with the police and holding their own seminars. This kind of reaction is to be expected at the start, and the challenge will be to encourage and build on it.

Impact and Future: There have been no impact evaluations⁵⁶ and few student examinations. Field observations and reports from human rights monitors suggest the course work, along with the police training, has had some effect on respect for such basic rules as the need to present a prisoner before a justice of the peace within forty-eight hours of apprehension. Some justices of the peace are making the required prison visits, and criminal trials have been held in a few judicial districts for the first time in five years. Logically, both the advances and the sporadic backsliding have a variety of causes, and attempting to sort them out would be a futile exercise.

⁵⁵Participants included representatives from the French assistance mission, the DOJ staff, USAID's institutional contractor, and the Ministry of Justice.

⁵⁶A brief evaluation was conducted prior to the signing of the three-year agreement, but it hardly constituted a systematic impact assessment. Considering the size of the problem and the program's brief history, a more ambitious assessment would have made little sense.

More important is where the training goes from here. The objectives for the first courses were obvious -- to inform judicial officials of their responsibilities and the laws they were supposed to enforce. Even if all the information was not absorbed, and taking into account officials who had no attention of applying it or the various external impediments for those who did, it was bound to make a difference. It was an essential first step and an important way for program staff to understand the full nature of their challenge.⁵⁷ Equally basic, but more specialized courses on investigative techniques in combination with field visits and follow-up can be expected to improve handling of cases by prosecutors and investigative judges. Setting a curriculum to improve *judicial* performance and organizing complementary programs around it remain a problem and will become more critical as the work with prosecutors moves ahead. Legal defense, the third element, is currently being addressed through the support and training of local NGOs. Here sheer numbers, rather than the quality of training is the immediate concern.

For all categories of personnel, one additional impediment to impact is the highly flawed personnel system. Not only does the ministry lack a means of monitoring and supervising employees; as of late 1996, it had no complete list of personnel and in consequence regularly failed to pay many employees. Other elements of the USAID project are addressing these issues. Until they are resolved, training's impact will depend entirely on the trainees' good will. Additional uncertainties are posed by the government's announced intent to replace most of the existing bench. Should they abandon this plan, the Constitution still mandates the election of judges by new territorial assemblies. This places the Haitian program in an unusual dilemma of not knowing whether its current participants will remain on the bench, who will replace them, or how the government intends to use training to recruit, select or prepare new officials. Added to this are on-going discussions as to an eventual revision of basic codes, altering not only the content of courses, but also the roles played by the various official actors. On the assumption that a total purge of the bench, and thus the effective loss of past training, is not likely, the project staff has elaborated a series of longer term programs: a longer entry-level program for any newcomers, an extensive in-service program for those who have completed the first course, and more specialized courses focusing on investigation of different types of crimes.

The obvious need is a greater focus and strategic coordination among the interested parties -- the Haitian government, the various donors, and the participants in the U.S. project. The size of the task -- the overall reform and not just training -- easily exceeds their combined resources. Its resolution has not been aided by inadequately coordinated and occasionally competitive relationships. Fortunately, the training needs are so great that no effort is wasted. In the worst case scenario, where the government dismisses the entire bench, materials already developed could be used to train their replacements, and the initial participants would raise the level of legal knowledge in the outside community. However, a consensus on realistic medium range

⁵⁷In this regard, it is interesting that French magistrates invited to help design the model parquet program had to throw out their initial proposals once exposed to the situation on the ground. They admitted that what they had intended was far too sophisticated to succeed.

objectives for the justice system as a whole would facilitate a more rational investment of training and other resources. This will inevitably require some down scaling of plans in the interests of sustainability. There are already numerous proposals in circulation which exceed both Haitian and donor resources. Because training is more easily organized, and because the needs are so great, it has tended to get out ahead of the rest of reform planning. It has been an excellent source of ideas and may help generate pressures for further change. However, to optimize its effect it requires a vision of the larger system to which it is contributing and that this vision be shared and promoted by the surrounding reform program.

