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FINAL REPORT  
EVALUATION OF HARVARD LAW SCHOOL PROGRAM  
GUATEMALA

Presented to:

Coordinator for Democratic for Democratic Initiatives  
USAID/Guatemala

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## I EXECUTIVE SUMMARY

Based on a proposal from the Center for Criminal Justice of the Harvard Law School (hereinafter referred to as "Harvard"), USAID/Guatemala entered a Cooperative Agreement with Harvard in July 1987. The Cooperative Agreement obligated \$1,482,800 to cover activities through August 31, 1990. The purpose of the Cooperative Agreement is to support a project by Harvard "to strengthen the institutional capacity of Guatemala's Judicial Branch to contribute to the improvement of the criminal justice system and to provide recommendations for actions to be taken to respond to identified needs." Activities under the Cooperative Agreement began in October 1987. In December 1988 USAID/Guatemala authorized the establishment of an office for Harvard in Guatemala under the project, and in June 1989 it added \$200,000 to the Cooperative Agreement to cover the expense of that office. Harvard has requested that the Mission add \$589,260 to the Cooperative Agreement to cover the increased costs of the activities set forth in the implementation plan for the third year of the project. That request and the activities in the implementation plan currently are under review by USAID/Guatemala.

The Cooperative Agreement calls for evaluations of the project to take place approximately 18 months after the start of the project and within the last six months of its operation. This report provides the conclusions and recommendations of the two-person contract team which performed the first of the two evaluations. The research and interviewing for the evaluation was performed in Washington, in Cambridge, Massachusetts and in Guatemala during August and September of 1989.

The project being supported by the Cooperative Agreement was to consist of two types of activities. The first was a program of consultations "to identify and analyze technical and administrative problems and needs in the Guatemalan criminal justice process requiring immediate solutions [and] to deal with longer term issues in the area of policy reform...." The program was to consist of regular meetings of the staff of Harvard and high level experts and judicial officials from Guatemala; of visits to Harvard by individual Guatemalans and to Guatemala by legal experts from, or arranged by, Harvard in order to discuss further the topics identified as needing attention; and of individual research activities on these topics in Guatemala by personnel from Harvard. The second type of activity was to be a program of fellowships and seminars under which: i) representatives of the Guatemalan judicial sector would spend time at Harvard becoming familiar with the operation of the US criminal justice system, studying selected problems of the Guatemalan criminal justice system and devising approaches for meeting those

problems; and (ii) seminars would be held in Guatemala of interested persons to enable them to share the experience of the persons who had gone to Harvard on the short term fellowships and to discuss important problems facing the criminal justice system and their solutions.

Harvard has been carrying out the program as broadly described in the Cooperative Agreement. To date 14 Guatemalan judges and prosecutors have attended the five fellowship programs at Harvard and nearly 350 Guatemalans have attended the various seminars which have been held in Guatemala. Although the regular meetings under the consultations program fell into disuse, there have been numerous individual meetings between Harvard's staff and Guatemala officials key to the operation of the criminal justice system and short term research visits to Guatemala by experts from Harvard or sponsored by Harvard.

Early in the operation of the project Harvard concluded that, given its own expertise and interest and the activities which other organizations working with the justice sector in Guatemala were following, the focus of Harvard's effort should be on supporting the creation of a special prosecution unit in the Ministerio Publico to handle major crimes, including those with a political dimension; and on trying-out reforms and innovations through a number of pilot courts. Harvard also concluded that the reforms and innovations should be compatible with existing legislation so that they could be undertaken without waiting for legislative changes, and that they should be aimed at having practical effect on the quality of the evidence used by trial courts and on the ways in which those courts conduct their review of the evidence and reach their judgments. To achieve those reforms, Harvard considered it necessary to obtain the close cooperation of the national police and of the prosecution staff of the Ministerio Publico. Harvard also concluded that it would be important to improve the existing system for providing public defense counsel once the participation of the prosecutorial staff in the preparation and presentation of cases was achieved. All these conclusions were reached after consultations with Guatemalan officials.

The work with the pilot courts is underway. It has become the main focus of the project. One tier of trial courts (justice of the peace, investigating judge and sentencing judge) in Guatemala City has been functioning officially since May 1989. Another tier of trial courts has been functioning in the rural town of Totonicapan since July 1989, and is to have added to it another justice of the peace court and deputized lay personnel to assist in expanding its coverage. A proposal for a pilot effort in another rural area has been submitted to the President of the Supreme Court. Consideration is being given to preparing a pilot activity in a third rural area and in a second tier of trial courts in Guatemala City.

Although the pilot court effort is favorably viewed by the persons participating in it, the activity has not been in operation long enough to generate firm conclusions; and at present its implementation faces significant problems. The participation of the prosecutorial staff of the Ministerio Publico has got underway in Guatemala City only recently, and is not functioning in the rural areas. The promised cooperation of the national police has not yet become effective. Not all of the promised equipment has been supplied nor all the planned remodeling of the court facilities completed. No concrete plan exists for improving the participation of public defense in the activity.

The other activities under the project have not yet achieved the same degree of concreteness as has that of the pilot courts. The creation of a special prosecution unit in the Ministerio Publico has been abandoned in the face of the opposition of the Attorney General of Guatemala. Research and consultations have not yet produced concrete proposals for dealing with the need for an improved approach to public defense, for a program for the protection of witnesses, for increasing the willingness of the public to use and participate in the justice system and for ways to deal with the problem of the corruption of judicial officials. Harvard does have ideas and some written reports which could be used to prepare concrete proposals, but they have not yet been supplied to the Mission. While the main focus of the remaining year of the project is to be on the implementation of the pilot courts activity and on preparing for replication throughout the judicial system of the aspects of that activity which are successful, planning for that replication has not yet begun.

The major accomplishments of the project to date have been:

- Harvard has forged a close and fruitful working relationship with the President of the Supreme Court who also is responsible for the operation of the whole court system. This relationship has given Harvard and the court system the confidence to proceed with the reform effort and has fostered an open attitude by the court system toward dealing with the issues facing it.
- Harvard has been able to foster the design of concrete activities and get them underway rather than limiting its support to research and the discussion of problems.
- Harvard's activities are introducing improvements in the collection and use of evidence by trial courts which is an approach not undertaken by others who have been or will be active in supporting the improvement of the justice system.

- The project is producing experience which will be useful to USAID/Guatemala's Improved Administration of Justice Project in working with the overall operation of the criminal justice system. In addition, Harvard is demonstrating that a US organization can work in the sensitive area of reforming the justice system in Guatemala.

In addition to the need to overcome the obstacles facing the implementation of the pilot courts activity, the main problems and issues facing the project are:

- The project has not yet created a capacity within the court system to analyze problems and propose solutions, and it has not effectively involved existing units of that system (such as the training unit and the office of administrative affairs) in the design and implementation of the project's activities. Harvard itself has remained the coordinator and often the implementor of the activities.
- The project has not yet been able to bring about the effective participation of the Guatemalan Bar Association or the faculties of law, and has had little connection with the activities in Guatemala of A.I.D.'s Regional Administration of Justice Project.
- Harvard's staff continues to be concentrated in Cambridge while the project becomes increasingly one of implementing concrete activities in Guatemala.
- In planning for replication of the pilot court experience the project will need to place more attention on the probable costs of the replication and on the interdependence of the replication effort with the program to improve the administrative performance of the court system.
- The time remaining in the life of the project is not likely to be sufficient for the project to achieve significant progress on all the activities included in Harvard's implementation plan now under review by the Mission. The primary focus of the remainder of the project should be on taking steps to try to achieve lasting results from the project's activities. Choosing concrete targets for the final year of the project would help achieve that greater focus.
- Although relationships between Harvard and USAID/Guatemala are generally good, there are concerns left from past misunderstandings whose elimination will

require the conscious effort of both parties to achieve a more collaborative approach in the future.

The general conclusion of this report is that Harvard is meeting the terms of its Cooperative Agreement and is having a positive impact on the effort to strengthen the performance of the criminal justice system in Guatemala.

## II BACKGROUND OF THE ACTIVITY AND THE EVALUATION

In 1985 Guatemala took two major steps to move from a military, de facto government to civilian government based on democratic principles and practices. It adopted a new constitution and held a general election for the Presidency and the Congress. The civilian President took office in January 1986. Partly in response to these developments the Agency for International Development (A.I.D.) became more interested in assisting in the economic, social and democratic development of Guatemala. One of the steps it took to act on that interest was to include Guatemala in the Regional Administration of Justice Project which was being implemented through the Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD), a UN-related organization in Costa Rica which receives both financial and technical assistance from A.I.D. Under that project ILANUD provides training and technical assistance to personnel of the judicial system of Guatemala. The regional project also planned, and in late 1987 executed, an assessment of the operation and problems facing the criminal justice system of Guatemala. The USAID/Mission to Guatemala planned to build on the activities undertaken by ILANUD in Guatemala and to use the results of the assessment of the judicial system in preparing a project for improving the administration of the criminal justice system in Guatemala. That project was authorized in September 1988.

Another way in which A.I.D. acted on its interest in assisting the democratic development of Guatemala was to encourage Harvard to become involved in assisting the improvement of the operation of the criminal justice system of Guatemala. Harvard independently had become interested in working in Guatemala in response to the situation created by the adoption of the new constitution and the holding of free elections. The three persons who were key to the development of Harvard's interest were: Professor Philip Heymann, Associate Dean and Professor of Law and Director of the Center who had been Assistant Attorney General of the United States in charge of the Criminal Division of the Department of Justice; Dr. James Rowles, a Senior Fellow at the Center who is an expert in comparative law and Latin American law and in the problems of development; and

Dr. Daniel McGillis who has a doctorate in social psychology and has been active in work in the US on issues of criminal justice, violent crime, conflict resolution and terrorism.

During the second half of 1986 Professor Heymann and Dr. Rowles made several trips to Washington, Guatemala and Costa Rica to meet with representatives of the Department of State, A.I.D., ILANUD and Guatemalan institutions concerning the needs of the Guatemalan criminal justice system and how Harvard might be of assistance in meeting them. As a result of those discussions and the information collected during the visits, Harvard presented a proposal to USAID/Guatemala in February 1987 which became the basis of a Cooperative Agreement between USAID/Guatemala and Harvard for \$1,482,800 covering the period July 8, 1987 through August 31, 1990. Harvard acknowledged receipt of the Cooperative Agreement on September 30, 1987. In an amendment to the Cooperative Agreement of December 9, 1988 USAID/Guatemala authorized the establishment of an office for Harvard in Guatemala "to provide administrative and technical support to the project." A second amendment of June 27, 1989 provided \$200,000 to fund that office thereby raising the total for the Cooperative Agreement to \$1,682,800. (Attachment A gives the current summary budget as modified.)

In March 1989, Harvard presented USAID/Guatemala with a proposal to increase the level of funding by \$500,000 in order to carry out all the activities proposed in the implementation plan for the period July 1989 through June 1990. The Mission replied that Harvard could continue the on-going activities and make plans to undertake the proposed new activities, but that before the Mission could obligate funds for the new activities it would want to have the results of the first evaluation of the activities as called for by the Cooperative Agreement. In August 1989 Harvard submitted a modified proposal for activities during the third year of the Cooperative Agreement. It includes a request for an additional \$589,260 for a total of \$2,272,060 for the three year Cooperative Agreement. That proposal is currently pending before the Mission.

AID/Washington issued a Task Order under a regionally funded Requirements Contract with Checchi and Co. for that company to conduct the first external evaluation of the activities under the Cooperative Agreement. The scope of work for that evaluation is given in Attachment B. Checchi and Co. formed a team consisting of Mr. John R. Oleson and Mr. Robert Page. They visited Harvard on August 28 and 29, and spent September 1 through 8 interviewing persons in USAID/Guatemala and in Guatemalan institutions involved with the work of Harvard both in Guatemala City and in the town of Totonicapan. In addition, Mr. Oleson spent September 9 through 14 meeting with additional Guatemalan persons who had participated in or observed the activities being assisted by Harvard; he also met with representatives of the Department of

State, of the Department of Justice and of A.I.D. in Washington. Altogether, Mr. Oleson and Mr. Page interviewed over 50 persons. A list of those persons is given in Attachment C.

On September 27, Mr. Oleson and Mr. Page met in Washington with Mr. Ronald Witherall, the USAID/Guatemala Coordinator for Democratic Initiatives, who is responsible for the Mission's relations with the Harvard project. They gave him a verbal report of their conclusions and recommendations. A draft of this report was sent to USAID/Guatemala and to Harvard in late October. Comments received from the Mission and from Harvard on that draft were taken into account in the preparation of this final report.

Subsequent to the conduct of the interviews and the preparations of the draft report, Checchi and Company was awarded a contract to staff the Project Implementation Unit of the Mission's bilateral Administration of Justice Project and to provide most of the technical, advisory services called for by that project. Both Mr. Oleson and Mr. Page will be involved in the implementation of that contract.

### III DESCRIPTION AND DISCUSSION OF MAJOR ELEMENTS OF THE PROJECT

#### A. Purpose and Nature of the Project

The basic rationale of the Harvard proposal was that the operation of the criminal justice system must be improved in order to reduce the incidence of crime whose continued high level would undermine confidence in the new democratic government, and to enable the democratic government to deal fairly and effectively with the inevitable outbreaks of politically motivated crimes - both from elements of society seeking to discredit the democratic government and from elements seeking to further their own interests and agenda through the use of violence.

According to the proposal the major obstacles facing the improved operation of the Guatemalan criminal justice system were:

- the lack of training of the police in modern investigative techniques;
- the lack of cooperation between the police and the investigating judges;
- the lack of training of investigating judges;

- the lack of sufficient investigating judges to provide effective coverage for the whole national territory;
- the need to create a modern, prosecutorial force to assist the judicial system in its work; and
- defects in the performance of the current written, inquisitorial system.

The main defects of that system were identified as: the continued use in the rural areas of one judge to perform both the investigative and judging/sentencing functions of the first instance courts; the reliance on evidence consisting of the written record of routine questioning of witness and persons accused of crime usually conducted by court employees without the judge's being physically present, and the lack of direct contact between the judge making the decision and the persons giving testimony or submitting evidence.

Given its analysis of the situation facing the Guatemalan criminal justice system, Harvard proposed nine major areas of attention. They were:

- solving politically-motivated crimes against persons, including all homicides and disappearances;
- training investigating judges in rigorous and effective investigations through working with the police and other authorities who are responsible for providing evidence and other assistance;
- training existing and new prosecutors in modern techniques of caseload management, the effective prosecution of cases on the basis of scientific proof and the means of effective cooperation with judges and defense attorneys;
- training and adopting techniques for extending coverage of the justices of the peace throughout the national territory;
- implementing the career judiciary called for by the 1985 Constitution;
- analyzing the appropriateness of introducing greater orality into first instance proceedings and the use of concentrated, oral proceedings by the sentencing judges;
- planning for a new public defenders' program;

- analysis of the issues which will arise with the creation of a Human Rights Ombudsman with the right to bring criminal actions in the courts; and
- analysis of the problems which will emerge as the effort to improve the system goes forward.

The major approaches to be adopted by the program proposed were:

- It will work closely with and through the Supreme Court in order to reinforce the central role played by an independent judiciary.
- It will seek to form and strengthen a broad coalition in support of the project by involving the Attorney General, the Minister of the Interior, the deans of the faculties of law, the Human Rights Ombudsman and representatives of the Congress.
- It will use working level, investigating judges as the means for conducting analyses and introducing charges.
- It will coordinate closely with the Regional Administration of Justice Project including providing information to assist in the conduct of ILANUD's assessment of the Guatemalan criminal justice system, forming linkages among the various institutions operating in the sector and focusing on investigating and prosecuting major crimes against persons.
- It will complement the focus on technical and scientific aspects of criminal investigations being provided to investigating judges by the International Criminal Investigative Training Assistance Program (ICITAP) of the US Department of Justice.

The proposal also contained a description of the activities which became the basis for the Cooperative Agreement between Harvard and USAID/Guatemala which called on Harvard "to strengthen the institutional capacity of Guatemala's Judicial Branch to contribute to the improvement of the criminal justice system and to provide recommendations for actions to be taken to respond to identified needs." In order to carry out that purpose, Harvard was to conduct two major programs--one of consultations and one of fellowships.

The consultations program was "to identify and analyze technical and administrative problems and needs in the Guatemalan criminal justice process requiring immediate solution, to deal with longer term issues in the area of policy reform, and to

permit the monitoring and tracking of progress..." The activities to carry out the program were to be regular meetings, individual research and consultation visits. Under the regular meetings activity there were to be up to four annual meetings of a week each in Guatemala or at Harvard. The meetings were to be attended by "high level legal experts... and judicial officials" from Guatemala and the Harvard Law School as well as by invited, outside legal experts. The purpose of the meetings was to "facilitate the solution of current problems in the criminal justice system and to contribute to the institutionalization of a problem-solving and decision-making process within the Judicial Branch that would permit Guatemalan officials and legal experts to arrive at action-oriented recommendations for the resolution of immediate problems... and to design and implement longer term reforms in the criminal justice area." Under the individual research activity, legal experts from Harvard and other sources were to conduct on-site research and consultations in Guatemala concerning "the major problems or issues that have been introduced in the regular meetings or elsewhere and to provide assistance in carrying out any recommendations for resolving them." Under the consultation visits activity, Harvard would invite "high level Guatemalan officials and legal experts" to consult on subjects discussed during the regular meetings or otherwise identified as being of interest and "arrange for other legal experts, as appropriate, to visit Guatemala to provide needed assistance in the criminal justice area."

The fellowship program was "to complement and facilitate work carried out under the consultations component, the end result of which should be an enhanced capacity within the Supreme Court and other judicial institutions to analyze and resolve problems and maintain an effective system of criminal justice." The activities to carry out the program were to be specialized study and research at Harvard and seminars to be held in Guatemala. Under the specialized study and research activity, "up to 12 of the most qualified personnel" were to spend up to one semester at Harvard "to study and carry out research focusing on improvement of Guatemala's criminal justice system." Emphasis was to be put "on improving the analytical and research skills of judges, especially in criminal justice procedures, and on drawing on the experience of other countries in developing practical but innovative approaches to the resolution of problems." The participating judges were to have individual programs designed for them which would include work with the faculty of Harvard, observation of the US criminal justice process in operation and the supervised writing of "a research paper on a specific subject or topic related to the functioning of the criminal justice system in Guatemala." Under the seminars activity, Harvard was to organize seminars each summer in Guatemala for 20-40 Guatemalan "investigating and sentencing judges and other qualified personnel" so that they could share the experience of the judges who had gone to Harvard under the specialized study

and research activity and to discuss topics of importance to the judicial system.

The following sub-parts of this report describe the activities which have been conducted to-date pursuant to the Cooperative Agreement and what is being proposed by Harvard to be done during the last year of the Cooperative Agreement. The activities underway and proposed show several important trends.

- The project has evolved from an emphasis on studying and discussing key problems and their possible solutions to implementing activities to test possible solutions.
- The project has become focused on pilot court activities in Guatemala City and in the rural Department of Totonicapan and on practical steps to improve the ways in which those courts gather evidence (with most attention being placed on the better interrogation of witnesses and parties) and hold hearings (with steps to increase the direct, personal contact of the judges with the witnesses, the parties and their counsel).
- In the face of opposition or relative lack of responsiveness from various potential Guatemalan participants, the project has dropped or postponed work on a special prosecution unit, a new defense system and a witness support activity. It is working largely with the court system alone.
- Harvard has played a very active role throughout the life of the project, and only within the past six months has it begun to concern itself with the institutionalization of the activities and with preparations for replication of the new techniques throughout the court system.

