

CARIBBEAN JUSTICE IMPROVEMENT PROJECT
(JAMAICA)

Prepared for
U.S. Agency for International Development
under
IQC PDC-0085-I-00-6108-00

January 1990

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CARIBBEAN JUSTICE IMPROVEMENT PROJECT - JAMAICA
MID-TERM EVALUATION

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**CARIBBEAN JUSTICE IMPROVEMENT PROJECT - JAMAICA
MID-TERM EVALUATION**

EXECUTIVE SUMMARY

A. BACKGROUND

United States support for administration of justice projects derives from concern for protection of human rights, promotion of democratic institutions, and, towards that end, strengthening the credibility of democratic governments.

In Jamaica there had already existed a relatively strong system for administration of justice; but since independence it had suffered substantial deterioration, principally because of continuing stress on the national economy with consequent budget reduction. Among the more obvious symptoms of deterioration were rundown physical facilities, increasing delays as growing demands on the system outstripped the capacity of staff and facilities, and reduced access to code and case law, sources of which have not been kept current.

B. PROJECT DESCRIPTION

The responses to these more obvious problems have included the following:

1. Physical facilities have been renovated. This is largely cosmetic, including internal and external painting and minor structural changes for more efficient use of space, but nonetheless significant in improvement of image and working conditions.

2. To help address the delay factors, some additional courtrooms have been included in the courthouse renovation, and some additional judges have been appointed. The use of computers is being introduced for automated court reporting and library and registry information retrieval systems.

3. Training has been provided to judges, registrars, librarians and other key professional and paraprofessional personnel within the justice system.

4. Among notable policy changes, judicial salaries have been raised and user fees have been increased to help finance system services.

C. PRINCIPAL FINDINGS AND CONCLUSIONS

1. Facilities Refurbishing

In renovation of facilities, particularly the Supreme Court, the need to provide for continuance of court sessions during construction has complicated and delayed the work of the contractors. Another major delaying factor was Hurricane Gilbert of September 1988. The hurricane caused some damage to work in progress, but its more significant impact was in greatly expanding the demands upon Jamaica's supply of construction materials and particularly its limited supply of skilled workmen.

Contributing further to delay, but of significantly lesser magnitude, has been the policy of parcelling out the work in small contracts with separate bidding procedures and contracts for each of the proposed six phases of the Supreme Court building and for each of the parish courthouses. While certain economies of scale and efficiencies in timing could have been realised by going to larger contractors with larger contracts, we can appreciate the political and policy justifications for permitting more and smaller contractors to participate in the program.

2. Computer Applications

Relative to introduction of computer technology to speed up various functions of the justice system, only the computer-aided transcription of trial testimony is installed and operational as of this evaluation. There have been some initial delays in obtaining appropriate instruction and gaining acceptance of this completely new technology among the stenotypists who would use it, but the technology itself appears appropriate.

The absence of experience with computer technology prevails throughout the justice system. Accordingly similar experiences in familiarization and acceptance must be expected in other areas where computer technology is to be introduced. Preliminary studies are underway in the registries and in the library, but the systems are yet to be designed and installed.

3. Training

Most funds available for the training component have been committed, but there still remains substantial training to be carried out, especially training for the middle level officials, including the clerks of courts, their deputies and the public prosecutors. This training deserves highest priority since these are the court personnel that serve most at the interface between the public and the justice system. Also they are the people most in need of training. Further such training

opportunities are a substantial element of compensation in helping to attract and keep good people.

Otherwise, we find that in general the training courses appear to have been well selected and carried out. We do note, however, that there have been some courses of marginal relevance to project purposes. For overseas training in particular, the training resources have been used more as a fund available for response to targets of opportunity, than for the implementation of a program well defined in relation to previously identified needs. Such lack of focus could have been avoided by more attention to the design of the training program at the outset of the project.