Alternative Models: Training Without a Judicial School and other Variations

Bolivia:

Source of funding: bilateral project (1992-1997)

Amount of funding: \$300,000 to 1997

Objective: set the basis for establishing a training program (and possibly a school) and increase interest in overall reform

Type of assistance: technical assistance for program design, some instructors, and limited financial support

Type of training: short term in-service, training of trainers methodology, multi-site

Amount of training: two two-day courses conducted in all nine departments; remaining eight courses suspended for lack of funds

Major accomplishment: involvement of most of first- and second-instance judges as active participants in the program, many as trainers, and awakening of interest in a permanent program; also encouraged interest in judicial reform

Colombia:

Source of funding: bilateral project through subagreement with OPDAT (DOJ) (1995-1998)

Amount of funding: \$6 million

Objective: train prosecutors, judges, and defenders in new Criminal Procedures Code: establish permanent training program(s)

Type of assistance: technical assistance to design and implement program; financial assistance to carry out courses; external instructors; development of materials

Type of training: training of trainers; and series of short courses using multiplier approach. Also nationwide meeting and observation tour

Major accomplishment: All prosecutors exposed to new code and increased enthusiasm about their role in it. Creation of special units where participants are encouraged to work to new principles under new legislation.

General Background: Although in both of these cases, the official objective includes the establishment of a judicial school, successful emergency programs have been mounted without one. In Bolivia local circumstances made it apparent that reaching agreement on the form and purpose of the school might take years; thus, it was decided to start training as a way of building interest, advancing the larger reform program, and setting the base for the subsequent creation of the school itself. The goals in Colombia were similar. Despite the availability of three schools, the program worked around them. Both programs have made substantial progress on the first two objectives; progress on the third is less certain. Interest in establishing (or in the case of Colombia, consolidating) a school has grown, but the initial, largely political and intra-

institutional obstacles remain. Moreover, the methodologies introduced may not be appropriate for a permanent program; attempts to adopt them, based on their evident success and popularity, could represent a step backwards in medium range training needs. Nonetheless, the experience represents an interesting alternative for countries wishing to get the maximum benefits out of training in the shortest possible time. They do presuppose a moderate level of professional and organizational development, and would be far less appropriate for a situation like that of Haiti.

In both countries, USAID's goals are to advance the usual criminal procedures reform package. In Colombia, a new code was approved in 1991 along with other sectoral reforms; in Bolivia it is drafted and awaiting approval.⁵⁸ Reforms similar to those adopted in Colombia -- the creation of a judicial council, constitutional tribunal, and human rights ombudsman -- had also been presented to the Assembly. Colombia's reforms created a *Fiscalía General*, responsible for prosecution of crimes; Bolivia already had a Public Ministry, but it performs very poorly. Thus, among the specific goals to be advanced by training in both countries, were the generation of support for and understanding of the new procedural rules among members of the affected institutions, and the strengthening of the prosecutorial body in particular. Although both programs ostensibly focused on the courts and the prosecutors (and in Colombia, the public defenders), differences in institutional receptiveness and the technical assistance provided gave Bolivia's efforts more success with the judiciary, and Colombia's with the *Fiscalía*.

Organization: Despite evident differences in size and focus, the two programs have an astonishingly similar methodology. Both rely on training of trainers and involve the entire institution in the training program. The Colombia process has been particularly labor intensive, drawing one hundred prosecutors, judges and public defenders into full-time involvement in the year long program. In the *Fiscalía*, other prosecutors were expected to devote up to a quarter time to training over the same period. It is not apparent that the courts and defenders completed the entire internal process, but the impact on these institutions was also far less. In Bolivia, shorter courses and more time between them required a less total institutional involvement. Efforts to mount a similar program with the *Fiscalía* never got off the ground.

Bolivia's less costly and less intensive program revolves around a series of two-day courses (as of late 1996, before funding problems forced their suspension, two of the proposed ten had been conducted) held in each of its nine departments (each corresponding to a judicial district). The program was designed and coordinated by an Argentine lawyer, contracted on a part time basis. She had developed the technique working with provincial courts in her own country. Each course is organized around a theme drawn from the reform legislation and departs from a lecture given by a foreign or local expert. To cut costs, lectures are videotaped and after the first course, used in this form. In addition to the lectures, each training module is accompanied by a book of readings and exercises intended for further information and discussion.