While the following discussion points out shortcomings and problems, the general conclusion of this report is that Harvard is meeting the terms of its Cooperative Agreement and is having a positive impact on the effort to strengthen the performance of the criminal justice system in Guatemala.

## B. Consultations

### 1. Regular Meetings

The first regular consultation meeting was held for three days at Harvard in January 1988. (It had been scheduled for November 1987, but had to be canceled because of the

unavailability of the Minister of the Interior). It was attended by the President of the Supreme Court, the Minister of the Interior, the President of the Constitutional Court, Professors Heymann and Weinreb and Drs. Rowles and McGillis. Also present were Mr. Mark Richard, a Deputy Assistant Attorney General in the U.S. Justice Department's Criminal Division, and a Harvard Law School student who presented his research and findings regarding caseflows in the Guatemalan criminal court system. The Guatemalan Attorney General could not attend, but he sent a paper outlining his views of the problems facing the system.

The purpose of the meeting was to discuss the major problems facing the Guatemalan criminal justice system and possible ways of addressing those problems. The main suggestions were to:

- consider developing a special investigation unit to deal with serious repeat offenders;
- develop improved procedures for encouraging truthful testimony to court personnel;
- consider the increased use of oral trial proceedings;
- implement effective case-screening mechanisms to reduce the overload of cases in the system; and
- develop statistical systems for measuring case handling at various stages of the system.

The suggestions were not formally adopted, but were to be explored further under the project. When Professor Heymann met with the Attorney General in March 1988 to brief him concerning the January consultation meeting, the Attorney General verbally agreed to establish a special prosecution unit.

The second regular consultation meeting was held in Guatemala for two days in May 1988. It was much larger than the first meeting. In addition to the persons attending the first meeting, it included from the Guatemalan side the Attorney General, the President of the Guatemalan Bar Association, four officials from the Supreme Court, two judges and two prosecutors who had gone to Harvard under the fellowship program; and from Harvard's side, Ms. Carmen Ortiz the project's Training Coordinator, the Administrative Assistant and a Harvard Law School student who assisted Professor Heymann in research on Guatemala. The main topics discussed at the consultation meeting were:

- the role of the National Police in Guatemala;
- the role of the Ministerio Publico in the judicial system;
- the role of the Judicial Branch in Guatemala;
- Harvard's proposal to develop a model prosecution office within the Ministerio Publico;
- the statistics developed by Harvard concerning criminal trials in Guatemala;
- a proposal that law students gain experience in prosecution; and
- evaluation of the experience under the project to date.

The topic most discussed was the proposal for a model prosecution office in the Ministerio Publico. The Attorney General and the Minister of the Interior agreed to reach a decision concerning that possibility. However, of even greater importance to the project was the follow-up meeting held between the Harvard staff and the President of the Supreme Court on June 8 at which Harvard proposed the creation of a series of model courts in which to try out the reforms which had been discussed at the various meetings and seminars held since the beginning of the project. The President of the Supreme Court accepted that proposal. (For further discussion see sub-part E (1) below.)

There have been no further regular consultation meetings although there have been several meetings between representatives of Harvard and the officials who had participated in the first two regular meetings. Harvard concluded that, although regular meetings had been of use in getting the main themes of the project under consideration, the regular consultation meetings were not as likely to produce concrete actions as were individual meetings with key Guatemalan officials. Thus Harvard decided to place emphasis on the latter, and it appears that this element of the project will not be carried out as originally planned. Furthermore, looking at the experience of these meetings so far, it seems that they have been more dependent on Harvard's initiative and analytical work than was intended, and thus were unlikely to contribute to the "institutionalization of a problem-solving and decision-making process within the Judicial Branch...". Nevertheless, Harvard proposes to hold another regular consultation meeting in Guatemala in the spring of 1990. Further justification for an additional regular meeting should be required.

## 2. Individual Consultation Visits

The project has been very active in supporting individual consultation visits. The more important of the individual consultations in Guatemala by persons from or sponsored by Harvard have been the following:

- March 1988, Professor Heymann prepared for the second regular consultation meeting and the first Guatemalan seminar.
- May and June 1988, Professor Heymann and Dr. McGillis met with the Attorney General and the President of the Supreme Court to discuss the proposed special prosecution unit in the Ministerio Publico and other topics.
- December 1988, Professor Heymann and Dr. McGillis discussed further with the President of the Supreme Court, the Attorney General, police officials and USAID personnel the reforms being supported by the project and especially the proposal for the special prosecution unit (sometimes referred to as the Major Offense Unit) in the Ministerio Publico as well as the participation of personnel of that organization in the pilot court activity. They also discussed with USAID/Guatemala the conduct of the administrative responsibilities of the project.
- December 1988, Mr. Richard visited Guatemala to work on a further elaboration of the pilot court activity.
- March 1989, Professor Heymann reviewed with the President of the Supreme Court the progress being made on the pilot court activity in Guatemala City and with the new Attorney General the possibility of creating a special prosecution unit in the Ministerio Publico and the cooperation of that ministry in the pilot court effort.
- August 1989, Professor Heymann, in connection with attending the annual seminar, discussed the progress and future of the project with the President of the Supreme Court and the A.I.D. Mission.
- June 1989, Mr. Richard reviewed the progress being made on the pilot court activity.

- Since his arrival in Guatemala in September 1988 Harvard's resident representative has maintained contact with all the entities involved in the program giving particular emphasis to fostering the participation of the national police in the pilot court activity and getting that activity underway in the rural areas.

The focus of these consultations has been on supporting the implementation of the pilot court activity and encouraging the Ministerio Publico to create a special prosecution unit. The consultations have been almost exclusively by persons from Harvard or closely allied with its activities. The initiative for the visits came from Harvard as did their planning and the use of their results. Indeed, this activity seems to have been basically one of project design and monitoring of implementation by Harvard rather than one of involving Guatemala officials and legal experts in the analysis of problems.

This element of the project also supported consultation visits to Harvard by Guatemalans apart from the organized programs discussed below. The more important of these visits were:

- July 1988, the first instance investigating judge who had handled the trial of the accused planners of the May 18 attempted coup visited Harvard to discuss her experience with members of the Center and of Harvard's Kennedy School of Government.
- August 1988, the first instance sentencing judge who had handled the case of members of the police in Quetzaltenango who were accused of kidnapping and murdering two politically active students visited Harvard to discuss his experience with members of the Center and of Harvard's Kennedy School of Government.
- August 1988, the outgoing chief of the Guatemalan National Police visited Harvard to discuss his perspective on the criminal justice system.
- November 1988, Guatemala's Ambassador to the United States visited Harvard (not at project expense) to discuss the Guatemalan political situation including the concerns which Harvard had expressed concerning the use of "street sweeps" of ordinary citizens as a technique of controlling crime, the kidnapping of a judge who had been handling the case of members of the police who had been accused of kidnapping and murdering persons for political reasons and the subsequent dismissal of that case.

- November 1988, the editor of a major newspaper in Guatemala visited Harvard to discuss his views of "street sweeps" and the role of the President of the Supreme Court in opposing them.
- May 1989, the new Attorney General visited Harvard to discuss further the possibility of creating a special prosecution unit in the Ministerio Publico.

Again, the initiative for the visits came from Harvard. Indeed the primary purpose of these consultation visits to Harvard seems to have been to provide more information to the staff of Harvard concerning the operation of the Guatemalan criminal justice system when confronted with cases involving political interests. Although the information provided to Harvard may enable it to perform its responsibilities under the project in a more enlightened way, there does not seem to be a plan for producing reports of the results of the visits or for the use of the information supplied in a concrete way.\*

### 3. Individual Research and Consultation

This element of the project overlaps with that of the individual consultation visits discussed above. Its difference lies in its greater emphasis on research than on policy discussion and on the involvement of working-level personnel rather than policy makers. The more important of these activities and visits have been:

- January 1988, a Harvard Law School student spent three weeks in Guatemala observing court procedures and collecting statistical data on case processing. He then prepared a paper presenting his findings which were discussed at the first regular consultations meeting.
- May and June 1988, Ms. Ortiz studied the court system first hand in order to supplement her understanding of the system based on her participation in the first judges' program at Harvard.
- August 1988, Professor Charles Ogletree of the Harvard Law School discussed the defense function. He met with the President of the Supreme Court, the President of the Bar Association, the deans of the four law

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\* In its comments on the draft of this report, Harvard stated that it will supply USAID/Guatemala with written reports incorporating recommendations which take into account the content of these visits.

faculties, the operators of the university-based legal aid societies and a number of defense lawyers.

- November 1988, a Harvard Law Student, who is also a staff member of the Center, visited Guatemala with a casewriter from the Kennedy School of Government to work on the Quetzaltenango case mentioned previously. She did further research on the operation of the court system.
- December 1988, another staff member visited Guatemala to study the judicial system first hand with particular attention on its treatment of political violence and the possibility of developing a Victim-Witness Advocacy Program to work with the pilot court activity.
- January 1989, two students from the Harvard Law School came to Guatemala to study the operation of the police in investigating crimes.
- March 1989, the same staff member who visited Guatemala in December 1988 conducted further research on how to encourage crime victims and witnesses to participate in the judicial process.
- June 1989 the same staff member conducted interviews of labor leaders, journalists, students, and human rights groups and judicial officials concerning violent crime in Guatemala and the nature and extent of outside influences on the judiciary amounting to intimidation or corruption.
- June 1989, Professor Richard Wilson of the American University Law School, who is an associate of the Center, reviewed the operation of the current defense system. He interviewed the deans of the law faculties, the director of one of the legal aid societies and judges involved in the pilot court activity. Professor Wilson prepared a report for Harvard with suggestions for actions to improve the defense function.
- Since his arrival in Guatemala Harvard's resident representative has been conducting informal research on the operation of various aspects of the Guatemalan judicial system as well.

As in the case of the consultation visits, the initiative and planning of the research activities have come from Harvard. Guatemalans have not been actively involved except as the subjects of interviews. The visits for research purposes have been short--sometimes amounting to only a few days. To date only the January 1988 report on case processing seems to have had

practical impact on the project. Professor Ogletree and Wilson produced reports for Harvard on the defense function; but as of the date of this evaluation, those reports had not been provided either to the Mission or to the Guatemalan court system. The other research activities do not appear to have produced any reports or conclusions. They may have provided Harvard with useful information, but they do not seem to be of the nature that was anticipated in the Cooperative Agreement. Furthermore, they have been the subject of misunderstandings between Harvard and the Mission. (This is discussed further in sub-part H (2) below.)

Harvard proposes to continue this element of the project during its last year. Given the desire to achieve the most practical impact possible under the project during that time, it would seem desirable that the research component be more focused on implementation aspects of activities already underway.

C. Fellowship Programs at the Harvard Law School

The fellowship program was to serve two purposes -- to facilitate carrying forward work on the problems identified and discussed under the consultations component of the project and to improve the capacity of the Supreme Court and other institutions in the Guatemalan judicial sector to analyze and solve their problems. The program has been useful in achieving the first purpose and largely unsuccessful in achieving the second purpose.

To date, there have been five fellowship-type programs given at Harvard. The Spring 1988 Judges' Program was the first. Four judges participated--two sentencing judges, one investigating judge and one justice of the peace (who later became an investigating judge). All the judges were from Guatemala City. The judge with the strongest English arrived on February 1 for a specialized program. After receiving a month of instruction in English in Guatemala, the other three arrived March 1 to begin the common two month program. It had three major subcomponents:

- observation visits to major US criminal justice system agencies,
- the exploration of problems confronting the Guatemalan justice system, and
- the preparation of papers dealing with potential solutions to the problems of the Guatemalan criminal justice system.

The program included visits to observe the operation of the criminal justice system of the Boston area and a trip to Washington to meet with officials of the US Department of

Justice, the FBI and human rights organizations. Members of Harvard's staff acted as interpreters. Throughout the program the judges received English lessons, and had discussions with the personnel of Harvard concerning the needs of the Guatemalan criminal justice system. The judges produced studies concerning each of the three levels of the first instance process--the Juzgado de Paz, the Juzgado de Instruccion and the Juzgado de Sentencia. The studies have not been published, but copies were provided to the President of the Supreme Court and later to the Mission.

Harvard identified three major problems with the first program. First, three of the four judges did not have sufficient knowledge of English to be able to function without an interpreter, and the English lessons given during the program were insufficient to make any difference. Second, the judges had not been made aware that the analysis of Guatemalan problems would be a major part of the program, and some resisted that activity. Third, all the judges had difficulty producing written, analytic work. Our interviews with the participating judges confirmed that these were problems. In addition, the judges believe that it would have been better to spend more time in observing the operation of the various aspects of the US criminal justice system and in having more direct contact with practicing judges. Indeed, the observation visits, rather than the opportunity to discuss Guatemalan problems free of any pressures that might be felt within Guatemala, appear to be the principal reason why the judges endorse holding such programs at Harvard rather than in Guatemala.

The second activity under this component was the Spring 1988 Prosecutors' Program. It lasted for two weeks in May. Two prosecutors attended. The purpose of the program was to design a special prosecution unit in the Ministerio Publico as had been agreed to in principle by the Guatemalan Attorney General. The program also included observation visits to various parts of the US criminal justice system including discussions with the directors of two special prosecution units. The two prosecutors and the Harvard staff then produced a paper discussing the major issues to be faced in creating a special prosecution unit in Guatemala. A copy of the paper was given to the Guatemalan Attorney General.

The third activity was the Fall 1988 Judges' Program. Three judges attended--a Juez de Paz from the rural town of Totonicpan, a Juez de Paz from a rural area near Guatemala City and a traffic court judge from Guatemala City who had served in many areas of the country. The purpose of the program was to develop plans for pilot courts at the Juzgado de Paz level. The program lasted from the middle of September to the end of October. As in the first Judges' program, this program consisted of discussions with the Harvard staff concerning the problems facing the criminal

system in Guatemala, observation trips and discussions with participants in the US criminal justice system both in the Boston area and in Washington, and the preparation of papers. In this case the papers concerned the design of the pilot courts. They included several concrete suggestions. Copies of the papers were provided to the Mission (in English translation) and to the President of the Supreme Court. Two of the participants reported that lack of English was an impediment to their taking advantage of the program (the third participant had good English from having gone to school in the US), and all stated that the observation of the operation of the US system was the more interesting part of the program. Although the participants would have liked even more exposure to some of the investigative techniques which they were shown, they thought that six weeks in the US was enough.

The fourth activity was the Spring 1989 Judges' Program. The purpose of the program was to develop further the plans for a rural pilot court activity. It lasted for four weeks in March and April. Three judges participated--two investigating/sentencing judges and one justice of the peace. Two of the judges had had contact with Harvard's activities in Guatemala before, and had worked with Harvard's resident representative on designing a rural pilot court proposal. The other was selected because his jurisdiction was in an area of political conflict. The program was a shortened version of the earlier judges' program. Except for one day, the first two weeks were devoted to lectures concerning the US criminal justice system or observation visits to the various elements of that system in the Boston area. As might be expected, the two participants which we interviewed showed frustration at their not having had more time to understand how the US system works. The second two weeks were largely devoted to discussing the plans for pilot courts in two rural areas of Guatemala--Totonicapan and Solola. All the judges worked on completing a proposal for Totonicapan which had been started in Guatemala by Harvard's resident representative and the investigating/sentencing judge from Totonicapan. The investigating/sentencing judge of Solola undertook to prepare a proposal for Solola on her return to Guatemala. That was done; the resulting document was reviewed by Harvard; and it was sent to the President of the Supreme Court.

The fifth, and to date the final, activity of the fellowship program was the Spring 1989 Prosecutors' Program. Four prosecutors participated--including the two prosecutors who had attended the Spring 1988 Prosecutors' Program. The purposes of the program were to assess the feasibility of creating a special prosecution unit (also called a Major Offense Unit) in the Ministerio Publico and to strengthen the cooperation of the Ministerio Publico in the pilot court activity. The program lasted for two weeks in May. It included discussions of the

Guatemalan situation and visits to observe the functioning of various elements of the US criminal justice system. The program included the participation of a representative of ICITAP who discussed collaboration with the police. The new Attorney General of Guatemala joined the session, and after discussion he decided that he did not want to proceed with the creation of a special prosecution unit. He did agree that the Ministerio Publico would cooperate with the pilot court effort. (However, only one of the participating prosecutors has been assigned to that activity to date.)

So far the fellowship program has sent 14 judges and prosecutors to Harvard thereby surpassing the number of participants called for in the Cooperative Agreement. While the elements of the programs have been the same since the beginning-- i.e. observation of the US criminal justice system in action, discussion of the problems facing the Guatemalan criminal justice system and preparation of analyses of those problems and of suggestions to meet them--the relative importance of those elements and of the ways in which those elements have been used has evolved. The judge's program has become shorter--the first lasted two months, the second six weeks and the third a month; and they have become increasingly focused on the treatment of the Guatemalan problems--the first dealing with the needs of all levels of the first instance process, the second with the issues facing the justice of the peace level and the third with the issues facing two specific rural areas. In contrast, both prosecutors' programs were short (two weeks) and dealt with the same topic of a special prosecutors' unit in the Ministerio Publico. However, the two sessions served somewhat different purposes--the first being to work out a design of the special prosecution unit and the second to provide stimulus and training to the potential members of the unit.

Thus the program took on a very practical cast. It designed activities to be carried out by the project in Guatemala, and stimulated and prepared key members of the court system and the Ministerio Publico to participate in those activities. After the experience of the first fellowship program, it did not place significant emphasis "on improving the analytical and research skills" of the participants as called for by the Cooperative Agreement. This was a realistic reaction to the nature of the Guatemalan personnel available to the project and to the other decisions being made about the focus of the project's activities.

While one can easily conclude that this program served a useful purpose, there are important questions concerning its cost and applicability to the future particularly in view of the fact that Harvard proposes to continue the judges' fellowship program in the last year of the project in order to design pilot court activities in additional rural areas and to prepare a system for

replicating the positive experience of the pilot courts throughout the court system. First, there is the fact that four of the ten judges and three of the four prosecutors who participated in the program are not involved in the on-going activities of the project in Guatemala. Furthermore, we could not find evidence that those who were not participating in the pilot court effort had in fact changed the ways of performing their duties by reason of their participation in the program. This drop-out rate reflects several factors: personnel decisions by the court system, judgments by Harvard concerning the attitude of persons toward reform activities and the decision by the Attorney General not to create a special prosecution unit. It also probably reflects some mistakes in the choice of the persons who were sent to Harvard under the program. Should the program be continued in the future, it would be better to have assurance of the person's continued participation in the project activities before sending him to Cambridge.

Second, holding the program at Harvard means that fewer Guatemalan judges and prosecutors can participate. The arguments in favor of that approach are that it provides the stimulus of exposure to the US ways of handling the criminal justice process and the morale boost of attending Harvard while providing an atmosphere free of work responsibilities and the fear of having one's views monitored during discussions. Certainly, the participants seemed to appreciate the opportunity to observe the US criminal justice system in operation although most were of the opinion that they would need more time really to understand it. However, we did not find clear evidence that the returned participants were applying any techniques which they observed in the US, and we found ambivalence on the part of the participants as to whether traveling to Cambridge was important to holding discussions on the problems facing Guatemala and possible ways of addressing them. Indeed, one might well conclude that the Guatemalan dimension of the problem is more likely to be given its due if more Guatemalans participated in the design effort. Thus we suggest that consideration be given to having future design work done in Guatemala, and that trips to the US by personnel from the judicial system be used only for very specific observation purposes directly related to their continued participation in the project's activities.