4. Procurement

Procurement has generally proceeded well under the program. We do note, however, some exceptional situations of expensive and vulnerable equipment arriving out of phase with the facilities in which they are to be housed. Procurement of library books was complicated by inappropriate use of a U.S. procurement intermediary for procurement more appropriately performed by the Supreme Court Library. Not only is the Court Library experienced in purchasing law books directly from the publishers, but also this is a function which the Court Library will continue to perform in the future.

Further relative to appropriate division of labour in such a project, among items included for AID financing were relatively small furniture and equipment items which have caused unnecessary headaches as to appropriate type and style. We suggest that AID financing, with its complicated and time consuming approval procedures, is more appropriate for larger project elements, leaving to the Government the smaller items to be financed from the GOJ's own funds without need for AID approval.

5. Policy and Policy Analysis

While there have been some improvements in compensation of justice system personnel and in charge of fees for services, in general the justice system still suffers from low esteem in the GOJ's assessment of its development priorities. The system will continue to deteriorate without significant increase in GOJ financial support.

To sustain the Jamaican legal system, it needs thorough study and analysis to determine what efficiencies may be realised to enable the system to meet most important needs at minimum cost. The current project was undertaken without such analysis of the system. While there have been some significant

achievements in improving both the image and function of justice administration, the approach was to address quickly the most obvious symptoms of problems in the system, more than to determine and attack the underlying causes.

To provide an adequate quality of justice, the system must adapt so that the essentials may be provided at a cost the country can afford. Perhaps the most important contribution of this project over the long term is that it has raised the hopes of the Jamaican judiciary and bar, motivating them to consider the further need for such fundamental reform of the system.

We are impressed that the core problem of the justice system, which will become increasingly apparent in the future, is the deterioration of human resources, particularly the entry level professionals: the court registrars, the clerks of court and their deputies, and the public prosecutors. These are the people with whom the public deals principally, the functions they perform are important to the quality of justice, and they are the professional pool from which the judges and other senior officials of the system are drawn.

To attract and keep such people in the justice system, improved working conditions and training opportunities will help, but also compensation levels must be substantially increased. Viewing realistically Jamaica's economic prospects and capacity to support its public services, the justice system will almost certainly have to look to savings within its present budget levels to finance such increased compensation as well as improved maintenance of plant and equipment.

Thorough study and analysis is necessary to determine where lie the opportunities for such savings through improved efficiency. In such search, cost benefit analysis must be applied to all aspects of the system. Services and functions will have to be reexamined and prioritized to determine which are most essential and which may have to be shed or provided at service fee sufficient to cover cost. Plant and equipment may have to be reduced substantially to reach a level that the system may realistically expect to maintain and sustain. Only by realizing such efficiencies and using the savings to provide attractive compensation and working conditions will the system have the quality of professionals which are most important for performance of the essential functions.

This is an effort which for reasons of appropriate competence, vital interest, and proprietorship in results, should best be carried out by Jamaicans. We suggest that the leadership for such study should be provided by principal officials of the justice system and leaders of the private bar. For thoroughness and timeliness of their report, however, they should be supported by a paid professional staff for research, analysis, and

drafting. The role of external assistance would be limited to help in financing costs of support staff and possibly some foreign consultant services to gain the benefit of experience elsewhere.

D. PRINCIPAL RECOMMENDATIONS

Looking to the conclusion of the project, and understanding that AID's interest may continue with additional funds available for such project, we make certain recommendations concerning the use of such funds.

1. Court and Registry Facilities

1. That GOJ start now to plan and prepare for expansion of Supreme Court facility.

2. Court and Registry Administration

1. That the Court consider the use of audiotaping as an alternative or supplement to stenographers, particularly for lower level tribunals.

2. That the GOJ review courtroom use of registry staff for efficiency.

3. That GOJ rationalize and reform property disposal policies and procedures.

4. That GOJ review registry file storage and disposal policies and practices to facilitate information storage and retrieval as well as conserve storage space.