⁵⁸The USAID project continued to work on improving the draft, which as of early 1998 had still not been approved.

To this point, the organization resembles that used in other training programs, with the exception that with fewer modules, more time and effort can go into the production of each one. The important difference lies in how they are used. In conjunction with these courses, and in prior independent sessions, the advisor also trained selected judges in adult education and participatory training techniques. These participants were encouraged to see themselves as facilitators not teachers and to view their goal as making every judge a trainer. When the courses were taken on the road and conducted in the remaining district courts, the thematic lectures were to be points of departure. Group discussions of the lectures and readings emphasized drawing answers and ideas out of the individual members. Participants interviewed (admittedly from one of the more progressive judicial districts) were extremely enthusiastic both about the training received and the training methodology, echoing the emphasis on learning as a collective responsibility. Interestingly, Bolivia's public defenders office, which was not involved in the program, has initiated a similar training activity. The central office periodically distributes selected readings around which local offices organize group discussions. Participation in the discussions is counted in defenders' performance evaluations.

When these observations were made, the Bolivian program had administered two of the modules on a nationwide basis. Aside from general enthusiasm about the program, apparent impacts are a greater understanding of the reform principles and draft legislation, an increased interest in training and in the creation of an official school, and a heightened sense of common purpose. Given the brevity of the courses and the other problems facing Bolivia's criminal justice system, more concrete impact on performance seems unlikely. In the two departments chosen as pilots for other reform activities (the introduction of a computerized case tracking system and improved court administration), the training has also benefited their advance. Interestingly, the Supreme Court, the putative head of the judiciary, has been no more than a passive observer. Still, they did not oppose the effort,⁵⁹ which also may have been aided by Bolivia's tradition of greater regional autonomy (or lesser central control). USAID's training program for the *Fiscalía* was more conventionally organized. This rather than the *Fiscal General's* lack of interest seems to account for its lesser success.

There are obvious limits to this kind of program, absent other reforms (including those in the *Fiscalía*) and courses which add knowledge rather than trying to draw it out of the group. The Colombian experience takes the methodology a little further. It also benefitted from prior systemic transformations, high level support, a greater sense of urgency, and far more resources. The program began in 1994, two years after the creation and near collapse of Colombia's *Fiscalía*, an entity which now has 23,000 members, accounts for almost half of the sectoral

⁵⁹With the appearance of a World Bank financed project which also included judicial training, the Court did become more aggressively hostile. This, along with the funding shortage, motivated USAID's decision to suspend the program. Although the World Bank training uses foreign(Costa Rican) instructors, it also is problem oriented, decentralized (courses are taught in the districts), participatory, and has introduced innovative evaluation techniques.

budget, and faces a backlog of one million cases. Through an interagency agreement, USAID/Bogota arranged for OPDAT (the US Justice Department's Office of Professional Development and Training) to organize a program to train prosecutors, judges, and defenders in the new criminal legislation. Although the program was designed for members of the three groups, the majority, and those most affected, were prosecutors.

This was an emergency program par excellence. The sixty prosecutors and forty judges and defenders chosen as its core trainers were to devote fourteen months to the task. An effort was made to select the most promising members of the institutions, and at least for the Fiscalía where the courses were centered, seems to have been successful. The program was organized around ten week-long courses in which the 100 participants were brought to Bogota to listen to lectures and take part in discussions on themes ranging from the principles of criminal procedures to interviewing techniques and criminology. Lecturers included foreign and local experts. Here as in Bolivia, the themes, organization, and content of the initial courses were not unusual; what followed was.

Participants were provided with reading materials and during the week following each module used these and their own notes to develop a course which they then delivered to five of their colleagues back home. The five in turn were to train five others, thereby reaching roughly two-thirds of the prosecutors in the country.⁶⁰ The process was capped with a nationwide meeting for the 100 primary trainers and 100 additional participants in which they discussed the results of the program, identified the implications for the criminal justice system, and drafted a series of conclusions on the reforms. The 100 trainers also took part in an observational trip to Puerto Rico where they watched criminal trials and were able to interview participants on what they had seen. A similar program has begun for the investigative police (composed of three bodies, only one of which actually belongs to the Fiscalía) with the assistance of ICITAP.