#### D. Seminars and Training Activities in Guatemala

The major activities under this component of the project have been the following:

- June 1988, two three-day seminars--one in Guatemala City and one in Quetzaltenango--were held for some 30 first instance judges and prosecutors at each session. Their purpose was to enable the judges who had

participated in the first fellowship program at Harvard to report their impressions to a wider audience and to organize a discussion of the issues facing the criminal law system in Guatemala and of the suggestions which the judges and Harvard staff had prepared for meeting those issues. The seminars used the technique of small working groups led by the judges who had been on the fellowship program followed by reports of the working groups to the plenary sessions. The seminar also presented lectures by a well known Italian judge on the legal reform movement in his country and by a retired, Spanish speaking FBI agent on interviewing witnesses. The latter presentation also included a video of a US criminal trial. The Guatemala City seminar was attended by six magistrates of appellate courts, 23 judges of first instance courts and two prosecutors. The Seminar in Quetzaltenango was attended by 12 magistrates of appellate courts and 20 judges of first instance courts. Portions of the Guatemala seminar were attended by the President of the Supreme Court, the Attorney General, the Minister of the Interior, the US Ambassador and Professors Heymann and Weinreb. The Supreme Court prepared a document listing the recommendations coming out of the seminar. Harvard translated that document, and gave a copy to the Mission.

-- February 1989, a seminar was held in Guatemala City for the staff of the courts and the Ministerio Publico who were to participate in the pilot court activities in Guatemala City and in Totonicapan. Thirty-two persons attended the two sessions of three days each. The seminars were given by Harvard's Training Coordinator and Director of the Pilot Court Program with the assistance of two US prosecutors, the retired FBI agent who made a presentation to the June 1988 seminars, Harvard's resident representative and the judges who had participated in the fellowship program at Harvard. The purpose of the seminar was to train the participants in investigative techniques and methods of the interrogation of the witnesses. The seminar included the distribution and discussion of forms which might be used to improve the questioning process and the use of role-playing exercises.

-- August 1989, two one day seminars were held in Guatemala City to explain the nature and intent of the pilot court activity which was underway. All the judges and prosecutors in Guatemala City were invited as were representatives of other interested organizations. Altogether 89 persons attended the two sessions. The seminars also included presentations by

US experts on combating corruption and the intimidation of judges.

- September 1989, a seminar was scheduled for Quetzaltango to train the staff of the courts and the Ministerio Publico who are to participate in the pilot court activity but had not been able to attend the training seminars in Guatemala City in February. However, shortly before the seminar was to be held Harvard canceled it in protest against the failure of the Government of Guatemala to take more effective action in investigating the disappearance and murder of students.

Harvard considers this component of the project to have been successful. In its opinion, the June 1988 seminars ratified the conclusions which had been reached during the first judges' fellowship program, and helped in the planning for concrete programs to address the problems of the criminal justice system; the February 1989 seminars provided the training needed by the persons who would be involved in the pilot courts, and the persons who attended the sessions have been using the techniques learned in the seminar; and the August 1989 seminars provided information to overcome doubts which had arisen among members of the judiciary who were not directly involved in the pilot court activity. Based on our own interviews we should agree that these seminars have had a positive impact. However, we also noted that many of the participants in the February 1989 seminars thought that more training was necessary for them to be able to use the new approaches. Frequently those persons would refer to ICITAP courses, which they also had attended, as being more complete and useful. The observation also was made that other persons in the system than those involved directly in the pilot court activities could benefit from training in the techniques.

This component of the project also has evolved from one of the discussion of problems and their possible solutions to an effort to train persons in new approaches and techniques. It needs to address several issues. The first issue is the fact that Harvard has not designed a way to teach Guatemalans to carry on the training activity in the future. Indeed, Harvard has not sought to include or use the training unit of the judicial system in any substantive way. Partly this is the result of the failure of that training unit, but it also probably is the result of Harvard's practice of planning the seminars in Cambridge. A second issue is the amount of time which is taken from official duties for training and the costs of the training. In the past both the time and the cost of training were high because the program focused on a few key members of the judiciary as participants in the design and dissemination of the reforms to be supported. (Perhaps the most extreme case was one judge who

during one year attended three types of training--six weeks at Harvard, five weeks in an ICITAP program and three days at a seminar in Guatemala.) A third issue is that the project's design appears to assume that the judges of each court participating in the pilot activity will be responsible for assisting their staffs to use the new techniques which are the subject to their training and for assuring that the support for the reformed procedures is available in a timely way, and yet the training which the judges have or are to receive does not include management skills. A fourth issue is that the relationship between training being provided by ILANUD and ICITAP is not yet entirely worked out. For instance, ICITAP asserts that it should be responsible for teaching techniques of crime scene investigation; that emphasis should be placed on the collection of physical evidence; and that the police should be the primary (perhaps the exclusive) group which collects evidence and conducts the initial interviews of witnesses and of the accused. Harvard asserts that the Guatemala system requires judicial control over the taking of testimony and the observations of the scene of a crime; that the prompt and thorough interrogation of witnesses and of the accused is more important than the collection of physical evidence; and that the judges and officials of the courts need training in both aspects of crime investigation. Although these views are not necessarily incompatible, they have added a complication to the always difficult task of coordinating two active programs. These issues will need to be addressed in planning the replication effort.

#### E. Action Programs--Rationale and Implementation

From the beginning it has been the project's intent to identify important problems facing the Guatemalan criminal justice system and to design activities to overcome them. Early in the project's life when the initial design discussions were taking place, Harvard decided that the focus of its efforts should be on the work of first instance judges and their staffs; and that within that focus, primary attention should be paid to improving the collection of evidence and its utilization in the hearing and sentencing stages of the trial process. Although the work of various organizations--the police, the prosecutors, the public defenders and the law faculties--would have to improve in order to achieve fully the purpose of the project, Harvard decided to place the first instance courts and their personnel at the center of its effort. There were several reasons for this. One, the President of the Supreme Court was the most receptive official to Harvard's presence and ideas and the most assertive in his expression of an intent to support reforms. (Indeed, he already had undertaken some steps himself.) Two, other organizations were addressing or planned to address other important issues or work with the other Guatemalan organizations--ICITAP with the police, ILANUD with the court system on providing more complete and systematically presented information

on the legal basis of the system (codes, statutes, decisions and jurisprudence) and on the administrative performance of the courts; and USAID/Guatemala with the court system on improving its administration on a system-wide basis.

The major exception to Harvard's focus on the first instance courts and their personnel was the importance given to working with the prosecutorial staff of the Ministerio Publico. There were several reasons for this. First, the prosecutorial staff was the most likely source for increased support for the work of the courts at the professional level since the prosecutors are all lawyers. Second, there was unanimous agreement among Guatemalans that the Ministerio Publico failed to provide any useful input to the criminal justice system. Third, the key members of the Center have had extensive experience in the work of the prosecution in the US system, and most probably could not imagine a criminal justice system operating effectively without strong prosecutors. Fourth, perhaps also as a result of the background of its key members, Harvard saw the creation of a special unit of elite and strongly supported prosecutors within the Ministerio Publico as being the best way to solve major crimes including crimes having a political or human rights dimension, and dealing with those types of crimes was considered to be a basic reason for Harvard's working in Guatemala.

In addition to deciding to focus on the work of the court system at the first instance level and, somewhat secondarily, on the role of the prosecutorial staff of the Ministerio Publico, Harvard decided that its activities should be focused on a limited number of courts on a pilot basis. That decision responded to several conclusions. The project did not have the level of resources or the time required to effect system-wide changes. Harvard did not have the personnel or the experience in implementing programs which would be required to support system-wide changes. The use of reformed techniques on a limited basis would permit their adjustment as necessary before resources were devoted to their widespread utilization. As a consequence of this decision, the work with the pilot courts has become the center of the project's efforts; and in the process the project has become more and more concerned with the implementation issues facing most development projects. Harvard has moved into an area in which its expertise is more limited.

The following sub-parts discuss the activities to date and the problems they face.

#### 1. Pilot Courts

Support for the operation of pilot courts was introduced into the project in June 1988. Taking into account the discussions about the needs of the Guatemalan criminal justice system which had taken place during the first judges' and

prosecutors' fellowship programs in Cambridge, the various individual visits and consultations and the seminars held in Guatemala and Quetzaltenango, Harvard proposed that innovations in procedures be tried in several pilot courts of first instance before their use was attempted on a broader basis. The effort was to include the sentencing court in Guatemala City which the President of the Supreme Court already had authorized to introduce reformed procedures and whose judge had attended the first fellowship program at Harvard. The effort would add a Justice of the Peace Court and an investigating (Instruction) court in Guatemala City. The effort was to be complemented by the creation of the "model" prosecutors' unit discussed in sub-part 2 below, a "model" defense office and a Supreme Court Advisory Council to consist of a group of judges and other court personnel selected by the President of the Supreme Court which would provide him with advice on the conduct of the effort as well as on problems facing the judicial system which were not being addressed under the project.

The reforms which were identified as ones to be introduced at the various levels were the following.

At the Justice of the Peace level:

- training in crime-scene investigation techniques;
- improved techniques for interviewing defendants;
- better linkage to the police investigations;
- improved liaison with the Ministerio Publico's prosecutors;
- better screening of cases (to focus on the more serious cases and on those with a better chance of being solved); and
- the use of forms for the recording of testimony.

At the investigating judge level:

- improved procedures to ensure that witnesses and defendants tell the truth;
- training of court officials in interviewing witnesses;
- changes in policies for the use of pre-trial detention;
- better links to police investigations;

- improved liaison with the Ministerio Publico's prosecutors; and
- the use of forms for the recording of testimony.

At the sentencing judge level:

- experiments to use more "orality" in the procedures;
- experiments to establish greater "concentration" in the proceedings e.g. to have more immediate contact among the judge, witnesses, the accused and the lawyers representing them;
- the use of hearings open to the public to generate confidence in their probity; and
- the use of the same reforms being introduced at the other levels concerning the taking of testimony.

To support these new procedures the proposal also called for the further remodeling of courts in order to encourage frankness by witnesses and the parties and to improve the ability of judges and court officials to reach conclusions concerning the veracity of the testimony being given. It also suggested supplying cameras and tape recorders for taking initial testimony from victims and witnesses at the crime scene and electric typewriters to be used by court staff to expedite the taking of testimony.

The initial plans called for the pilot courts in Guatemala City to be functioning by September 1988, for a conference to be held in June 1989 to review the experience and for the next year to be used to implement priority reforms which had been shown to be effective widely across the justice system while the pilot activity continued to try out additional reforms. However, almost immediately Harvard concluded that a similar pilot effort should be undertaken in a rural area since such an area would present circumstances very different from those in Guatemala City. The more important differences are that rural courts :

- investigate different types of crimes (more disputes over property and personal relationships);
- face serious problems of accessibility given the poor communications and relatively small number of judges available; and
- must deal with populations the majority of which do not understand Spanish; are illiterate; and do not really have the cultural preparation to understand the formal criminal justice system.

The effort in the rural areas would build on the earlier decisions of the President of the Supreme Court to require that all judges be lawyers and to increase the number of justices of the peace to improve the justice system's coverage in rural areas.

As indicated above, the Fall 1988 Judges' Fellowship Program at Harvard was focused on preparing for the pilot court effort at the justice of the peace level in both urban and rural areas. The judges prepared written proposals which later were shared with the President of the Supreme Court. Development of a proposal for a pilot sentencing court was carried forward through a one week individual consultation visit to Guatemala by Dr. Rowles of Harvard who worked with the judge who had attended the spring fellowship program. The judge prepared a proposal which the President of the Supreme Court approved in December 1988. At that time, during a visit to Guatemala by Professor Heymann: (i) discussions were held with the President of the Supreme Court on the overall approach being taken and on the crucial need to improve cooperation among the personnel of the several levels in the judicial system which handle cases at the first instance and with the prosecutors and the police so that the work of the latter would be more useful for the work of the judges; (ii) the idea was first discussed of having two or three prosecutors from the Ministerio Publico assigned to participate in the pilot court activity (this is in addition to the work on the special prosecution unit discussed in sub-part 2 below); and (iii) Mr. Richard, Harvard's consultant, worked with the judge of the pilot investigating court who also had attended the first fellowship program at Harvard.

By the beginning of 1989 the project had become focused largely on the pilot court activity. Ms. Carmen Ortiz, an experienced prosecutor on the Harvard staff, assumed overall responsibility for the activity; and the principal responsibility of the resident representative of Harvard became monitoring and fostering the implementation of the activity including further development of the design of the rural pilot courts and encouraging the cooperation of the police with the activity. Future training programs were to be focused on the needs of the activity. The first of these sessions was held in February. (These training activities are described in C and D above.)

Harvard then prepared and submitted to USAID/Guatemala a revised implementation plan for the project which focused on carrying out the pilot court effort in eight sequential stages. They were to be:

- (i) Pilot Courts at each level of the first instance are to be established in Guatemala City and are to work together. A preliminary evaluation of that work is to be conducted after 90 days.

- (ii) Four to six weeks after that initial evaluation pilot justice of the peace and investigating/sentencing courts will be established in the Department of Totonicapan.
- (iii) The special prosecution unit will be established in the Ministerio Publico to work on important cases in Guatemala City.
- (iv) A major evaluation of the pilot court activity will be conducted.
- (v) A seminar will be held in Guatemala to discuss the experience to date and ways of sharing the useful reforms with other courts.
- (vi) Legislative proposals will be developed to strengthen and extend the use of the reforms.
- (vii) An activity will be developed with the Guatemalan Bar Association to assist the defense function.
- (viii) Pilot courts will be developed for the Department of Solola (this area was added because it presented the circumstance of political and social conflict).

The ambitious and demanding schedule implied by this implementation plan was not met. The President of the Supreme Court changed the judges in charge of a couple of participating courts; the provision of equipment and of the physical modifications of the investigating court in Guatemala City was delayed; all the printed forms were not delivered; and the Ministerio Publico failed to assign prosecutors to participate in the activity. Furthermore, in further planning the activity for the area of Totonicapan, Harvard concluded that more extensive change was necessary and required further discussions. For instance:

- In order to provide adequate coverage of the area by the judicial system another Justice of the Peace would be necessary; non-legal personnel (aguaciles) would need to be deputized to act for the judges and the police in reporting crimes and complaints, in preserving evidence and taking preliminary statements and in assisting in bridging the cultural gap between the population and the formal legal system; and the Justices of the Peace would have to travel within their jurisdictions on a regularly scheduled basis.
- The Ministerio Publico would have to provide a new prosecutor for the area.

- An additional sentencing judge should be appointed to cover the areas of Totonicapan and Solola thereby freeing the investigating judges for more work and accomplishing the separation of investigation and sentencing which the President of the Supreme Court previously had adopted as the standard for the whole system, but which had been carried out only in Guatemala City.
- A separation of the police from the military in the rural areas should be sought and written instructions given to the police concerning the rights of persons being detained.

The pilot courts in Guatemala City were formally inaugurated on May 2, 1989; and in late June the first public oral hearing was held by the pilot sentencing court. Because of the pressure of time the planned initial evaluation of the urban pilot courts was not conducted before activity in the rural areas began. The investigating/sentencing court in Totonicapan was inaugurated in July. In August a seminar was held for all the judges and court personnel in Guatemala City to explain to them what was occurring in the pilot court activity.

Harvard provides support and encouragement for the pilot court effort through the work of its resident representative and the trips of Ms. Ortiz from Cambridge. For instance, the first two planned series of monthly meetings of all the judges and staff of the three pilot courts in Guatemala City were held at the initiative of the Harvard's resident representative.

As described in sub-part D above, Harvard is positive about the use to which the training is being put although it observes that the effectiveness of that utilization will depend on the initiative and capability of the judges, and it is somewhat disappointed at the progress made so far in the Guatemala City investigating court. During our visits to the pilot courts we found that judges and court officials did endorse the changes which had been explained to them and appeared to be trying to use them. However, we also found that there were many comments that more training was necessary, and that there were still serious impediments to using the new techniques--impediments such as a lack of equipment (recorders, electric typewriters), of supplies such as tapes for recorders and printed forms beyond the two checklists now in use, of vehicles for the rural courts and of reimbursement for travel expenses. Some of the equipment is to be provided by Harvard through the project.

The pilot court activity has given structure and concrete purpose to the project. Furthermore, Harvard has made

significant progress in its implementation although the effort is taking longer than was anticipated.

- Important, innovative principles have been discussed and agreed on with the President of the Supreme Court (e.g. the use of aguaciles).
- The courts have been inaugurated publicly thereby becoming a symbol of progress for the system.
- Oral, concentrated hearings have begun at the sentencing level.
- At least in theory, the Ministerio Publico and the National Police have agreed to support and cooperate with the activity.
- The activity has given the court system a sense that concrete improvements are possible, and that A.I.D. will support them.

It is clear that this progress would not have been made without Harvard's having acted as the catalyst for the planning and as the supporter/gadfly for implementation.

Nevertheless, there are still important problems facing the implementation of the pilot court activity:

- Physical remodeling of the courts has occurred only in the sentencing and justice of the peace courts in Guatemala City and in the investigating/sentencing court in Totonicapan (and the physical improvement of the first two courts had been carried out before the pilot activity got underway), but even the remodeled justice of the peace court still has no telephone and thus cannot communicate with the police or the other personnel of the pilot courts who are in a different building.
- A new justice of the peace court has not been established in Totonicapan.
- Aguaciles have not been named for the Totonicapan area, and only four personnel of the court are able to understand and use the local language.
- The Solola proposal has not yet been approved, and no concrete steps have been taken to carry it out. Indeed the potential for violence in the Solola area may well prevent participation of Harvard's personnel in an

activity which includes outlying areas of that Department.

- Two prosecutors recently were assigned to the Guatemala City pilot court activity and given space in the court building, but the degree to which the Ministerio Publico will provide them support and permit them to respond to the requests of the pilot court judges is not yet clear.
- The prosecutor in Totonicapan has not yet been informed by the Ministerio Publico that she is to participate in the pilot court effort; and she has not done so in an active way.
- The police have not yet assigned particular members to be investigators for the pilot courts (although the Deputy Director of the National Police supports doing so and is optimistic that the coordination will be effective).
- There is not yet a concrete plan for adding a defense function to the pilot court activity.
- There is no Guatemalan official or office which actively follows the progress of the activity and assists in moving it forward; that function is being performed by Harvard.
- The cumulative effect of the impediments to using the new techniques mentioned above could cause an erosion in morale of the participants.

Harvard is aware of these problems, and it is working on them. However, it may be under-estimating the difficulty of resolving them within the remaining period of the project since to do so would seem to require a more intense in-country effort than Harvard is now planning.

## 2. Special Prosecution Unit in the Ministerio Publico

In addition to participation by the prosecutors of the Ministerio Publico in the pilot court activity discussed above, Harvard has advocated from early in the project the creation of a special prosecution unit to handle major cases. The presumed success of such a unit would generate publicity and a feeling among the public that the criminal justice system was becoming effective in solving crimes and would provide experience that might be useful to all prosecutors in their work. The unit also would have the means and the will to investigate and prosecute cases with political ramifications thereby reassuring the public

that the system would not be subject to political influence and that human rights would be protected.