5. That AID and GOJ subject the introduction of microfiche and computer technologies to thorough cost benefit analysis by qualified expertise, including a court administrator with relevant experience, to determine whether and to what extent economically and practically feasible for Jamaica.

6. That, to facilitate and improve access to the laws of Jamaica both as to timing and availability, the GOJ consider less expensive mode of publication, particularly as to binding, and provide by either public or private publisher, for publication of new Acts and Regulations at least every two months.

7. That, in the interest of improved maintenance and administrative efficiency, the establishment of administrative offices be extended beyond the Supreme Court to cover the resident magistrate courts.

3. Training

1. That the program's emphasis on training be continued.
2. That future training programs emphasize local over foreign training, increased attention to needs of entry and mid-level professionals, and include solicitor general personnel, and civil as well as criminal legal systems.
3. That training programs make more use of Caribbean regional training programs and facilities, particularly UWI.
4. That participants in overseas programs be engaged as instructors or presenters in local training programs.
5. That each training program include a self evaluation element as part of the program at completion of training.
6. That future training programs be preceded and guided by thorough training needs assessment of the justice system.
7. That GOJ consider establishing an Administration of Justice Training Advisory Committee, including representatives of Judiciary, Bar Association, General Legal Council, Council of Legal Education, and Solicitor General's office, to review proposed training programs.

4. AID Project Management

1. That, to expedite project implementation and reduce demands on limited staff, AID concentrate its financing on higher cost items and leave lower cost items to host country financing.
2. That in the future, foreign financed library book procurement be entrusted to the capable offices of the Supreme Court Library.

5. Policy

1. That GOJ budget and appropriate adequate amounts for justice system maintenance and that AID insist thereon as a condition of continued project financing.
2. That GOJ devise a long term program including substantial training, for strengthening the resident magistrate courts.
3. That, to assist in addressing the shortage of magistrates, GOJ consider appointment of temporary and part time magistrates.

4. That, to increase resources available to finance Court and Registry services, the Courts and particularly the Registry, continue to consider more and higher fees for services rendered, eg. registry research fees.

5. That GOJ give high priority to compensation of key justice system positions at levels sufficient to attract and keep well qualified and motivated personnel.

6. That, to accomplish more with limited funds available, the Court System and organized bar, with such outside help as necessary, conduct a thorough analysis of the justice system to determine where greater efficiency with consequent savings may be realized.

INTRODUCTION

A. BACKGROUND

United States support for administration of justice projects derives from concern for protection of human rights and promotion of democratic institutions, and particularly, towards those ends, for strengthening the credibility of democratic governments. In the early 1980s the problems of the democratic government of El Salvador in protecting human rights led to substantial AID support for improvement of administration of justice in that country. Having been sensitized to the importance of justice administration in El Salvador, and pursuant to the strong recommendation of the Bipartisan Commission on US policy towards Central America and the Caribbean ("The Kissinger Commission"), U.S. support for improvement of administration of justice was extended throughout Central America and the Caribbean.

In the English-speaking Caribbean, as distinct from the Latin American countries, there had already existed relatively strong systems for administration of justice, but they had suffered substantial deterioration, principally because of the economic stress currently experienced by the countries in the region. As a consequence of declining budgets in real terms, but also because of relatively low priority for the justice sector in those budgets, certain symptoms of deterioration were readily apparent. For lack of maintenance funds, physical facilities were becoming dingy and dysfunctional. Users of the justice system suffered increasing delays as a consequence of shortage of judges and other skilled personnel needed to make the system work. These included court reporters, clerks of court, their deputies and public prosecutors. Demands on courtroom and registry facilities substantially exceeded their original capacity. Another troublesome symptom was deteriorating access to code and case law, publications of which had not been kept current because of lack of funds.