Not surprisingly, the training had its greatest impact on the Fiscalía; its participants demonstrated an almost religious fervor about the new criminal procedures and the training experience. Even the OPDAT advisor admits that its impact on the judiciary and public defense has been far less impressive. While the content was general enough to appeal to all groups, the underlying message about the virtues of the adversarial system was clearly tailored to the prosecutors. Nonetheless, the program faced the same problem as that of Bolivia. Having stirred up mass enthusiasm for the new regime, which at least in Colombia was legally in effect, its converts returned to the same structural and organizational setting in which they had begun.

Here the program took a novel twist, reminiscent of the Panamanian and Guatemalan field based alternatives, by introducing what it called special units (*unidades especiales*). These were pilot prosecutorial offices whose members were encouraged to apply the new guidelines and develop

⁶⁰The remaining prosecutors, those at the local level, were attended in a similar exercise the following year.

investigative teams combining the police and prosecutorial forces. However, unlike Panama, the greater number of special units, and limited advisory services meant that the units were pretty much on their own to innovate. The initial training was too generally focused to do more than provide general principles and a few specific skills (e.g. how to interview a hostile witness or collect evidence for DNA testing). It hardly delivered a blueprint or recipe for organizing the new operations and it is doubtful that its organizers had one (except for how they had done things back home which was clearly not going to be the Colombian model).

The training team attempted to conduct a week-long to two day inaugural seminar in each unit. It proposed to follow this with periodic visits. However, as the head of one unit noted, by the time of the seminar, he had already begun his reorganization. The number of proposed units has expanded from twenty to forty. Unless the team of advisors (almost all of whom will be members of the Fiscalía) expands accordingly, it is doubtful they will be able to provide much assistance or supervision. The crux of their message is team building, the elimination of unnecessary paperwork in favor of direct communication, and an emphasis on results.. As time goes on, the advisors' most useful role may be identifying and disseminating successful practices developed in the most innovative units and resolving specific organizational or technical problems encountered along the way. Thus, they may become the link between the grassroots innovation they unleashed and the promotion and standardization of organization-wide change.

Impact and Future of the Program: The Bolivian and Colombian programs are powerful illustrations of how much can be accomplished through training programs independently of a judicial school. They also suggest a number of further conditions and limitations on this approach.

First they make apparent its dependence on the quality of its direction. In both programs, a training of trainers methodology was successfully used to involve all members of the principal participating institution in the program and to generate organization-wide enthusiasm about an imminent or realized change. The fact that in one country the method succeeded with the Fiscalía but not with the judiciary, while in the other the successes were reversed indicates that it is not the target institutions, but the implicit message and role and identification of the principal advisor which is determinant. In Bolivia, the advisor worked with and designed the program for the courts; in Colombia, he worked out of and was identified with the Fiscalía. Efforts to duplicate the program in or transfer it to the excluded institutions could not transcend this implicit bias or compensate for the lack of their own dedicated advisor.

Second, while the methodology can function without high level involvement (Bolivia), it does require leadership's acquiescence. This may actually be easier if there is no school in existence or little interest in creating one. In Colombia, the program worked through a very small training department in the Fiscalía. Had it attempted to work through either of the judiciary's two

training schools,⁶¹ it would have run into resistance from directors who had their own ideas about training. That the judiciary cooperated at all was facilitated by the schools' greater interest in fighting with each other.

Arguably the approach also requires a certain level of functional decentralization and pre-existing professional development and identification. Panama, Guatemala, and Haiti have also utilized a less intensive multiplier program, but existing deficiencies in human resource and organizational development in the latter two countries may produce less dramatic results.

Finally, the approach is most appropriate when combined with a shift in internal procedures and roles which becomes its *raison d'être*. This is not limited to early stages of reform; Costa Rica's eighteen month program to introduce its new criminal procedures code adopts a similar design as the most effective way to introduce such changes rapidly.