Harvard received support for the idea from the U.S. Ambassador, the President of the Supreme Court and the then Attorney General who was in charge of the Ministerio Publico. However, it is not clear that all the parties understood the idea in the same way. In particular, it seems that the President of the Supreme Court and the Attorney General did not anticipate that the special unit would pay particular attention to cases with political ramifications. Then too, the particulars of the idea changed over time. For instance, in the early discussions it was proposed that the prosecutors be supported by special investigators who would be recent law school graduates. Later those investigators were to be members of the police assigned to the special unit. Later still, the investigators were seen to be policemen available to the unit but remaining under the supervision of the police authorities. Sometimes the unit seemed to be thought of as a way for the Ministerio Publico to support the pilot court activity; at other times it was described as something apart from that activity. Nevertheless, the basic idea of a special unit with exceptional resources remained constant.

The idea received strong support from the project. The two Prosecutors' Programs at Harvard had as their main purpose the design of such a unit and the preparation of its personnel. Persons with experience in such units in other countries were included in the Guatemalan seminars. The representatives of Harvard as well as the U.S. Ambassador supported the idea in conversations with key Guatemalan figures including the Attorney General. However, little was done by Guatemalans to implement the idea. Indeed, the unit was never formed. The Attorney General, with whom the idea originally was discussed, explained the lack of action on the grounds that he lacked the personnel and resources to establish the unit; but he stated that he was hopeful that the President would support his attempt to get those resources. (The Ministerio Publico is independent of the judicial and executive branches, but is dependent on the latter for its resources.) Finally, in the spring of 1989, the successor to the Attorney General informed Harvard that he did not want to establish a special unit because he was not in favor of a high profile entity (with the attendant danger for its personnel); because he wanted to improve the performance of all his prosecutors not just a few; and because the Ministerio Publico still had too few prosecutors to attend to its current duties without taking on the additional responsibility of a special unit. (Some observers also suspect that the Attorney General was reluctant to develop and exercise the political will by the Government of Guatemala which would be needed to support the work of such a unit.) This decision caused Harvard to drop the idea of a special unit from the project. It caused considerable disillusionment for Harvard, the U.S. Embassy and

the prosecutors who were being prepared to form the unit. While the participation of prosecutors from the Ministerio Publico in the pilot court activity remains an accepted part of the project, the tensions caused by the disagreement over the special unit have made working out that participation somewhat more difficult.

Given the amount of resources and time the project devoted to supporting the idea of a special unit and preparing for its creation this outcome is a major disappointment. The idea had much to recommend it. However, there were indications from the beginning that the Guatemalans had difficulties with it, and persons both in A.I.D. and the Department of State warned Harvard that there were problems with the idea in the Guatemalan context. Harvard did not heed those warnings because it was convinced that the idea was sound, and was encouraged by the support which the idea received from both the President of the Supreme Court and the U.S. Ambassador.

### 3. Public Defense System

The public defense system in Guatemala is based on legal aid provided by law students who are required to handle a certain number of cases in order to graduate. The system is considered very weak since the students are inexperienced; their motive is just to fulfill a graduation requirement; and the supervision they are provided by faculty members is slight. Harvard agreed that the defense system needed to be improved, but it gave that topic a secondary priority in order to work with the personnel of the court system and the Ministerio Publico. The reasons were that: there was no consensus among Guatemalans as to what needed to be done; the law faculties and the Bar Association (as the parties most interested) were not enthusiastic in response to Harvard's invitation to become active in the project; and Harvard thought it would be unwise to work on improving the defense system before the very weak prosecution system was strengthened so that the already low conviction rate would not fall.

Nevertheless, Harvard has taken some steps to address the need for a better defense system. It has sponsored research on the current defense system through short visits by Professor Ogletree in August 1988 and by Professor Wilson in June 1989. Both of those consultants prepared reports for Harvard, but they have not been shared with the Mission or with Guatemalan entities although a summary of Professor Wilson's recommendations were included in Harvard's Quarterly Report issued in October. Harvard's implementation plan for the last year of the project asserts that it plans to work on the defense function in the context of the pilot court activities.

Although the reasoning for giving the defense function a lower priority is understandable, it does seem to overlook the social inequity of persons of little means being the subject of

prosecution by private persons of substantial means, and it has resulted in the project's entering its third and last year of operation without there being an agreed defense element formally designed. It now seems doubtful that sufficient experience can be obtained on any proposed defense system in time for it to be included in a replication effort.

#### 4. Citizen Cooperation and Witness Protection

One of the problems facing the performance of the Guatemalan criminal justice system is the lack of citizen cooperation with it. Observers attribute that lack of cooperation to a conviction by most people that the system does not work and by many that it can be dangerous as well as time consuming to become involved in the process. To counteract those attitudes the project relies on the improvements being made in the system under the other components. Harvard also has considered establishing a specific activity to foster citizen cooperation. It sponsored a short research effort on the topic in Guatemala by a staff member in December 1988 and March 1989. There has been no report of the results of that research nor any follow-up activity. There do not appear to be any plans for addressing this topic directly during the last year of the project.

#### 5. Corruption and Intimidation of Judges

Obviously the criminal justice system will not be accepted by the public unless the public is convinced that the judges and their staffs are free from corruption and intimidation. Thus the President of the Supreme Court and Harvard have been careful and selective in choosing the judges who participate in the pilot court activity and intend to be vigilant concerning the actions of those judges during the operation of the pilot effort. However, a more institutionalized approach will be required to deal with the large number of persons involved in the criminal justice system over the longer term. Professor Heymann raised the topic with the President of the Supreme Court in May 1989; and, presumably with the latter's agreement, the topic was the object of a short research visit to Guatemala by a member of Harvard's staff in June. The topic was also included on the agenda of the August 1989 seminar. Two U.S. experts sponsored by Harvard gave talks on the topic, and discussions were held. As a result, it was concluded that intimidation did not seem to be a serious problem; but that corruption - and especially corruption of the staff of the courts - was.

Harvard has included the corruption topic under the research activity in its proposal for the last year of the project. However, it has not designed a concrete activity to be implemented although it does have some written suggestions from the expert who made the presentation at the conference. While the short time remaining in the project may preclude any

significant trial of techniques to combat corruption in the system, it would seem to be important that the topic continue to be discussed with the goal of its being made part of the Mission's continuing support for improvements in the court system.

#### 6. Replication of Successful Innovations

The basic rationale of the use of the pilot court approach was to test new techniques and procedures on a limited scale before seeking to implement them throughout the system. As described in sub-part E (1) above, the pilot court activity is now underway in three courts in Guatemala City and in the courts serving the area around the town of Totonicapan; plans are underway to start pilot courts in two areas of the Department of Solola; and consideration is being given to starting such an activity in the Department of Zacapa. Each of these areas presents a perceived difference of circumstance sufficient to justify a separate pilot effort. Despite the fact that the pilot court activities have been underway for only a short time there is pressure to expand their coverage. For instance, the President of the Supreme Court wants to include another tier of first instance courts in Guatemala City, and some members of the judiciary think that the techniques involved in the pilot courts should be taught and their use encouraged apart from whether a particular court has been formally named to be part of the pilot effort. Furthermore, as the project enters its final year, the Mission is concerned that the experience be analyzed and preparations made so that the Mission's bilaterally funded Improved Administration of Justice Project will be able to utilize the experience in its program to improve the judicial system as a whole.

Harvard has responded to these concerns by including a new activity on replication in its proposal for work during the last year of the project. The activity would be one of planning and preparing for replication rather than actually supporting replication. In the words of the proposal, the activity would plan to, "establish the organizational components necessary for replication; train their officials; develop outside support for their operation; and help them make the initial plans for how the replication effort can be carried out." Tentatively those plans include: (i) creating a special office in the Supreme Court to plan and manage the effort with a judge being in charge; ii) training the staff of that office and assisting them to make plans, organize and muster resources; (iii) designing (perhaps together with ICITAP) a training program for judges and court officials in the new techniques and in what is expected of them as managers; and (iv) using incentives to get courts to adopt the new techniques, the certification of courts on a Department-wide basis that the techniques are being used, and the use of monitoring of the courts to assure that the techniques are being

used and that corruption and other malfeasance are being avoided. The proposal has not yet been the subject of detailed discussion with the Mission or the President of the Supreme Court although Harvard has proposed the name of a judge to head the special unit to be created.

There appear to be several major difficulties facing this new responsibility for the project. First, because the pilot activity is so recently undertaken it is doubtful that there will be much experience on which to base judgments as to what should be replicated in time for very concrete planning to be done during the year. Second, the pilot court activity was to include cooperation by the prosecutors of the Ministerio Publico, specially designated members of the police force and some form of public defender system; and yet none of these entities will be under the jurisdiction of the replication office and the system as tentatively conceived. Third, the replication effort necessarily will rely of the work of other units of the judicial system - and especially on the training unit - but those other units do not appear to be involved in the planning of the effort. Fourth, the proposed approach to replication does not seem to contemplate close coordination with the Mission's bilateral Improved Administration of Justice Project. For instance, it does not consider using the National Justice Commission, which is to be supported by that project, to achieve the support which will be needed from the several member agencies of that Commission apart from the Supreme Court; and it does not appear to see the need for a planned relationship between the special replication unit and the planning unit which is to be created and supported by that project. More broadly, the proposed approach does not seem to give the importance to the administrative dimension of the replication effort as would seem to be warranted. Fifth, the costs of replication have not been estimated, and the tentative description of the effort does not seem to contemplate the court's or Harvard's doing so. It is particularly important that this be done since our own very approximate estimation of those costs indicate that replication of the current model could be very expensive. Early testing of whether these resources will be provided would be prudent. (See attachment D for a fuller discussion of the probable cost of replication.)

An alternative to the replication process as now envisaged by Harvard would be to extend throughout the court system the use of training in the techniques being used in the pilot courts and printed forms and manuals and to do so without requiring that the recipient courts be involved in all the aspects with the current pilot court effort. The arguments in favor of this approach are that it would be cheaper and faster, would utilize the obvious advantages of several of the components of the current pilot court activity and would use existing units of the court system rather than foster the creation of a new, separate office.

Consideration of this alternative might well be included in planning the design of the replication component of the project.

F. Strengthening Democracy and the Observance of Human Rights

Both Harvard and the Mission see improving the capacity of the Guatemalan criminal justice system to be an important way of strengthening democracy and the observance of human rights. The Mission sees this result occurring indirectly and over the longer term. Harvard appears to expect more immediate results, and wants to demonstrate a direct connection between its efforts and those results. Harvard also sees itself as having a responsibility not only to provide the technical assistance necessary to carry out the purpose of the project but also to use its reputation and its independence (including from the United States Government) as leverage to encourage Guatemala to "do the right thing." Furthermore, Harvard is unwilling to work in a context in which the Government of Guatemala does not show a conviction to observe human rights and to take reasonable measures to see that those rights are observed by others. The U.S. Ambassador considered that Harvard's presence in Guatemala would encourage the Guatemalan forces supporting democracy and the observance of human rights.

Harvard concluded that it needed to understand better how the Guatemalan system handled crimes with probable political connections and what was the extent of disappearances and political homicides, and that it had to keep in touch with student and other groups which might be the object of intimidation or crimes. While agreeing with the desirability of Harvard's purpose, the Mission was concerned that Harvard might take actions which would place its staff in danger or cause a reaction which would impede the implementation of the whole project. The Mission also was not confident that Harvard was sharing with it all the information which Harvard was collecting or discussing with it the measures which Harvard was considering taking to carry out its efforts on this topic.

Through its many conversations with key Guatemalan persons and particularly with the President of the Supreme Court, Harvard's representatives were able to express opinions in support of the observance of human rights and of the need for the prosecution of crimes which violate those rights regardless of the persons or movements which may be involved in those crimes. They also argued that the creation of a special prosecution unit in the Ministerio Publico would be useful in solving such crimes, and made suggestions on how the problems of the suspected intimidation of judges might be addressed. More controversial have been Harvard's public criticisms of the actions of Guatemalan officials. In July 1988 Professor Heymann sent telegrams and wrote letters to several high level Guatemalan officials and members of the U.S. Congress complaining about the

lack of action on the prosecution of the "white van" case and protesting the abduction of the judge who had been handling that case; and in September 1989 Harvard cancelled a seminar planned for Quetzaltenango on the grounds that Harvard could not continue to do business as usual in the face of the recent disappearances of students and the murder of at least some of them. In both cases Harvard raised the possibility that it would be unwilling to continue to work on the project if corrective actions were not taken. In neither case did Harvard give the Mission advance notice of its intentions to take those actions nor discuss with the Mission the pros and cons of its doing so. Furthermore, Harvard - together with ICITAP and the U.S. Embassy - protested the inclusion of representatives of the military intelligence force in the police units with which they were trying to work or cooperate.

It is, of course, extremely difficult to gauge what effect Harvard's actions have had on improving the observance of human rights. In the case of the inclusion of military officials in the police force the objections made with ICITAP and the U.S. Embassy appear to have reversed the action. In the other cases, no concrete actions appear to have occurred. However, one can not say that Harvard's actions did not have some influence. Surprisingly, those actions have not led to the criticism of Harvard among Guatemalan officials which many would have expected to occur; and this may be an indication that Harvard's stature enables it to voice opinions and take actions which others would be unable to sustain. The more troublesome aspect of Harvard's approach is that by not discussing its thoughts and proposals for action with the Mission before acting Harvard creates more anxiety than may be necessary, and runs the risk of not hearing the counsel of an organization with extensive experience in implementing activities in Guatemala and with an important and legitimate interest in the success of the project being implemented under the Cooperative Agreement.

## G. Reporting, Planning and Evaluation

### 1. Reporting

The Cooperative Agreement called on Harvard to, "prepare quarterly progress reports as well as an end-of-project report, including summaries of the findings and recommendations resulting from the consultative process," and to have its, "field teams" provide briefings to the Mission "before beginning any phase of activity in Guatemala" in order to "appraise the [Mission] of the nature of the specific activities to be undertaken by the field team during the visit in question," and to provide a debriefing to the Mission on the completion of the particular activity.

Harvard has prepared the quarterly reports although they usually were delivered to the Mission several months after the

completion of the reported period. The delayed delivery is the result of Harvard's using the quarterly reports to provide a detailed written record of all the activities which had occurred under the project and as a way of transmitting copies of documents prepared through the project's activities. The reports to some extent discuss the strategies followed by the project and the problems facing the project, but those topics are more extensively treated in letters sent by Professor Heymann to the Ambassador and the Mission Director. Furthermore, the quarterly reports did not consistently set forth the results of all the consultations - especially the individual ones - and of the research activities; and those results were often not given in Professor Heymann's letters.

The degree to which Harvard-sponsored field teams gave arrival and departure briefings to the Mission is not clear. Harvard asserts that it was careful to provide those briefings while Mission personnel indicated that they were not always informed about Harvard's plans. It appears that the Director and Deputy Director of the project were consistent in providing briefings during their visits, but that the other representatives of Harvard were not. There are only a few memoranda in the Mission's files evidencing such briefings; but that, of course, may just indicate that the memoranda were not prepared. The Mission's concern seems to be most acute concerning the individual consultations and the research activities and its desire to have advance understanding of what is to be done so that suggestions can be made on the plans. A related problem for the Mission was the occasional failure of Harvard to seek prior approval for the travel of Harvard sponsored persons to Guatemala or the requesting of such approval very shortly before the planned departures. However, this aspect of the administration of the project appears to have improved during the past year.

## 2. Planning

The Cooperative Agreement called for Harvard to prepare an implementation and financial plan by December 31, 1987 to cover the calendar year 1988. The Mission was to review and approve the plan. Similar yearly plans were to be prepared for each year of the project. Harvard has had difficulty in meeting this requirement. A plan for 1988 was never formalized. One for 1989 and the first six months of 1990 was not submitted to the Mission until March 1989 although the Mission repeatedly had requested its submission. Then early in August the Mission requested that Harvard redo the plan to take into account the developments described in previous parts of this report. A revised plan covering FY 1990 was submitted later that month. It is the basis for the discussion of Harvard's plans in sub-part I below.

The nature of the project - whose focus was evolving throughout its life and which included the technique of generating ideas for consideration - made precise forward planning more difficult than usual. However, the failure of Harvard to produce an implementation plan during the first year and a half of the project's life did raise understandable concern on the part of the Mission as to whether it knew enough about Harvard's thinking to meet its monitoring responsibilities. Now that the project has moved toward one of implementing activities as well as creating and testing ideas, the need for implementation planning is greater. Thus, the current dialogue underway between the Mission and Harvard on the proposed implementation plan is very constructive.

### 3. Evaluation

The Cooperative Agreement calls on Harvard to cooperate with two project evaluations to be carried out by external consultants contracted by the Mission with funds apart from the contract. The first evaluation was to take place 18 months after the beginning of the contract and the second within the final six months of the project. This evaluation is the first one to be conducted.

The Mission requested Harvard's suggestions on how the second evaluation should be conducted, and on what measures of progress should be adopted for use by that evaluation. In June 1989 Harvard submitted a draft design for that evaluation. It covered the pilot court activity in Guatemala City. Harvard intends to submit another draft design to cover the pilot court activities in Totonicapan and Solola. The evaluation design submitted presents a thorough effort to describe the types of results which might be expected from the reforms being tested in the pilot court activities, and makes useful suggestions on how those results be evaluated. However, the design presents several issues which should be addressed. First, it does not make an estimate of what magnitude of changes in the results of the operation of the courts would be significant although several of the anticipated results can be expressed in quantified terms. It leaves such judgments to the evaluators. Harvard asserts that making an estimate of what magnitudes are significant is difficult, but it does not explain how the evaluators are expected to come to a conclusion about that matter. Second, the design is for a one-time evaluation by external experts. It does not include a design for collecting information beforehand (whether as baseline data or for on-going monitoring purposes) nor does it seek to help the court system create a capability to conduct evaluations of its own. Thus it loses an opportunity to help the court system create a very necessary tool for its own improvement. Third, the design, in being exclusively focused on the results of the pilot court activity, leaves out any targets or methods of evaluation relevant to the other activities which

have been supported by the project. Attachment E provides a further discussion of the draft design.

H. Personnel and Organization of the Project and Relationships Among the Parties

1. Personnel and Organization

Attachment F sets forth the personnel associated with the project and the amount of their work-time which is charged to the project by fiscal year. During the first year of the project 28.9 person work-months were charged to the project; in the second year 90.5 work-months were so charged; and Harvard's proposal for the third year is for 116.9 person-months to be charged to the contract. The growth in size of the staff mainly results from the increased activity in training and work with the pilot courts activity and to increased time for research assistants and associates.

The main characteristics of the project's staff and its configuration are:

- The Director and Deputy Director, the key persons for the project, have been with the effort from the beginning; and they will remain throughout its life.
- Several staff members have had extensive experience in prosecution work in the United States. The Director of the Project has been an Assistant U.S. Attorney General in charge of the Criminal Division.
- The Director and the Deputy Director do not speak Spanish. However, the Training Coordinator and the Research Associates do understand and speak Spanish, and they have acted as interpreters for the other members of the staff.
- The only member of the staff with prior, significant experience in Latin America was the original Project Coordinator who left the project during its second year.
- The staff is overwhelmingly based in Cambridge with just one person residing in Guatemala since September 1988.

As one might suspect from the above listed characteristics, the main strength of the staff is its experience in working with the criminal justice system in the United States and its main weakness is its inexperience in working in Latin America. The impact of that weakness has been accentuated by the organization's having only one person residing in Guatemala.