B. PROJECT DESCRIPTION

The Caribbean Justice Improvement Project was authorised on July 15, 1986 pursuant to Sections 531 and 534 of the U.S. Foreign Assistance Act of 1961. The Project comprises two basic components: one for the Eastern Caribbean and Belize, and the other for Jamaica. A.I.D. authorised an initial sum of US \$10 million in grant funds to strengthen the legal systems in the English-speaking Caribbean. To this end a five year Grant Agreement was signed between the University of the West Indies and U.S.A.I.D./Barbados on August 26, 1986, under which USAID undertook to provide US \$7.8 million in grant funds for the Eastern Caribbean component and a separate three-year Agreement

was executed on September 15, 1986 between the Government of Jamaica and USAID/Jamaica for US \$2.2 million to cover the Jamaican segment. The Jamaican component was subsequently increased in July 1988 by US \$600,000.

The Project consists of assistance to the participating Caribbean governments in their efforts to improve and maintain the administration of justice and legal system in their countries. It aims to rehabilitate delapidated court buildings, provide technical assistance and training to various sections of the legal system, provide legal materials for Court libraries, improve court and law reporting, assist in legal publications and stimulate the rationalisation, modernization and general reform of the legal systems of the region.

The Project was designed to commence about January 1987. This mid-term evaluation assesses project progress in meeting its objectives, the extent to which the primary beneficiary countries are meeting their commitments to effect policy reforms in the justice system, and to ascertain what are the requirements for maintaining the system and ensuring that the benefits of the programme are preserved and enhanced.

C. SOCIAL, ECONOMIC AND POLITICAL CONTEXT

The primary as well as subsidiary beneficiaries are located in what is termed the Caribbean Basin. The countries involved in the Project are members of the British Commonwealth of Nations, have a common colonial history and democratic parliamentary traditions, adhere to the Rule of Law and enjoy similar cultural development. They participate in the Caribbean Community and Common Market, the University of the West Indies, and the Council of Legal Education which administers regional Law Schools.

Their economies have been dependent and tenuous. They are largely growers of primary agricultural products. Adverse trading factors, natural disasters, low world market prices for primary commodities and insufficient technological development have imposed strict budgetary constraints, created balance of payments crises and severely curtailed their socio-economic advances. More recently, tourism has been promoted to exploit the natural beauty and semi-tropical climate of the islands, but this sector is vulnerable to the economic vicissitudes of the source countries. In the face of rising populations and severe unemployment, the Governments have been unable to devote adequate funds to the legal system, and to the maintenance of the machinery of justice. Therefore relatively low salaries are paid to judicial and legal officers, inadequate equipment and accommodation provided for courts and legal offices, and the legal aid services are minimal or unsatisfactory.

D. OUTLINE OF JUDICIAL AND LEGAL SYSTEM

The Court system of Jamaica basically consists of the Court of Appeal, the Supreme Court, the Resident Magistrates' Courts, and the Courts of Petty Sessions. The first two are superior courts of record and the second two are inferior courts. The Court of Appeal is the highest Court in Jamaica, although it is not the final court since appeals from it may go to the Judicial Committee of the Privy Council in England. The Court of Appeal exercises only appellate jurisdiction. It hears appeals in both civil and criminal cases from the Supreme Court and Resident Magistrates Courts. The Supreme Court has unlimited civil and criminal jurisdiction. It also has original jurisdiction over complaints that fundamental rights under the Constitution are infringed or are likely to be infringed. It has limited appellate functions, e.g. it hears appeals from the petty sessional courts. It exercises the important supervisory jurisdiction in proceedings for habeas corpus, mandamus, certiorari and prohibition. The Revenue Court is also a superior court presided over by a Supreme Court Judge as is the Circuit Division of the Gun Court.

The Resident Magistrates' Courts are the local courts exercising wide-ranging but limited jurisdiction in civil and criminal matters. These Courts, which are located in all the parishes of the Island, hear most of the small causes of the average citizen, thus playing a significant part in the system of justice. There are also special Family Courts and a Traffic Court in the metropolitan area presided over by Resident Magistrates.