These experience also suggest limitations. If the primary impact is energizing the institution and preparing it for change, it will be stymied if there is no outlet for this enthusiasm. Bolivia's pilot courts provided this for two of its judicial districts, but that leaves seven others. In Colombia, the addition of the special units, while adding other problems, provided a next stage. This leaves the question of where training goes from here. While Colombia's program used more external input, neither it nor the Bolivian program advanced skills transfer very far. The Bolivian courses and the Colombian follow-up program both attempt to pull innovative answers out of their trainees. They were willing to tolerate possible distortions of content for mass involvement in the lesson. However, if training as knowledge transfer is too often overdone in conventional programs, it is necessary. At some point both programs will have to return to a more traditional format, where the teacher teaches even if in a participatory atmosphere. The combination of a training of trainers methodology with on-site technical assistance in Panama is another alternative, but is both too costly and too slow for a country the size of Colombia. It also may be more appropriate for certain roles -- prosecutors -- than for others. Judges, because of their presumed independence, may be more resistant to having a mentor looking over their shoulders.

In Bolivia and Colombia, the approach was also intended as a step toward the establishment of a permanent training program or school. While it has increased interest in training, neither its methodology nor content may provide an adequate base. Conceivably the materials developed could be adapted to any entry-level program. They are an unlikely model for subsequent courses which must focus on specific skills and other kinds of knowledge. Moreover, the level of mass mobilization is hardly sustainable over the longer run. Tying up this many people in training

⁶¹One of the aftermaths of Colombia's creation of a judicial council and the transfer of training responsibilities to it was the temporary co-existence of two judicial schools, both relatively inactive. One was the new training department for the council; the other was the former judicial school, assigned to the Ministry of Justice until 1998. This school had once been more active, but it was a casualty of the 1991 reforms.

would prevent the organization's carrying out its normal business. The process has exposed a majority of institutional members to new training methodologies, given many of them direct experience in their application, and helped identify those who could serve as instructors in future programs. Designing and implementing those programs will require taking a new and different look at training needs, and a different kind of technical assistance.

Other Alternatives: Despite the fixation on a school model, which even in Bolivia and Colombia is the longer term goal, Latin American programs have generated additional ideas as to how training could be accomplished. They all require the presence of a specialized training office or division usually located in the Court, Judicial Council, or in each of the sectoral institutions. One option would give this office responsibility for setting policy and developing materials, but leave the implementation of courses to district or departmental court or other agencies. A greater use of self-taught courses⁶² or ad hoc groups of judges and other officials has also been suggested.

Rather surprisingly, there has been only limited interest in using private groups and especially universities to conduct the actual training. Several countries have used private contractors, but only for such specialized subjects as computer literacy. Ecuador has half-heartedly explored turning all judicial training over to local law schools. Colombia's two judicial training programs have also seen this as a possibility. Peru is currently contracting out courses for administrators to local universities. For countries of their size, this has clear advantages, eliminating the logistical problems and costs of a centralized facility or the possibly still higher costs of regionalizing a wholly institutional program. The disadvantage is the low quality of university education and legal training in particular in many countries, and the difficulty of getting university faculty to adopt nontraditional methods and course content. Costa Rica recently initiated a post graduate program with two universities, but it is academic in its focus. Broadening it to include "normal" judicial training is not among the options being considered to improve the latter. However, for countries still in the hypothesized second stage of training development, the option may be worth revisiting. As many of these countries also have inadequate university programs, closer cooperation with judicial training could resolve two problems at once.

It is likely that we will see more of these innovations over the next years. It is striking that so many programs have already begun to explore similar alternatives. It is unfortunate that they have not had more opportunity to learn from each other. Here the Latin Americans have been much better than their foreign advisors. While the former have sought out new ideas, the latter have been jealous of their inventions and disinclined to explore what others have done. Inter-governmental and interagency rivalries provide part of the explanation, but whatever the reason, shameless imitation should be encouraged, not repressed. Every situation is unique, but that should be no impediment to borrowing what is applicable.

⁶²El Salvador was attempting this in 1997; the impact remains unevaluated.

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