Some observers have expressed the concern that the weakness of inexperience in working in Latin America is made more serious by Harvard's using law students or recent law graduates to conduct research for the project, to have discussions with high level Guatemalans and to staff its Guatemalan office. These observers doubt that those persons can bring much worthwhile experience to bear on the activity; find it inappropriate that such junior people would be expected to deal with senior Guatemalan officials; and are concerned that they lack the judgement to deal with the sensitive topics involved in any project aimed at modifying the criminal justice system of a foreign country. While we understand this concern and would share it in theory, we did not find any evidence that the use of these young people had caused problems. There was no criticism of them by Guatemalans whom we interviewed. Indeed, there was much positive comment concerning the work of Harvard's resident representative. Still, it probably would be better to have more experienced persons involved in the work in Guatemala. That would involve more costs and, thus, fewer research activities. It also would involve rethinking the replacement planned for Harvard's current resident advisor who will be leaving Guatemala in January 1990.

The stationing of one staff member in Guatemala came about principally as a result of the Mission's urging since the Mission found in the first year of the project that it had to take on many administrative tasks for Harvard. However, the scope of responsibilities of the person assigned also includes maintaining liaison for Harvard with all the interested parties in Guatemala, conducting research on various topics of interest and assisting in preparing the design for the pilot court activities and encouraging the taking of the steps necessary to carry them out. Currently, approximately 20% of his time is being spent on administrative matters with the rest being devoted to working with the pilot courts.

While administrative problems still do occur, the stationing of the staff member in Guatemala has improved the operation of the project and been important in getting the pilot court activity underway. Nevertheless, there is more to be done than it is reasonable to expect of one person in Guatemala. The expansion of coverage of the pilot courts effort, the follow-up necessary to see that the effort is in fact implemented effectively, the undertaking of preparations for replication of the new procedures and techniques and the need for more active coordination with other organizations and activities all amount to a large and growing workload. Thus, in addition to the suggested location of the Training Coordinator in Guatemala it would seem to be appropriate that Harvard also add a full-time administrative assistant to the Guatemala office to free more time of the local representative for the various follow-up activities required and to provide coverage for the local office

during the travels of the representative to the rural areas. In our opinion the new positions of Training Coordinator and Staff Assistant contained in the Harvard proposal for FY 1990 might better be located in Guatemala than in Cambridge.

## 2. Relationships Among the Parties

### a. Guatemalan Entities

During the design of the project and during its initial phases Harvard made contact with many persons and organizations in Guatemala. The contacts were generally at the highest levels of the organizations contacted since they were the persons able to make decisions and give guidance and since there was not enough time during the visits by Cambridge-based persons to cultivate a wide selection of persons from each of the organizations contacted. The Fellowship program and the seminars and training activities in Guatemala, the arrival of Harvard's resident representative and the more frequent trips by personnel of the Center in connection with the pilot court effort all have given Harvard added contacts below the highest level. However, because of the personal stature and the predominance of the Project Director in the project's activities, contacts between the Cambridge personnel and the high-level Guatemalans remain crucial to the project. This has the advantage of assuring that the project is guided by a firm and experienced person. It has the disadvantage that all issues of consequence need to be discussed with the Director either by traveling to Cambridge or awaiting the Director's visits to Guatemala.

The following is a short discussion of Harvard's relationship with the Guatemalan organizations which are of importance to work in the criminal justice system.

The Supreme Court and the Organismo Judicial. The Harvard staff at all levels have a close relationship with the President of the Supreme Court. He makes himself available to them both formally and informally. They seek and follow his guidance on all significant steps taken under the project (except for the instances in which the Director of the Center made public complaints concerning the resolve or actions of the Guatemalan authorities as discussed in sub-part F above). The support of the President of the Supreme Court has been crucial in both the design and the implementation of the activities under the project. It is likely to remain so.

Harvard also has developed good working relationships with several of the judges who have participated in the fellowship program and are now part of the pilot court activity. They welcome Harvard's participation in that activity. However, Harvard has not maintained contact with the judges who participated in the fellowship program but are not active in the

pilot court activity. In part this is because of lack of time on the part of the resident representative; and in part it is because the non-participation of the judges is due to one kind of negative factor or other which reduces their utility to the project.

Of greater importance to the project is Harvard's failure to develop good working relationships with other offices of the court system and especially with the chief administrative officer and the director of the training unit. The former was assigned by the President of the Supreme Court to be the Guatemalan counterpart person for the project. However, early in the project Harvard concluded that these officials were either too busy or not interested enough to be of assistance to the project, and decided to rely on its own personnel (and that of the Mission) to carry out the activities. That may have been an inevitable result, but Harvard does not seem to have used its good will with the President of the Supreme Court to remedy the situation. This has contributed to the relatively weak institutionalization of the project's activities to date, and it could be a serious impediment to the replication effort. The problem needs to be addressed.

The Ministerio Publico. The past activities of Harvard with the Ministerio Publico are discussed in sub-parts E(1) and (2) above. The result has been fairly negative. Relationships with the current Attorney General at best are correct, and it is unclear whether he will support effectively the participation of selected prosecutors in the pilot court activity. Furthermore, Harvard has not maintained working contacts with the prosecutors who participated in the fellowship program but are not now assigned to the pilot court activity.

The National Police. Although the project does not work with the police since A.I.D. funds can not be used for that purpose, the cooperation of the police is important to the pilot court activity. Harvard has sought to understand the operation of the police better through individual consultations and research by its staff members, and the resident representative considers one of his priorities to be forging good working relations with the police. Harvard's relationship with the current Deputy Police Commander is good, and his attitude toward cooperation with the pilot court activity seems to be excellent. However, the national police have not yet become active in support of the project.

The Bar Association. Harvard has had contact with the Bar Association since the beginning of the design of the project. However, it has not brought the Bar actively into the project. From Harvard's point of view that is the result of the Bar's having failed to respond to invitations to be more active and of the lesser priority given to working on a new public defenders

system to which the Bar's support would be most relevant. From the point of view of the leaders of the Bar, they have learned of the pilot court activity only in general and indirectly; and they speculate that their past differences with the President of the Supreme Court may be a reason that they have not been consulted more by Harvard. Whatever the explanation of the current situation, it would seem that the project should make a greater effort to involve the Bar. Should the Bar not support the utilization of the new techniques being tried by the pilot court activity (and it might well conclude that the self-interest of its members would not be served by the introduction of the new techniques) their replication would be much more difficult. Probably it would be in the interest of the reform effort that training be made available to the private defenders on how the new techniques work and what is expected of defense counsel under them. The Bar might be useful in such an effort.

The Law Faculties. As with the Bar Association, Harvard has been in contact with the faculties of law since the beginning of the design of the project. However, the law faculties have had even less of a role in the project so far than has the Bar Association. From Harvard's point of view the reasons for this are similar to the case of the Bar Association. However, the resulting situation may be even more negative for the project, since the idea of using student assistants for prosecutors and the proposal of Harvard's consultant for an improved defenders' system (expanded to include private prosecution as well) will require the cooperation of the law schools and their legal service offices.

The National Justice Commission. In designing the project Harvard decided not to try to utilize the National Justice Commission which had been created with support from A.I.D.'s Regional Administration of Justice Project. Harvard thought it would be more effective for it to work individually with those members of the National Justice Commission who were important to the project as it developed--e.g. the President of the Supreme Court, the Attorney General, the Minister of the Interior, the President of the Bar Association and the representatives of the law faculties. That may well have been a correct decision from the point of view of moving forward on its activities more quickly; but it also reinforced the tendency for Harvard to see itself as the coordinator of all the entities relevant to the project, and thus it may have contributed to the lack of progress on the institutionalization of the effort. As the project plans the replication effort Harvard might well consider working with the National Justice Commission which is to be strengthened under the Mission's bilateral Improved Administration of Justice Project.

b. USAID/Guatemala

Both the U.S. Embassy and USAID/Guatemala encouraged Harvard to undertake work in Guatemala, and Harvard consulted with the Mission while preparing its proposal. Both Harvard and the Mission agreed that, although the Cooperative Agreement required the Mission to approve Harvard's implementation plan, the Cooperative Agreement intended to set up a relationship of mutual cooperation among independent organizations not a relationship under which Harvard would be simply an instrument for carrying out a Mission program or Mission decisions. Indeed, the position of the Program Office of the Mission, which initially had responsibility for the activity, was that the Mission had neither the time nor the expertise to design and implement a program with the criminal justice system; and that Harvard should be given full reign to do so. Harvard, for its part, recognized that its efforts were preparatory for a larger project which the Mission would be planning for the future.

The initial understanding served adequately until early 1989. By then its adequacy was being questioned by the Mission because of several conditions and events which had occurred during the project's first year. The more important ones were:

- The Mission found that it had to devote more administrative attention to the project than it had planned, and thus it sought to have Harvard make changes in the manner of its operations the most important of which was the assignment of a resident representative to Guatemala.
- Harvard's strong and active support for the creation of a special prosecution unit in the Ministerio Publico in the face of a lack of movement on the part of the Guatemalans caused concern that the overall project would be involved in conflict arising from the situation facing this particular element.
- The inability of the Mission to provide budget type support in its bilateral project for the operation of the pilot courts and the special prosecution unit caused friction with both Harvard and the U.S. Embassy.
- Harvard's failure to submit an acceptable implementation plan for 1988 raised concern that the project was not well focused.
- A dispute with Harvard over the approach to research on the operations of the Guatemalan police and Harvard's public criticism of the lack of action by Guatemala in the "white van" case raised questions as to whether Harvard and the Mission shared an understanding on how best to proceed with the project under Guatemalan conditions.

- The friendship of Harvard's Project Director and the U.S. Ambassador and Harvard's failure to provide advance notice to (much less discuss its intentions with) the Mission on such actions as the public criticism mentioned above and the assignment of the person to be the resident representative created the fear that Harvard did not really intend to take the Mission's views into account.
  
- Responsibility for the Mission's several activities in support of democratic initiatives was being transferred from the Program Office to the Human Resources Development Office, and the latter office concluded that a tighter strategy and monitoring of the activities was called for (however, the personnel actions to make this intention practical were not taken until February 1989).

From Harvard's point of view it was acting in good faith. From the beginning it had asserted its right to have independence of action; it saw its relationship with the U.S. Ambassador to be highly constructive for both itself and the USG's interests; it believed that it had been responsive to the Mission's concerns in assigning a resident representative to Guatemala and that its staff had been careful to meet with the Mission's personnel whenever they visited Guatemala; and it thought that those visits and the several letters of explanation of its strategy and tactics which were sent by Professor Heymann to the U.S. Ambassador and the Director were even more useful than an implementation plan. Furthermore, Harvard asserts that the Mission personnel did not give it negative comments either in writing in response to those letters or verbally during the several briefings it gave in Guatemala.

After reaching something of a crisis in early 1989, the relationship between Harvard and the Mission has improved. The issues of the special prosecution unit and the lack of financial support under the bilateral project for that unit and the pilot courts have been resolved by time and the actions of others. The administrative performance of Harvard has improved due to increased efforts in both Cambridge and by the resident representative. The level of understanding by the Mission of Harvard's intentions rose as Harvard's resident representative met regularly with Mission personnel, as the new Mission Coordinator for Democratic Initiatives took hold of the portfolio and began to provide written comments to Harvard on its various submissions, as Harvard finally submitted an implementation plan for the Mission's review and as Harvard saw that the Mission was not seeking to deny it the right of independent action.

Still, some concern or anxiety remains from the past; and both sides need to make an extra effort to understand each other's needs and accommodate them if at all possible. Thus it was particularly unfortunate that Harvard recently cancelled the

Quetzaltenango seminar without prior consultation with the Mission. Perhaps it would be useful for the Mission and Harvard to schedule quarterly review meetings to discuss the problems and opportunities facing the project. The purpose would be to discuss what are Harvard's plans for the future rather than to have Harvard describe what had been done in the past. At such meetings the Mission would be expected to give Harvard its opinions and suggestions concerning the plans, and Harvard would be expected to make its best effort to present all the activities which it was considering. Ideally, Harvard and the Mission would also agree beforehand on topics which needed resolution or the preparation of more information to be the basis of discussion.

c. Other Assistance Agencies

The programs in Guatemala of other assistance agencies which are relevant to the project are: ICITAP's training activities for the police, prosecutors and judges; ILANUD's work with the Organismo Judicial in training and on the organization of judicial information--both substantive and administrative; and Florida International University's (FIU) work with a commission of Guatemalan professionals to produce an analysis of the operation of the justice sector. The latter two activities were funded by the AID Regional Administration of Justice Project.

Harvard has had significant contact only with the ICITAP activity. During the early stages of the project cooperation between ICITAP and Harvard was not close. Schedules for training events inadvertently fall into conflict. Differences over the relationships between the police and the investigating judges and the prosecutors were not resolved before the programs made known their views to key Guatemalans. Harvard's plans for studying and utilizing the police were made without input from ICITAP. However, with very strong encouragement from the U.S. Ambassador, coordination has improved. There are still differences of opinion as discussed in sub-part D above. However, Harvard seeks the opinion and suggestions of ICITAP, and uses ICITAP training courses in its activities while ICITAP encourages cooperation by the police with the pilot court activity.

Harvard's lack of connection with the work of FIU was, in part, the result of the Cambridge-based approach of the project and, perhaps, of Harvard's assumption that it must do its own analytical work. However, since most of the problems identified during the early stage of the project as being important to the operation of the criminal justice system had been identified in the FIU assessment, using that assessment and paying attention to the workshop process for discussing the assessment might have enabled Harvard to arrive even more quickly at implementing activities. Closer involvement in the process also might have

led Harvard to be more open to working with the National Justice Commission.

Harvard did not pursue closer relations with the ILANUD activities because it saw them as being directed more at system-wide administrative problems than at reforms of the investigative/sentencing process itself which Harvard had chosen for its focus. However, this lack of contact probably contributed to the failure to achieve mutual support. For instance, Harvard prepared its own written instructions to judges concerning the new techniques rather than trying to adopt them to a draft manual for Justices of the Peace which ILANUD had prepared and which the President of the Supreme Court had held up using until Harvard's input could be obtained. However, in the short run the lack of relations probably was not too important. That is not likely to remain the case as Harvard prepares for replication. Considerations of administrative support and the way in which large-scale training in the new techniques is to be achieved will be increasingly important, and incorporating aspects of ILANUD's work will become increasingly relevant. Thus Harvard will need to pay more attention to what ILANUD and the court system are doing and to finding ways to utilize that work in its planning.

#### I. Plans and Budget for Last Year of the Project

As previously mentioned, Harvard has presented a revised implementation plan and budget for the period July 1989 through June 1990. We understand this to be the budget for the last year of the project as well. It calls for an increase in funding of \$589,260 for a total of \$1,236,804 for that period and for a grant total of \$2,272,060 for the three year project. A breakdown of the third year budget as presented by Harvard is given in Attachment G.

Except for support for a special prosecution unit in the Ministerio Publico, the program set forth in the implementation plan continues in some degree all the activities which have been part of Harvard's on-going project. Work with the pilot courts becomes an even greater focus of the project than in the past, and preparing for replication becomes the next most important activity. Other activities such as the judges' program in Cambridge (which evolved from the fellowship program) and the seminars program in Guatemala serve those activities exclusively. The plan also includes work on devising a new public defense system (to be linked to the pilot court activities somehow) and on techniques to deal with judicial corruption.

Several of the issues raised in the preceding discussions of the elements of the project are relevant to the proposed implementation plan.

- The use of a Cambridge-based judges' program to plan for the expansion of the pilot court activity and its eventual replication throughout the nation seems to be expensive and to suffer from the drawbacks discussed in sub-part C above.
- The need for another consultative meeting so late in the project period is not clear. If one is held it might better take place under the auspices of the National Justice Commission and be focused on the needs for cooperation in the program for replication.
- The seminars in Guatemala program might well include follow-up training in the use of the new techniques as well as discussions of the plans for replication.
- The research component continues to be more wide-ranging than is likely to prove useful for accomplishing the main focus of the project - analyzing the experience of the pilot courts and preparing for the replication effort. Limiting the scope of research might produce more practical results.
- The relationship between the proposed special office for replication and the other offices of the judicial system needs more analysis, and any training effort aimed at replication needs to take into account the relevance of those other offices.
- Although the budget amounts assigned to further work on the defense and prosecution aspects of the pilot court activities are small, the prospects for achieving concrete activities (especially in the defense area) within the next 10 months are so unclear that it might be wise not to spend significant amounts of time on them.
- The expansion of support for Harvard's staff contemplates two additional positions in Cambridge when the greater need is for more presence in Guatemala.
- The amount of funds planned to support the preparation of the replication effort seem low compared to the level of support for additional pilot court activities.

Our attempt to analyze the proposed budget for the last year proved to be inconclusive since the budget did not include the detail and was not organized in a way which permitted a thorough analysis. For a discussion of this problem and other aspects of the proposed program and budget, see Attachment H. For the reasons set forth in that Attachment it would seem advisable for Harvard to resubmit a budget which takes into account the questions and issues raised. Our tentative judgement would be that it is not likely that a substantial increase in the level of

resources will be necessary to meet what the project can reasonably be expected to do over the next eight months.

#### IV MAJOR ACCOMPLISHMENTS

##### A. Relationship with the President of the Supreme Court

As mentioned in various places in the discussion of the project's activities in part III above, Harvard has established a close and positive relationship with the President of the Supreme Court who also is responsible for the operation of the entire court system (the Organismo Judicial). That relationship covers both formal and informal activities, and it includes both the intellectual and the organizational aspects of Harvard's activities. The strong support from the President of the Supreme Court may have led Harvard to assume that it did not need to work at cultivating other levels of the system thereby contributing to some of the administrative problems which have occurred in the operation of the activities. However, it is nearly impossible to over-emphasize the importance of the relationship to the confidence which Harvard has shown in moving forward with the project and to its ability to be well received by the court system. Harvard deserves much credit for having been able to foster that support and to retain it in the face of the difficulties which have beset various aspects of the program. Indeed, the positive impact of Harvard's relationship with the President of the Supreme Court goes beyond the immediate needs of the activities under the project. It also has demonstrated that a US institution can work in the sensitive area of judicial reform without putting itself into conflict with the national leaders of that system--something that many people doubted was possible after the earlier experience which AID-assisted programs in legal matters had had in Latin America. Harvard thereby has produced a more favorable atmosphere for activities such as those to be carried out under the Mission's Improved Administration of Justice Project.

##### B. Achievement of Concrete Activities

The evolution of the project has been described in part II above. The project now has underway activities introducing very concrete changes in the ways in which the trial court level of the Guatemala criminal justice system conducts the gathering and utilization of evidence. These changes are still on a pilot basis, but the project plans to take steps to prepare a program under which many of the changes will be replicated throughout the system. The changes include modifications in the ways in which witnesses and accused persons give their statements, the way in which judges relate to the interested parties and witnesses and the way in which the judges hear the arguments of the parties.

The changes include the greater use of forms and checklists, the introduction of more penetrating interrogation techniques, the use of greater orality in the presentation of testimony and trial arguments and many additional suggestions (e.g. that justices of the peace have greater discretion in the forwarding of cases to the next trial level) which in their cumulative impact can amount to very significant change in the way the system works. No other external institution has taken on this task of focusing on criminal law procedures (not just administration improvements) and on introducing concrete changes (in contrast to discussions about changes).

The introduction of these concrete changes are important both for themselves and for the impression which they give to the court system that, in fact, change is possible. It was not a foregone conclusion that an academic institution such as Harvard would pursue the implementation of concrete changes; indeed, some observers question whether Harvard has the experience that is most appropriate to be the implementor of such a program. However, in the situation in which other assistance activities (including USAID/Guatemala's own bilateral project) had not yet generated actual changes in the aspects of the judicial system on which they were working or planning to work, the fact that Harvard did begin the introduction of concrete changes is noteworthy.

C. Basis for Additional Support by USAID/Guatemala

From the beginning of the project it was expected that the Harvard assisted activity would generate experience which might be the basis for a program to cover the entire judicial system. It appears that the Harvard project will meet that objective. The changes bring tried under the pilot court activity will both complement the administrative improvements to be supported by the USAID/Guatemala bilateral project and offer the experience on which that project could support their expanded use throughout the system. The experience may well offer a basis on which the scope of that bilateral project can be expanded beyond administration matters into criminal law procedures. Thus it will be important that, as work during the last year of the project focuses on preparations for replication, the connection between the procedural changes and the administrative aspects of the work of the court system be given greater attention. However, that need does not detract from the accomplishment of the project's having generated experience for use by the court system and those agencies planning to assist it.

V MAJOR ISSUES OR PROBLEMS FACING THE PROJECT

A. The Pilot Court Activity Faces Serious Difficulties

The problems facing the conduct of the pilot court activities have been discussed in sub-part III E above. The major ones are:

- There have been delays in providing the equipment and physical improvements called for.
- Initial training has not yet been given to all the personnel of the participating courts, and those that have received the initial training express an interest and a need for follow-on assistance and further training.
- The proposal for a pilot activity in the Department of Solola has not yet been approved nor has training and other preparations been completed for its implementation.
- Although two prosecutors just recently were assigned to the pilot court activity in Guatemala City, the cooperation of the Ministerio Publico with the pilot effort remains untested.
- The cooperation of the police with the pilot court activity has not yet got underway.
- The strengthening of the defense aspect of the pilot court activity has not yet been formally planned, much less implemented.
- The extent to which additional pilot court activities will be added to the sites now underway has not yet been decided or planned for.

**Recommendation:** Harvard and USAID/Guatemala should address more completely the implementation problems facing the pilot courts operating in Guatemala City and Totonicapan before undertaking additional pilot court activities. In considering expanding the scope of the pilot court activity to other geographic areas, Harvard should carefully weigh the requirements of implementation against the time remaining in the project for producing concrete experience.

In addition to addressing the above listed problems, the main issue facing the pilot court activity is how to provide the additional support which appears necessary while reducing its cost. This issue involves both the training program and the

individual follow-up support by Harvard's personnel and the court system.

Costs of Training. The costs budgeted for training programs by Harvard appear quite high. Looking at the programs for the pilot court effort in Totonicapan, for example, Harvard has budgeted \$25,906 for initial training and approximately \$16,410 for follow-up training, approximately \$28,497 in personnel costs, \$7,384 in monitoring and assessment, \$12,332 in overhead and \$9,364 in equipment for training related expenses in the coming year. (The personnel, monitoring and assessment and equipment costs were determined by assigning these costs proportionally to the direct training costs at 27 per cent.) The total budgeted for training in Totonicapan is \$99,893. This figure does not include any effort in training that the in-country Harvard representative would do from the Guatemala office or work budgeted under the replication office. In Totonicapan, the court staff consists of 19 employees. Assuming all are trained and the prosecutor participates in the training, the cost per employee for the coming year would be \$4,994. Given that a great amount of training took place last year and that the court personnel interviewed all seem aware of the objectives of the system and their responsibilities in it, the budgeted amount appears excessive. (The same comments can be made for the pilot court effort proposed for Solola, which is budgeted at an even higher amount).

There is also the issue that there is significant turnover in the judicial system and judges are reassigned frequently. Thus, if the training is so heavily oriented to individuals rather than to a system-wide effort, the benefits can be undermined by personnel changes.

Content of Training. The training has focused on improving the investigation of cases. There is no evidence of training which acknowledges the judge's role as a manager. Yet, in two pilot courts the main problems appear to be a result of the judge's inability or unwillingness to act as a manager. Furthermore, there is considerable comment that training programs should be shortened and regionalized to reduce the amount of time officials are taken away from their courts. The court staff who were interviewed in Totonicapan suggested the regionalization of training programs as they felt that they had more common problems with the surrounding departments than with courts in Guatemala City. There is evidence that this regionalization is happening - e.g. the seminar scheduled for Quezaltenango.

Follow-up. Additional training is one type of follow-up; another is the visits made to the courts by Harvard's resident representative and its Cambridge-based personnel. This type of activity must balance the need to avoid being seen as overbearing or as interfering in the operation of the courts with the need to

provide informed advice on practical applications of the reformed procedures--advice which requires observing the operation of the court personnel and being available to make suggestions at the moment the suggestions would be most relevant. It also involves assisting in resolving shortfalls in the support being provided to the pilot courts by the overall court system and by other cooperating organizations. The resident representative of Harvard is very actively engaged in these tasks and is having a positive impact. However, based on the interviews we conducted, we conclude that the court system needs and would welcome more intense follow-up by Harvard. We doubt that will be possible without an increase in Harvard's in-country staff.

Recommendation: Harvard and USAID/Guatemala should review the plans for training and follow-up under the pilot court activity to find more economical ways of providing an even higher level of support.

B. Institutionalization of Project Activities Has Been Weak

Although much progress has been made in designing and getting activities under way, and although Harvard has been conscientious in involving Guatemalan judges in the design work and in the several activities preparatory to implementation, Harvard has taken on itself responsibility for the accomplishment of most of the activities; and Harvard's personnel have taken almost all the actions to move the activities forward. There has been no effective counterpart for the Harvard project apart from the President of the Supreme Court who, obviously, cannot be expected to act as the project's implementing agent. Neither the administrative office of the court system nor its training division have had effective participation in the activities under the project, and Harvard has chosen not to try to involve the National Justice Commission. As a result, the activities under the project are overwhelmingly dependent on the actions of Harvard.

The up-coming effort to design a replication component for the project presumably will include steps to strengthen institutional ways to assure that the experience of the pilot court activity is utilized. However, it would seem preferable not to wait for the replication effort to be implemented to engage Guatemalan organizations more intimately in the conduct of the project--including the pilot court activity itself. This may require reconsideration of who should be the official counterpart for Harvard's activity. A role for the National Justice Commission might be considered.

Recommendation: Even in advance of the design of the replication component, Harvard and USAID/Guatemala should prepare a strategy for increasing the role of Guatemalan organizations in the execution of the project. Particular

attention should be paid to the possible use of the training unit of the Supreme Court and the National Justice Commission. The need for further institutionalization of the activities and for an effective counterpart for the Harvard activity should be a matter of discussion with the President of the Supreme Court.

C. Harvard's Relationships with Several Guatemalan Entities and Other Assistance Organizations Need Strengthening

Sub-part III H (2) above provides a discussion of Harvard's relationship with the various entities involved in, or particularly useful to, the efforts being supported by the project. To date, Harvard has spent a great deal of time and effort in seeking to involve the Ministerio Publico and the national police in the project. It has been less persistent in trying to involve the Bar Association and the law school faculties, and it has had little contact with ILANUD or the Regional Administration of Justice Project since the design stage of the project. Harvard's closest contact and highest degree of coordination has been with the ICITAP program which already was underway in Guatemala when the Harvard activities began. Although greater contact and coordination with these various organizations would have been desirable, it probably was not crucial as Harvard had its hands full getting underway the activities with the court system. However, now that those activities are underway, the project needs the greater involvement of those organizations to bring about important complementary actions--e.g. adding a defense function and designing a replication system which takes account of the administrative improvement and other plans of those organizations. Also in designing its own bilateral project USAID/Guatemala included a plan to use that project to provide coordination to the several activities (including that of Harvard) which were working with the criminal justice sector in Guatemala. However, no mechanism (apart from suggestions and recommendations by the US Ambassador) effectively has been put in place to provide that coordination. Such a mechanism is needed.

Recommendation: Harvard should place increasing importance on obtaining the involvement in the project of organizations apart from the court system, and USAID/Guatemala should seek to create a system for coordinating the actions in Guatemala of the various organizations receiving funding from A.I.D. to work on improvements in the criminal justice sector.

The reliance of the replication effort on training makes more acute the need to include the Supreme Court's training unit in the project's activities as indicated in parts A and B above. It also suggests that a greater effort should be made to involve the law faculties in the project. The preparation of the lawyers in the justice system clearly affects how well the system works.

In Guatemala it is generally agreed that the preparation in the law schools for practical court-related work is inadequate. Lawyers do not have any training in oral proceedings, for example, so if the idea of institutionalizing oral proceedings is to move forward, there will be a need to change the curriculum at the law school level. Furthermore, since the officials working in the court system are law school students, the law schools represent a much more immediate way to effect improvements in the justice system than they would in the United States. As an academic institution and a law school it would appear to be natural for Harvard to work with the Guatemalan law schools.

D. Greater Focus on Activities in Guatemala Is Required

During the first two years of the project the organization of Harvard's assistance was heavily focused on activities in Cambridge. (See discussion in sub-part III H (i) above.) Several of the issues raised in this evaluation report (e.g. lack of institutionalization of activities, the need for increased follow-up support for personnel for the pilot courts and the need for greater involvement of organizations apart from the court system itself) probably were made more serious by reason of the structure of the project. More importantly, in Harvard's proposal for the last year of the project, the structure of the project and its budget do not seem to reflect the increasing focus of the project on implementing activities in Guatemala. Funds are included for two additional positions, but both are to be located in Cambridge. Of course, considerable travel to Guatemala is provided in the proposed plan. However, it seems very doubtful that repeated trips will be an adequate substitute for in-country presence when implementation of activities is the principal focus of the project. This will be even more important if the pilot activity is expanded to other areas as well.

Recommendation: Harvard and USAID/Guatemala should review Harvard's proposal for work during the last year of the project from the point of view of whether the proposal provides sufficient support in Guatemala to accomplish the implementation of the pilot court activity and the preparation of the replication effort. In that review, they should consider the possibility of expanding Harvard's Guatemala office to include the Staff Assistant and Training Coordinator positions currently proposed to be added to the Cambridge-based staff. They also should consider how to assure that the Pilot Court Project Director will spend substantially more time in Guatemala.

E. The Planning for Replication Needs to Pay Attention to Costs, Administrative Aspects and Compatibility with USAID/Guatemala's Improved Administration of Justice Project

One of the two major foci of the project during its final year is to be planning for replication of the changes being introduced and tested in the pilot court activity. The status of work on the replication component of the project is discussed in sub-part III E (6) above. That discussion points out several important issues and difficulties facing the component. Among them are that neither Harvard nor the court system has made any estimation of the costs of introducing the new procedures throughout the system; and that, in planning to create a special unit in the court system to handle the replication activity, Harvard's proposal does not seem to be taking into account the role of the existing units of the court system's administrative structure nor planning to merge its effort with that under the overall administrative improvement program to be supported by the bilateral project of USAID/Guatemala. Our very tentative estimate is that the cost of the replication will be high, and that the willingness and ability of the Guatemalan organizations involved to meet those costs needs to be tested soon. We also are concerned that the establishment of a separate replication unit will lead to conflict with the other activities being funded by A.I.D. in the sector. For instance, where in the court system should there be a capacity to analyze problems and to plan programs to meet them - in the replication unit or in the planning unit to be created under the bilateral project?

Recommendation: As part of the early stages of its planning for the replicating activity, Harvard should assist the court system in making an estimate of the cost of replication of the new procedures and techniques; and, together with USAID/Guatemala and ILANUD, it should discuss with the Supreme Court, and perhaps the National Justice Commission, what approach to replication would be most compatible with the current and planned activities to improve the overall performance of the criminal justice sector and its institutions.

F. Further Program Concentration and Concreteness of Targets Would be Useful

The Harvard approach has basically been one of designing a program through bringing Guatemalans to Harvard to discuss different approaches. The components of the project have changed often. For example, within the past six months, the special prosecution unit and the victim-witness activity have been dropped and other activities such as having law school students work with the prosecutors have been added. While the flexibility of the project is important in allowing the project to take advantage of opportunities as they appear, as Harvard is in its

third and final year the introduction of new areas of work could be a defect rather than an advantage since new activities will not have time to mature before the project is completed.

Further, the Harvard project has not postulated any method by which the success of the overall project can be measured. For example, if the replication effort is the key measurement of the success of the program, there should be an objective that is reasonable to achieve, e.g. have the elements of the pilot courts been implemented in two other courts? By establishing such objectives, other elements critical to the replication effort will need to be discussed - for example, how will the effort be funded, who will do the training, are there sufficient funds for necessary travel expenses?

Recommendation: Harvard should more clearly state the project's objectives for the coming year, and articulate indicators by which they can be measured as having been achieved.

The Cooperative Agreement does not require any "deliverables" either to the Mission or for the Guatemalan court system. To date, Harvard has turned out written proposals for the pilot court activities in Guatemala City, Totonicapan and Solola. It also has produced the six forms and guides that are being designed and introduced into these pilot courts. Preparing for the time that Harvard will no longer be a presence in Guatemala (now thought to be mid 1990), Harvard should develop more "deliverables" that can be incorporated into the Guatemalan system. For example, the Harvard project has made much of the need to improve the investigation of crimes, and has developed forms for analyzing crime scenes. The forms have been extremely well-received, and go a long way toward standardizing procedures throughout the justice system. Additional forms could be developed and distributed. A simple manual with guidelines and forms could be developed based on the experience of the pilot courts and made available to all courts without having to wait for a full pilot court effort to reach them.

Recommendation: Harvard should establish a set of project "deliverables" including items such as manuals and forms based on the pilot court experience that can be introduced system wide.

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\* In its comments on the draft of this report Harvard stated that it intended to develop and deliver these types of outputs before the end of the project.

G. Working Relations Between Harvard and USAID/Guatemala Need Further Attention

The problems that have arisen between Harvard and USAID/Guatemala in the course of the project to date have been mentioned in sub-part III H (2) above. They have not been fundamentally troublesome for the conduct of the project. However, they have caused residual concern on the part of the personnel of the Mission. In our judgement the problems need not have arisen, and similar problems can be avoided in the future with effort on the part of both Harvard and the Mission. Taking actions to avoid such problems will be particularly important as the Mission's bilateral project gets underway; as pre-election tension mounts in Guatemala; and as the project becomes more widely known in Guatemala and thus more likely to attract politically motivated criticism. The Mission will have to accept that Harvard is entitled to express its views on major developments in Guatemala and especially on developments in the areas in which it is working, and that those developments may become so troublesome that Harvard will not be able to continue its activities. Harvard will have to accept that the Mission is entitled to have the opportunity of knowing beforehand what Harvard plans to do and of being able to provide comment and counsel to Harvard before steps are taken which could have significant effects on the project. As the Mission gives respect to Harvard's ability to devise useful improvements in justice systems, so Harvard should give respect to the Mission's judgments based on its long experience in managing development programs in the Guatemalan context.

Of equal importance is the need to achieve an even more collaborative approach to the conduct of the project during its last year. The greater focus of the Harvard project on replication and the Mission's increasing involvement with the justice system as the bilateral project gets underway, give an opportunity to achieve mutual reinforcement of purposes if there is full collaboration. Thus, it would be advisable to create mechanisms for fostering fuller collaboration. Our suggestions would be:

- (i) that there be quarterly review sessions in Guatemala between Harvard's key personnel and the Mission concerning Harvard's plans at which the Mission would be expected to provide Harvard with substantive comments on those plans;
- (ii) that Harvard make it a practice to provide the Mission with early written reports on all activities (including individual research activities) which take place under the project, and that the reports cover the substance of what was decided or reported.

Recommendation: Harvard and USAID/Guatemala should discuss what are their respective expectations of each other concerning the operation of the project during its final year and how more complete collaboration can be achieved.

**Attachment A**

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**Amended Illustrative Financial Planning**

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PIO/T No. 520-0376-3-70068

AMENDED ILLUSTRATIVE FINANCIAL PLAN  
 (For a Three - Year Program in U.S.Dollars)

ITEM	PREVIOUS BUDGET	INCREASE	NEW BUDGET
A. <u>Program Administration</u>			
1. Personnel Salaries and Benefits	425,000	102,119	527,119
a. Harvard University's Law School			
- Project Director (40% of time)			
- Senior Project Associate (15% of time)			
- Student Research Assistants (1,500 hours)			
- Guatemala in-country Director (full time). Includes fringe benefits on salary, post differential, insurance, housing allowance, office rental (allocated toward combined office/home rental agreement)			
2. Travel (International)	30,000	9,200	39,200
3. In-country operating costs (Office equipment, furniture, communications, travel, in-office expenses, meetings/conferences, maintenance services, transportation or taxis)	25,000	57,289	82,289

	I	NIC	BU	PT	NCI	SE	W	OT
<b>3. <u>Program Activities</u></b>								
1. Consultation			520,000				520,000	
a. Regular Meetings								
b. Individual Research and consultation								
c. Consultation visits								
2. Fellowship/Training			190,000				190,000	
a. Fellowships								
b. Seminars								
4. <u>Overhead</u>			295,000			31,392	326,392	
<b>GRAND TOTAL</b>			<u>1,485,000</u>			<u>200,000</u>	<u>1,685,000</u>	
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**Attachment B**

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**Scope of Work**



ATTACHMENT IBackground

Prior to the election and inauguration in 1986 of the current Guatemalan Administration, Guatemala suffered years of military dictatorships and repression, including widespread political motivated homicides and disappearances. The current Guatemalan Constitution, ratified in 1985, provides a full range of civil and political rights to assure protection against abuse of power, political repression and vigilantism. However, fully operationalizing those protections and establishing a strong rule of law requires the development of a greater capacity in Guatemala's judicial system.

In response to an unsolicited proposal from the Harvard Law School (HLS), the USAID signed a Cooperative Agreement on July 1, 1987 which provided the HLS with funds to assist in strengthening the Guatemalan Judiciary.

ARTICLE I -- TITLE

EVALUATION OF THE HARVARD LAW SCHOOL PROGRAM (PROJECT 520-0376).

ARTICLE II -- OBJECTIVE

The purpose of this Work Order is to provide to AID and Harvard Law School (HLS) a formative evaluation of HLS's work to date.

ARTICLE III -- STATEMENT OF WORK

The pivotal questions, which the USAID wants answered by the Contractor, are:

1. Given the unusual flexibility that HLS has had in designing its program, has it chosen activities which are both high priority and, in the Guatemalan context, feasible for successful replication? The HLS program has evolved into experimental or pilot activities in areas that HLS has determined to be critical to successful reform of the Guatemalan Judicial System. The evaluation team should carefully review these activities and document its judgement concerning (a) their priority and replicability given the human and financial resources (both from the USAID and donors) that can be expected to be available to the

Judicial System, and (b) the level of acceptance expected from those who would be involved in implementing the reforms (i.e., should resistance be expected?). Is HLS adequately documenting its activities so as to be able to describe to those who will be charged with extending the activities selected for replication what worked, what did not work and why?

2. Does the HLS program complement and reinforce other ongoing Administration of Justice (AOJ) activities? A.I.D. has been active in Guatemala since 1986 in AOJ activities, primarily through funding of the (ILANUD) program. A large bilateral effort, which would be the vehicle for replicating and spreading what HLS successfully designs and pilots, has been authorized and will begin activities o/a August of 1989. Other USG activities include funding of American Bar Association seminars in Guatemalan, USIS sponsored Invitational Visitor Program activities and training provided by the U.S. Department of Justice's ICITAP program. Also, other donors have provided some assistance.

3. How do the key personnel in the Guatemalan judicial system and the Bar Association view the HLS Program? How do they view the priority and replicability of Harvard's activities? Does good communications exist? Do they believe that their opinions have received adequate consideration in the design of the HLS program and its activities. How do they characterize the quality and quantity of HLS inputs? What do they see as the Program's successes and failures?

4. Does the HLS workplan for March 1989 through June 1990 appear feasible? Will there be adequate time and resources to accomplish what is proposed?

5. How do the activities actually implemented or contained in its March 1989 workplan compare with the Program Description contained in its Cooperative Agreement with A.I.D.? A point by point comparison should be presented, including the results or impact to date of activities actually implemented. If the contractor determines that HLS does not intend to comply with any activities prescribed in the Program Description, the contractor should provide an opinion concerning whether or not (a) the activity currently appears critical to the purpose of the Agreement and (b) is it of lesser or greater importance to

- 3 -

... purpose than activities which HLS is or is planning to pursue. Also, the contractor should describe (a) the extent to which participants in the HLS Fellowship Program have in fact shared the experience and ideas acquired in the Program with their colleagues, and (b) research papers produced by HLS staff or Guatemalan Fellows have had an acceptable level of distribution to interested parties.

6. HLS has chosen to manage this Program from Cambridge. Has centralized management proven adequate or is it a constraint to implementation?

Attachment C

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List of Persons Interviewed

LIST OF PERSONS INTERVIEWED

Department of State/Washington

Mr. James Michel, former US Ambassador to Guatemala

Ms. Fay Armstrong, Office of Policy Planning & Coordination, ARA

Agency for International Development/Washington

Ms. Norma J. Parker, Director, Office of Democratic Initiatives  
Bureau for Latin America and the Caribbean

Ms. Deborah McFarland, Deputy Director, Office of Democratic  
Initiatives

Regional Administration of Justice Office, USAID/Costa Rica

Mr. Carl Cira, Office Director (by telephone)

Mr. Luis Salas, Advisor from Florida International University (by  
telephone)

USAID Mission to Guatemala

Mr. Anthony Caterucci, Mission Director

Ms. Liliana Ayalde, Director, Office of Human Resources  
Development

Mr. Richard Martin, Deputy Director, Office of Human Resources  
Development

Mr. Ronald Witherall, Coordinator for Democratic Initiatives  
Office of human Resources Development

Licda. Carmen Aguilera, Project Officer for Harvard's  
Cooperative Agreement

Mr. Thomas Kellerman, Deputy Program Officer

ICITAP, US Department of Justice

Mr. Christopher Kriskovich, Director of the Program

Ms. Debbie Maxwell, Deputy Director of the Program

Mr. Yochelson, Chief of Planning and Evaluation

Center for Criminal Justice, Harvard Law School

Professor Philip Heymann, Director

Dr. Daniel McGillis, Deputy Director

Dr. James Rowles, former Project Coordinator

Ms. Carmen Ortiz, Pilot Court Program Director and Training  
Coordinator

Mr. Morris Panner, Guatemala Office Director

Professor Richard Wilson, Consultant

Members of the Court System of Guatemala

Dr. Edmundo Vasquez, President of the Supreme Court

Licda. Leticia Rodriguez, Secretary of the President of the Court  
System

Sra. Sandra Ulate, Chief of the Training Unit of the Court System

Sra. Josefina Cortiño, Chief, CENELAX

Lic. Alberto Cordon y Cordon, Consultant to CENELAX

Lic. Napoleon Gutierrez, Sentencing Judge in Guatemala City

Lic. Jose Maria Carrera, Sentencing Judge in Guatemala City

Lic. Leopoldo Guerra Juarez, Sentencing Judge in Guatemala City

Licda. Ana Maria Crozco, Investigating Judge in Guatemala City

Lic. Carlos Alberto Villatoro Schunimann, Investigating Judge in  
Guatemala City

Licda. Isabel Prem de Mijangos, Investigating Judge in Guatemala  
City

Lic. Hector Hugo Perez Aguilera, Investigating Judge in Guatemala  
City

Lic. Roberto Lemus Garza, Investing and Sentencing Judge in  
Totonicapan

Licda. Yolanda Perez Ruiz, Investigating and Sentencing Judge in  
Solola

Lic. David Moya, Justice of the Peace in Guatemala City

Lic. Oseas Colop Vicenta, Justice of the Peace in Totonicapan

Several officials of the Investigating and Sentencing Courts in Guatemala City and in Totonicapan.

Members of the Ministerio Publico

Lic. Rodolfo Cardenas Villagran, Attorney General

Lic. Mario Guillermo Ruiz Wong, Prosecutor in Guatemala City

Lic. Luis Fernando Argueta Bone, Prosecutor in Guatemala City

Lic. Miguel Enrique Solis Rojas, Prosecutor in Guatemala City

Licda. Catalina Katz Ungar, Prosecutor in Guatemala City

Licda. Eugenia Sandoval, Prosecutor in Totonicapan

Members of the National Police

Col. Mario Cifuentes, Sub-Director

Private Lawyers

Lic. Jorge Rolando Barrios, President of the Guatemalan Bar Association

Lic. Johnny Swank, Former President of the Guatemalan Bar Association

Lic. Herbert Valencia

Law Schools

Licda. Carmen Maria G. de Colmenares, Dean of the Faculty of Law of University Rafael Landivar

Dr. Cipriano Soto, Dean of the Faculty of Law of San Carlos University

**Attachment D**

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**Estimation of Costs of Replication**



## ESTIMATION OF COSTS OF REPLICATION

The ultimate measure of the success of the pilot court activity will be the extent to which the procedures and techniques that are found to be successful are replicated in courts throughout Guatemala. Key to that replication effort will be its cost to the justice system. At this point only the general types of start-up and ongoing costs of the activities to be replicated can be identified. Some of the funding requirements, such as the need for additional training and planning personnel, may be addressed by the bilateral Improved Administration of Justice Project.

According to the Gaceta de los Tribunales of June 1988 the number of first instance courts which would be included in the replication effort are as follows:

Courts of Sentencing	
Guatemala City	5
Courts of Investigation	
Guatemala City	7
Provinces (combined courts of investigation and sentencing)	35
Justices of the Peace	
Guatemala City	13
Provinces	<u>113</u>
Total	173

The major cost elements for replication of the pilot court effort identified to date are listed in the following discussion. Some are recurring while others are one-time costs. Decisions will have to be made as to staging incurring the expenses, but this list gives an idea of the overall level of the expenditures. These are very tentative estimates. The data needed for making estimates for several of the categories was not readily available, and we did not have the time to collect it. Harvard and the court system should conduct a more thorough analysis of the prospective costs of replication.

#### 1. Training Programs

The costs of training programs is difficult to determine. For the Solola pilot activity Harvard has budgeted approximately \$86,297 which includes a judges' program at Harvard, initial training and follow-up in Guatemala and a seminar under the

replication effort. Clearly this level of expenditure cannot be sustained for each Department. The training must turn to a "train the trainer" technique in which key Guatemalan personnel are trained and then expected to train the remainder of the personnel involved. At a minimum, one full time position in the national training office would be required to work on the training effort.

Although not mentioned in Harvard's implementation plan, it would appear inevitable that procedural manuals will be prepared and distributed to the courts. These manuals would outline procedures to be followed in examining the scene of the crime, in taking statements from witnesses and in using the model forms etc. The cost for the preparation and distribution of such manuals will have to be calculated.

-	1 staff analyst position at 75 percent of the salary of a judge of first instance for two years	\$11,000
-	Production and distribution of procedural manuals	<u>\$50,000</u>
	Subtotal (over two years)	\$61,000

## 2. National Administrative Office Personnel

The Harvard project has discussed the creation of a special replication office. Presumably the office would have a secretary and perhaps a planner/analyst position. Discussion will have to be held as to how this office and these positions would relate to the proposed planning office under the bilateral agreement. Furthermore, the Harvard plan talks about a certification process in which the courts would be periodically checked to see if they were following the guidelines of the pilot effort. At least one additional professional staff person would have to be added to the national administrative office to carry out that work.

To support the above personnel, office equipment will be needed. Some special equipment such as video camera equipment and VCR's will be required in order to conduct training programs.

-	Replication Office Director at 100% of first instance judge (2 years)	\$15,000
-	Staff Analyst (Planning) at 75% of first instance judge (2 years)	\$11,000
-	Staff Analyst (Certification) at 75% of first instance judge (2 years)	\$11,000
-	Office Secretary (2 years)	\$9,000
-	Office Equipment	\$10,000
-	Special Equipment (VCR, Tape Recorders etc)	<u>\$10,000</u>
-	Subtotal (over two years)	\$66,000

3. Production of Forms

The pilot court effort has produced six forms and guidelines for use primarily in conducting investigations. These forms will have to be reproduced and distributed nationwide on an ongoing basis. Several officials within the pilot court have stated that frequently the supply of forms has run out.

-	Development of standardized forms	\$35,000
-	Reproduction and distribution of standardized forms	<u>\$20,000</u>
	Subtotal (one time)	\$55,000

4. Special Equipment

The pilot courts are being outfitted with cameras, tape recorders and typewriters as necessary. The start-up cost will be the cost of this equipment. The ongoing costs of ribbons for the typewriters, particularly if electric typewriters are used, cassettes and film for the cameras as well as repair and maintenance of this equipment will be substantial.

Cameras

-	346 polaroid type cameras (at two per court) at \$60 per camera	\$20,760
-	7,000 rolls of film (at 20 rolls per camera) at \$8 per roll	<u>\$56,000</u>
-	Subtotal	\$76,760

Tape Recorders

-	173 tape recorders at \$40 per recorder	\$6,920
-	1,730 cassettes at \$1 per cassette	<u>\$1,730</u>
-	Subtotal	\$8,650

Typewriters

-	519 typewriters (at three per court) at \$2,000 per typewriter	\$1,038,000
-	2,595 ribbons (at five ribbons per court) at \$2 per ribbon	<u>\$5,190</u>
-	Subtotal (one time)	\$1,043,190

5. Physical Improvements

Much has been made of the creation of cubicles to provide privacy while court officials are interviewing witnesses and defendants. If such changes are to be duplicated in all courts the costs will be substantial. Furthermore, the introduction of oral testimony will have serious implications for the design of

the court facilities. The present court layouts in both the city and the rural areas do not include a "courtroom" as is the custom in the United States. If oral hearings are to be integrated into the system, modifications will have to be made in existing courts, and new courts will have to be designed differently. The cost of conversion to allow for oral testimony and hearings can be expected to be substantial as the courtrooms will also have to be outfitted with the appropriate equipment including benches, chairs, sound systems, etc.

- Modifications in existing courts  
to build cubicles @ \$2,000 per court \$346,000
- Construction of courtrooms  
in sentencing courts at  
\$15,000 per courtroom for five courts \$75,000
- Subtotal (one time) \$421,000

6. Travel Costs

Increased travel by court employees, police and prosecutors is key to improved investigations and to expanding the presence of the justice system in the rural areas. A common complaint among justice system employees is that there are no internal methods of transportation such as cars nor is per diem available to reimburse personnel for out-of-pocket expenses. As a consequence, necessary travel often does not take place. Funds destined for travel expenses will have to be increased substantially for the system to be effective. Travel funds will be essential for circuit riding judges, prosecutors to visit the crime scene and police to conduct detailed investigations.

- 8,650 days per diem (at 50 days per court)
- at \$10 per day \$86,650
- Subtotal (per year) \$86,650

7. Creating New Courts

It is debatable whether this cost category should be included in the cost of replication. On the one hand, one might conclude that it should be excluded since the policy to create additional justice of the peace courts and to separate investigating and sentencing functions and create the additional courts necessary to do so were policies adopted prior to the undertaking of the pilot court activity and will go forward whether or not the new procedure and techniques of the pilot court activity are replicated. On the other hand, the pilot court activity has adopted these two policies as part of its package, and assumes that they will be carried forward. On balance it seems that the cost of the policies should be included

in order to understand what are the financial implications for the court system of the reform effort now being undertaken. Unfortunately, we do not have the data on which to base a comprehensive analysis or the time to collect the data which would have permitted that analysis. The result is that we have estimated only some of the costs.

A new justice of the peace court is to be created in the pilot court program in Totonicapan. The plan for the Solola pilot court activity also calls for the creation of a new justice of the peace court. The court system conducted an earlier analysis to determine how many new justice of the peace courts will be needed and what are the criteria for creating them. The cost of creating new justice of the peace courts is substantial as it includes personnel, capital and operating costs.

The Supreme Court has adopted as a goal the creation of separate instruction and sentencing courts. It would seem necessary to create these separate courts if the concept of oral proceedings at the sentencing level is to be replicated nationwide. The cost for the staff for new sentencing courts in 21 Departments is estimated below. Other costs, such as purchasing equipment, are not included.

21 judges at \$7,500 (per year)	\$157,500
21 secretaries at \$5,000 (per year)	\$105,000
84 officials at \$4,000 (per year)	<u>\$336,000</u>
Subtotal (per year)	\$598,500

8. Creation of Alquacil Positions in Rural Areas

The pilot court effort in Totonicapan includes the creation of alquacil positions in rural areas. The court system will have to absorb the cost of these part time, non-salaried positions which are currently budgeted at 125 quetzales per month.

Creation of 173 <u>alquacil</u> positions at \$333 per year	<u>\$57,609</u>
Subtotal (per year)	\$57,609

9. Use of Law School Students to Assist Prosecutors

Although this plan has not been implemented, Harvard has proposed to experiment with using law school students to assist the prosecutors. Historically, students have only assisted the defense. The Attorney General has agreed with this idea, and on his own has contacted the four law schools in Guatemala. There will be some minimal costs associated with this program.

Subtotal (per year)	\$10,000
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10. Defense Program

Harvard has proposed a new system of defense which would take the form of a professional public defenders office backed up by law school students. The cost of the lawyers who serve as defenders will have to be met.

7 lawyers to serve as defenders in Guatemala at 75 percent of a first instance judge	<u>\$38,500</u>
Subtotal (per year)	\$38,500

11. Additional Fiscales

A basic concept of the program is that the prosecutor will play a greater role in the conduct of criminal cases. If this concept is to succeed additional prosecutors will have to be hired. For example, in Totonicapan there is only one prosecutor for three courts, and another justice of the peace and a sentencia court are about to be created.

10 additional lawyers to serve as prosecutors at 75 percent of a first instance judge	<u>\$55,000</u>
Subtotal (per year)	\$55,000

12. Summary of Estimated Costs

<u>Start-up Costs</u>	\$1,466,190
Training Programs	\$61,000
National Administrative Office Personnel	\$66,000
Forms Creation and Distribution	\$55,000
Special Equipment	\$1,043,190
Physical Improvements	\$421,000
<u>Recurring Costs (per year)</u>	\$846,259
Travel Costs	\$86,650
New Courts	\$598,500
Create <u>Alquacil</u> Positions	\$57,609
Law School Students to Assist Prosecutors	\$10,000
Defense Program	\$38,500
Additional prosecutors	\$55,000
Total	<u>\$2,312,447</u>

To some extent the total overstates the cost since all the new positions will not be needed immediately. However, the total probably more seriously underestimates the cost since training and administrative costs will continue beyond the initial replication period and since the categories of new courts and of the new prosecutors and defense systems do not include all the costs necessary to support the efforts with those aspects.

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**Attachment E**

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**Comments of Draft Evaluation Design**



## COMMENTS OF THE DRAFT EVALUATION DESIGN

Harvard Law School has proposed a design for the evaluation of the pilot court activity. The proposal was included in a letter of June 26, 1989 to Mr. Anthony Causerucci from Dr. McGillis, Deputy Director of the Center for Criminal Justice. In that letter the objectives of the evaluation are stated to be the assessment of whether the quality of case investigation has been improved through the use of the various reforms noted and of the impact of oral proceedings at the sentencing stage on the quality of the outcome.

The design notes that it will be difficult to quantify the changes in the pilot courts and therefore evaluate the effects of the changes. It suggests a system in which three experts would review the files and rate the effort based on 22 elements for the investigation phase with a suspect, 17 elements for the cases in which there are no suspects and nine elements for sentencing courts. The evaluation proposed is to include two major forms of research: (i) a comparison of case files generated by the pilot courts and by the traditional courts, and (ii) a comparison of case processing statistics from the pilot courts and from the traditional courts. The design proposes to select samples of cases and then have external evaluators read them. The overall sample is to be 52 cases including 24 cases with suspects and 16 cases which include the sentencing stage. The four statistical comparisons between the pilot court and traditional court cases are to be:

- monthly conviction rates,
- number of sobre averiguar cases (principally those without suspects) that pass on to sentencing courts,
- comparison of the total number of concentrated evidentiary hearings and oral arguments in one month, and
- average time to process criminal cases.

The following comments and suggestions are made about the evaluation method proposed:

1. The evaluation proposal is just for the pilot court effort in Guatemala City. An evaluation proposal also is to be made for the other pilot courts. One also might be prepared for the other aspects of the Harvard project. For example, are the prosecutors able to handle more cases in the pilot courts than in the other courts? Who benefited from the research? Was the research disseminated nationwide? etc.

2. The elements of the qualitative evaluation outlined potentially could be quite helpful in getting feedback on where problem areas are in the pilot courts activity. That activity was to include an evaluation of the pilot courts 90 days after each pilot court commenced. An evaluation conducted internally on a smaller scale prior to the larger evaluation outlined could provide such feedback. In that vein Harvard's resident representative developed a questionnaire for the participants in the model courts in Guatemala City which asks many of the qualitative questions proposed in the formal evaluation proposal. This stimulation of feedback could be used systematically.
3. Because the review of the sample of cases is primarily a qualitative review, it is doubtful that the sample size needs to be so large. Because the evaluation team needs to study each file in depth as opposed to just getting data, a smaller sample of cases might be reviewed to determine if there is a wide variation or not before embarking on analyzing the full sample.
4. The idea of including a Costa Rican judge is an excellent one since the Costa Rican system already has oral proceedings.
5. The measurement of the number of sobre averiguar cases that pass on to sentencing courts does not particularly relate to the pilot effort since most sobre averigu. cases are now sent to two special justice of the peace courts.
6. The statistical analysis touches on the main issues except that there is no measurement of the status of defendants, i.e. whether they remain in custody or not. Harvard has suggested an activity with a defense element so it would be wise to begin to analyze characteristics related to the defense. For example, if there are private accusers is the defendant more likely to be convicted? Does the presence of a defense lawyer mean that it is more likely that a defendant is in custody?
7. Presuming that the evaluation methodology confirms that the pilot court techniques are appropriate for the Guatemalan system, there should be an analysis of which elements of the pilot court effort are to be duplicated nationwide. To do that it will be necessary to try to differentiate the impact of the pilot court elements, with or without modification.

Attachment F

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Staffing of Guatemala-Harvard Criminal Justice Project

ATTACHMENT B: REVISED LEVEL OF EFFORT FOR LIFE OF PROJECT

GUATEMALA-HARVARD CRIMINAL JUSTICE PROJECT

Cooperative Agreement No. 320-0376-08-0033-08

## LEVEL OF EFFORT BY FISCAL YEAR

1. FISCAL YEAR 1988:		
Project Role	Name	Total Work-Months
a. Project Director *	Philip Heymann	1.3
b. Project Coordinator	James Roules	7.6
c. Deputy Dir./Sr. Proj.Assoc.	Daniel McGillis	5.0
e. Exec.Asst./Admin.Officer	Melissa Davy	4.5
f. Administrative Assistant	Ellen Lawton, Maris Figueras	5.2
g. Senior Faculty Participant	Lloyd Weinreb	0.3
h. Assistant to Director	Thompson Potter	2.5
i. Consultants	various	2.4
TOTAL WORK-MONTHS FY 1988		28.9

\* This figure is deceptively small for the Project Director, since Prof. Heymann spends a very substantial portion of his Harvard-compensated time on the Guatemala Criminal Justice Project. This time is not listed here because it is not charged to project funds.

2. FISCAL YEAR 1989:		
Project Role	Name(s)	Total Work-Months
a. Project Director *	Philip Heymann	1.0
b. Dep.Dir./Proj.Coordinator	Daniel McGillis	7.5
d. Senior Project Assoc.	James Roules	3.4
e. Training Coordinator	Carmen Ortiz	9.0
f. Admin./Financial Officer	Melissa Davy	9.1
g. Administrative Assistant	Ellen Lawton	12.0
h. Senior Faculty Partic.	var	0.4
i. Assistant to Director	Thompson Potter	3.0
j. Field Research Assoc./ Guatemala Office Director	Norris Panner	5.0
k. Research Associate	Lisa Iglesias	8.0
l. Office/Research Asst.s	various	16.8
m. Consultants	various	10.3
TOTAL WORK-MONTHS FY 1989		90.5

\* See footnote \* for FY 1988. (at left)

3. FISCAL YEAR 1990:		
Project Role	Name(s)	Total Work-Months
a. Project Director *	Philip Heymann	1.3
b. Deputy Dir./Proj.Coord.	Daniel McGillis	7.5
c. Pilot Court Prog.Dir.	Carmen Ortiz	10.1
d. Training Coordinator ***	New Attorney	9.3
e. Guatemala Office Dir. ****	Norris Panner, Ana Maria Salazar	13.0
f. Financial/Admin. Officer	Melissa Davy	9.3
g. Administrative Officer	Ellen Lawton	12.0
h. Assistant to Director	Thompson Potter	3.8
i. Staff Assistant ****	To be hired	12.0
j. Research Associates	Lisa Iglesias, Ana Maria Salazar	10.3
k. Office/Research Asst.s	various	21.0
m. Consultants	various	8.0
TOTAL WORK-MONTHS FY 1990		116.9

\* See footnote \* for FY 1988. (at left)

\*\* New position related to the Pilot Courts  
\*\*\* Total exceeds 12 months because we plan for 1 month overlap between Panner and Salazar in January, to ensure a smooth transition.  
\*\*\*\* New position

**Attachment G**

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**Guatemala-Harvard Project, FY 1990 Spending Estimate and Summary**



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CATEGORY	A	B	(A+B)
July 1, 1989 - June 30, 1990	DIRECT COSTS	OVERHEAD	TOTAL COST
1. CORE	\$183,017	\$17,299	\$220,316
A. Personnel	\$94,156	\$19,772	
B. Equipment	\$10,550	\$1,082	
C. Other Direct Costs	\$78,311	\$16,445	
2. JUDGES' PROGRAM	\$99,961	\$30,465	\$130,426
A. Solola Program	\$18,075	\$3,796	
B. Replication Office Prog.	\$9,177	\$1,927	
C. New Rural Pilot Ct. Prog.	\$19,957	\$23,644	
D. Personnel	\$52,752	\$1,078	
3. MEETINGS OF CONSULTATION	\$30,740	\$6,455	\$37,195
A. June 1990 Meeting	\$14,513	\$3,047	
B. Personnel	\$16,227	\$3,408	
4. JUDICIAL SEMINARS IN GUAT.	\$107,329	\$22,539	\$129,868
A. Aug. '89 (Guatemala City)	\$25,451	\$5,345	
B. May '90 (G.City)	\$27,848	\$3,848	
C. May '90 (Quetz.)	\$26,483	\$5,561	
D. Personnel	\$27,547	\$3,785	
5. BASIC RESEARCH	\$58,819	\$12,218	\$71,037
A. Corrup./Intim. Studies	\$17,062	\$3,583	
B. Legislative Research	\$10,678	\$2,244	
C. Political Violence Rch.	\$16,872	\$3,408	
D. Personnel	\$14,207	\$2,983	
6. REVIEW AND PLANNING	\$10,251	\$2,153	\$12,404
A. Program Costs	\$5,905	\$1,240	
B. Personnel	\$4,346	\$913	
7. PILOT COURT PROGRAM	\$322,238	\$60,701	\$382,939
A. TRAINING COSTS:			
i. Totonicapan	\$25,906	\$5,440	
ii. Solola	\$25,906	\$5,440	
iii. New Rural Court	\$26,050	\$3,767	
iv. Follow-up, Guat. City	\$17,936	\$5,471	
v. Follow-up, Toto./Solo.	\$32,820	\$6,892	
vi. Follow-up, New Rural Ct.	\$26,042	\$5,489	
vii. Personnel	\$105,544	\$22,164	
B. MONITORING/ASSESSMENT:			
i. Monitoring	\$22,149	\$4,651	
ii. Evaluation	\$5,202	\$1,092	
C. EQUIPMENT	\$34,683	\$315	
8. REPLICATION EFFORT:	\$94,094	\$24,648	\$118,742
A. Solola Seminar	\$25,906	\$10,330	
B. Guatemala City Seminar	\$15,296	\$3,212	
C. Assistance and Monitoring	\$15,536	\$3,262	
D. Advisory Board Development	\$4,132	\$868	

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CATEGORY July 1, 1989 - June 30, 1990	A DIRECT COSTS	B OVERHEAD	(A+B) TOTAL COST
E. Review Panel Development	\$0,612	\$1,368	
F. Personnel	\$26,612	\$5,568	
9. DEFENSE AND PROSECUTION PROJECT	\$19,472	\$4,117	\$23,589
A. Program Costs	\$15,672	\$3,319	
B. Personnel	\$3,800	\$798	
10. GUATEMALA OFFICE	\$92,023	\$18,265	\$110,288
A. Staff and Core	\$57,040	\$10,920	
B. Transportation	\$6,289	\$1,740	
C. Meetings and Conf.s	\$1,975	\$415	
D. Office Maintenance	\$1,358	\$285	
E. Services Purchased	\$2,945	\$618	
F. Communications	\$13,016	\$2,733	
G. International Travel	\$7,400	\$1,554	
TOTALS:	\$1,017,944	\$218,860	\$1,236,804

## SUMMARY:

Funds Granted as of 06/30/89	\$1,682,800	
Spending through 06/30/89	\$1,035,256	
Balance Remaining (07/01/89) for FY 1990		\$647,544
Funds Needed for FY 1990		\$1,236,804
Additional Funds Requested for FY 1990		\$589,260

Attachment H

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Analysis of Budget for FY 1990

BUDGET ANALYSIS FY 1990

The budget proposal for the last year of the project submitted by Harvard requests a total of \$1,236,804 - \$1,017,944 in direct costs and \$218,860 in indirect costs. The budget is divided into 10 areas of expenditures as follows:

Core  
 Judges' Program  
 Meetings of Consultation  
 Judicial Seminars in Guatemala  
 Basic Research  
 Review and Planning  
 Pilot Court Program  
 Replication Effort  
 Defense and Prosecution Project  
 Guatemala Office

This paper provides comments on each of these areas in view of the observations made in the main body of this report. Our main concerns are with the high costs of the additional pilot court activities, the apparent lack of attention to costs and the role of existing organizations in the scheme for replication and the need for a shift of Harvard's staff resources from the US to Guatemala. The preparation of a revised budget would appear to be necessary.

A. GENERAL COMMENTS

The budget is not detailed enough to conduct a thorough analysis. For example, it is impossible to relate the work of individual staff members to the above budget categories with the exception of the operation of the Guatemala Office which presumably covers 100 percent of the costs of the Guatemala Office Director. Furthermore, in the budget there is only a breakdown between direct and indirect costs, but no breakdown among salary, travel and other expenses, e.g. preparation of materials, outside consultants etc. In previous budget submissions by Harvard there was more detail. (See Attachment A of Prof. Heymann's letter to Richard Martin of March 1989.) There are confusing entries such as that under the judges' program listing a "Replication Office Program" while there is a separate budget category called Replication Effort. Without further explanation, these two entries would appear duplicative.

The budget request calls for a significant increase in the funding level without justification other than a statement that the Harvard team will "design a plan for replication." This statement suggests that the major reason for the funding increase is the replication effort, but the replication effort only represents approximately 10 per cent of the overall funding for the year. At the same time several elements of the previously funded workplan such as the special prosecution unit and the victim and witness program have been eliminated, but there is no reflection in the budget of that reduction in effort.

**Recommendations:**

1. A more detailed budget should be submitted which breaks down costs in each budget category into personnel costs, travel costs, equipment and other costs and which identifies the work level to be performed by each staff member with the budget categories. Greater detail on the purpose of each element and an estimated time for the completion of the activities would be helpful.
2. The budget should be organized so that the level of effort related to each geographic location can be assessed. The budget presently is organized in a manner which results in the appearance of duplicative efforts.

**B. CORE EXPENSES**

The core expenses are \$220,316 - less than the \$247,530 estimated for FY 1989 in the March 3, 1989 letter to Richard Martin from Professor Philip Heymann. Thus, even though there is a request for a substantial increase in the project's budget, including the hiring of two additional persons, the core expense budget would remain virtually unchanged. This needs further explanation.

**C. JUDGES' PROGRAM**

The work consists of three proposed activities. One program involves bringing the director and staff members of the proposed Pilot Court Replication Office to Harvard to work on planning the replication strategy to be used by the office. This activity should be included budgetarily under the Replication Effort, and will be analyzed in that context.

The two remaining activities involve bringing judges from Solola and Tonicapan and the Director of the Pilot Court Replication Office to Harvard to design a strategy for replicating the pilot court reforms throughout those Departments. While the idea is worthwhile the utility of holding such a

meeting at Harvard must be questioned. Harvard has stressed the importance of the participation of the Ministerio Publico and the police in the pilot court effort, and yet they would not be included in the meeting. Other offices such as the Supreme Court's Training Unit, which presumably would be involved in training during the replication effort, also would not participate. An objective of the program in the coming year is to create and institutionalize the role of the replication office. Holding the meeting at Harvard could undermine this objective. It would seem to be better to hold the meeting at the Supreme Court with the Harvard staff serving as facilitators and consultants. That would serve to strengthen the role of the Supreme Court's administrative offices in general and the replication office specifically.

The design of new pilot courts should not need the same level of initial research and discussion as did the pilot efforts in Guatemala City, Totonicapan and Solola. Rather an analysis could be made of the existing pilot systems to determine which elements of those systems would lend themselves to replication in other courts, Departments or zones and what modifications should be made to adapt those elements to the new location.

Recommendation:

The proposed judges' program should be held in Guatemala to enhance the replication effort and to strengthen the cooperation between the police, the Ministerio Publico and the courts by involving all three in the planning.

D. MEETING OF CONSULTATION

The need for the proposed meeting of consultation in the spring of 1990 is not explained. As has been stated by the Harvard team itself, the original meetings of consultation bore little fruit. There seems to be little reason to have such a meeting at the end of the project. Since Harvard will be leaving the scene, the purpose of such a meeting certainly is not to create a new agenda of issues for Harvard to work on. In addition, the bilateral Improved Administration of Justice Project should be operating by that time. New issues might be raised better through its mechanisms.

Recommendation:

A meeting of consultation run just by the Harvard group should not be held so late in the project unless the meeting is a part of the replication effort and designed to represent the findings of the project or held in conjunction with the bilateral project's activities.

**E. SEMINARS IN GUATEMALA**

The seminars proposed for Guatemala City and Quezaltenango in early 1990 raise the question of how they relate to the proposed training efforts for the pilot courts program and the seminars proposed for Solola and Guatemala City under the replication effort. The budgeted amount is substantial. More concrete justification is required.

**Recommendation:**

The Harvard program should define more specifically the purpose of the proposed seminars and how they will differ in content from the training provided under the pilot court and replication activities.

**F. BASIC RESEARCH IN SUPPORT OF THE REFORM EFFORTS**

The research efforts proposed include topics of importance such as reducing opportunities for corruption. However, the proposed implementation plan makes no comment on how this research is going to benefit the Guatemalan system, nor does it indicate as much focus on analyzing the experience under the pilot courts activity as would be desirable. The budget for this activity should include provision for the publication and distribution of this research as appropriate.

**Recommendation:**

The implementation plan should define the "deliverables" of the research to be conducted and what will be made available throughout the judicial system. It should reflect more closely the needs of the other activities under the project.

**G. REVIEW AND PLANNING**

The budgeted amount for review and planning is for support for project personnel to travel to Guatemala and Washington D.C. for meetings regarding the project. The numerous trips to Guatemala scheduled under other budget categories as well as the presence of Harvard's in-country Office Director should provide ample means for conferring with AID officials without a special budget category being necessary.

**Recommendation:**

The budget category for review and planning should be eliminated or merged with support for the regularly scheduled review meetings.

## H. PILOT COURTS

The implementation plan for the pilot court activity does not reflect any participation of the training office of the Supreme Court or of the staff of the proposed replication office. Taking into account the upcoming operation of the bilateral project which will provide funds for strengthening the training abilities of the Guatemalan court system, the level of expenditure for training proposed here appears high. For instance with regard to the level of expenditures for the pilot activities in Solola, when one includes support from all the various budget categories one gets a total of \$228,000. If the techniques and procedures of the pilot court effort require that level of expenditure to implement, then it must be questioned whether the Guatemala court system will have the financial and human resources capabilities to implement such programs nationwide. Clearly, the preparation and implementation of the pilot efforts can be expected to be more costly per court than mere replication. However, by the time of the implementation of the Solola pilot court, the pilot activities in Guatemala City and Totonicapan should have provided considerable information on the elements of the pilot court project that should be replicated. If the Solola environment is so distinct from the other two, then the question must be raised as to whether a model is being developed that can be replicated or just a series of separate projects that have to be designed each time to fit the unique circumstances of the location. If the latter is the case, then the cost of replication will be extremely high.

### Recommendation:

Harvard should reconsider its plans for conducting the additional pilot court activities, beginning with Solola, in order to reduce their cost. The currently projected training expenditure of approximately \$5,000 per person is too high, and these training costs do not even take into account the role of the Harvard in-country Office Director or of the seminars and meetings of consultation that are planned. In planning additional pilot court activities primary emphasis should be placed on achieving a cost effective, standard package to be the basis of replication.

## I. REPLICATION EFFORT

The replication effort is still in the stage of tentative ideas so it is difficult to make concrete comments on the budget. However, the following general comments are made:

1. Harvard's approach in focusing on creating a replication office may run the risk of creating a new entity without any

power to act. Many of the elements of the replication task fall under the jurisdiction of offices already functioning--personnel and training, for example. Significant work will have to be undertaken to ensure the commitment of the administrative offices to the concept of replicating the elements of the pilot court program. Just creating a replication office and staffing it will not necessarily result in this commitment.

2. The idea of bringing the person named to run the replication office along with support staff to Harvard (which is listed as judges' program activity) follows the Harvard approach of first discussing initiatives at Harvard. Although we question the need to bring Guatemalans to Harvard to discuss Guatemalan issues, we do see that they could benefit from visiting some state court administration offices in the United States. The larger of these offices have both lawyers and planners working on pilot programs and implementing their results throughout the state. Both the Federal Judicial Center and the Administrative Office of the Federal Courts also would be excellent resources for learning more about how to implement programs throughout a judicial system.

3. Consideration should be given to the existing or planned entities within the Guatemalan judicial system which should be included in the replication effort. These include the human resources of the Supreme Court, the National Justice Commission and the offices to be created or strengthened under the bilateral agreement. The workplan does make mention of ICITAP and talks of coordinating efforts with that organization, but it makes no mention of the other Guatemalan institutions such as the Bar Association or the law schools which over the long run will be important in achieving the program's success.

4. The idea of the judge or judges assuming administrative responsibility for the courts on a Department-wide basis may make sense. However, this concept should be developed in the larger context of creating an effective administrative structure in the Guatemalan court system not just in terms of replicating pilot courts. The Harvard project should coordinate its plans with the bilateral project which will be working on all the administrative issues confronting the courts.

5. Creating a certification office would introduce a new office when one already exists with more or less the same purpose. Within the national administrative office there is now an inspector's office whose responsibility it is to ensure that courts follow prescribed procedures. Rather than creating an entirely new office, Harvard should consider strengthening this admittedly weak office.

6. The Harvard team correctly identifies the importance of the replication effort in the implementation plan, yet the funding

for this effort represents only 10 per cent of the funds requested for FY 1990. The level of funding dedicated to the three pilot court projects is two and one half times greater than for the replication effort which will effect the entire court system. This in part reflects the organization of the budget and the fact that the replication effort is one of planning rather than implementing. However, it also may reflect a lack of importance given to the cost dimension of the experience to be gained from the pilot court effort.

Recommendation:

The replication effort might also consider supporting the early reproduction of training manuals and forms for distribution and training sessions for court personnel throughout the country. If this were done the budget for replication would need to be expanded.

J. CRIMINAL DEFENSE AND PROSECUTION REFORMS

The Harvard project has taken the approach that the defense function in the court system needs only be built up in a context where the prosecution is being built up in parallel. This conclusion may overlook the source of serious human rights issues in the justice system. For example, while it is true that the prosecution as represented by the Ministerio Publico has been weak, there is a system of private accusation in which private parties can and do hire lawyers to present accusations. Thus, a poorer defendant can be subject to a well-financed prosecution without the benefit of adequate counsel. Furthermore, court officials state that approximately 50 per cent of accused persons remain in custody while awaiting trial. If a person has been falsely accused he or she would need counsel to avoid being detained unnecessarily. Thus there is good reason to give more attention to the defense even now.

Harvard has developed ideas for a revamped defense system with the idea of integrating it into the pilot court activity. However these ideas are not yet in the form of a concrete proposal to the Supreme Court. Furthermore, the funding proposed for the prosecution and defense activities is so small that it would appear inadequate to mount any serious work in these areas during the last year of the project.

Recommendation:

The implementation plan and budget should be revised to reflect a greater, time-phased work effort in the area of the defense and prosecution or the activity should be dropped.

K. GUATEMALA OFFICE EXPENSES

The Guatemala office is increasingly important to the Harvard program as the project enters a more implementation oriented phase. The success to date of the in-country effort in fostering implementation and the importance to be given to follow-up support for the personnel of the pilot courts and to coordination with other organizations in starting the replication effort suggest at least relocating the new Training Coordinator position to Guatemala.

Furthermore, there appears to be a need for more administrative support in Guatemala. However, the budget does not reflect the creation of an administrative assistant position to deal with the many administrative elements of the program in Guatemala such as getting invitations sent out, making in-country travel arrangements, etc. Given the proposed large increase in the budget such a position would seem to be essential.

Recommendation:

The Harvard project should acquire the services of a Guatemalan administrative assistant to handle administrative matters pertaining to the project in Guatemala and consider placing the Training Coordinator in Guatemala.