The judges of the Court of Appeal, Supreme Court and the Resident Magistrates' have to be professionally qualified and must satisfy a minimum period of professional standing. They are appointed by a constitutionally independent Judicial Service Commission, enjoy a measure of security of tenure and are protected by legal provisions designed to insulate them from political interference or pressure. The Petty Sessions are presided over by lay magistrates, appointed by the Governor General on the advice of a political Minister of Government, who is however advised by non-political committees.

Juries are taken from the electoral lists and comprise adults who are not disqualified for specific statutory reasons. The right to a jury trial is very limited in civil cases, and in criminal cases is confined to the more serious indictable offences which are tried in the Circuit Courts.

The Jamaica system of law is based on the English Common Law and principles of equity. The statutory provisions are in many cases patterned on United Kingdom legislation, English and Commonwealth judicial precedents are of persuasive authority and

the decisions of the Privy Council in Jamaica appeals are binding on the Jamaican Courts.

I. COURT REPORTING

A. BACKGROUND

1. Identified Need

Delays in availability of trial transcripts have become a substantial factor in delay of criminal appeals. The criminal court system currently uses a system of stenotype recording of testimony at trial. The stenotype "tape" (a continuous narrow sheet of paper with the stenotype symbols thereon) is transcribed to typewritten record by the same stenotypist who created the tape. This is necessitated by considerable individuality of usage in stenotypist vocabulary. Because of shortage of skilled stenotypists, and because of the time needed to transcribe such record under the best of circumstances, the time required to prepare trial transcripts as the basis for appeal has been constantly growing such that delays of several months have become normal. In a system where bail is often denied and jail conditions are sorely punishing, such delays can result in grave and embittering injustice for the innocent.

2. Project Response

To address this problem, after consideration of various alternatives, including privatization of the court reporting function, the Supreme Court decided to adopt a computer-aided transcription ("CAT") system. In such system the stenotypist types the shorthand symbols directly on a 3.5 inch diskette, which diskette can be inserted in a computer word processing system with appropriate software to produce an immediate transcript requiring a minimum of editing before readiness for usage as an appellate record.

Privatization of the court reporting function was deferred for the present because of insufficient demand for stenotypist services outside of government tribunals.

B. IMPLEMENTATION

1. Training

There have been been certain delays in putting the "CAT" system in practice. There is limited computer experience in Jamaica and particularly in the court system. None of the stenotypists had any experience with computers. Good stenotypists may more readily be trained in the necessary degree of computer literacy than may computer literate people be trained as stenotypists. Accordingly, a training program had to be

developed to qualify the stenotypists for computer aided transcription.

At the outset there was substantial negative response, some of which might possibly have been avoided by more attention to computer basics before moving into the complexities of the software program. As of the evaluation team's visit, however, the stenotypists appeared to be developing the necessary competence and confidence, indeed enthusiasm, for use of the system.

Looking to the future, in order to help minimize "computer phobia" and help the computer operators to cope with the inevitable "glitches" as they arise, we suggest that one or two of the most able and interested computer operators be given additional training in the theory and programming of computers. This is an area in which people who are particularly interested might be willing to take additional training on their own time if the Government were willing to cover the out-of-pocket cost of course tuition and training materials.

2. Record Retention

Further we note that it has been the practice of the Supreme Court to retain the stenotype tapes, even for cases never appealed, for the full period of twenty-five years mandated for most government records. Once the reporting system has switched over to diskettes from paper tapes for the initial stenotyping, it will be necessary for the courts to reconsider the record retention policy. 3.5 inch diskettes are too expensive, and a foreign exchange cost at that, to be used for retaining a record of testimony beyond the appeal period, with such a high likelihood that they will never be needed.

3. The Audiotape Alternative

We also suggest that, if the courts were to consider extending transcription of testimony to additional types of proceedings, they should consider the use of audiotaping as an alternative to stenotyping. While the stenotyping-CAT system is unquestionably superior for assurance of accuracy and speed in transcription, audiotaping presents the advantage of substantially less capital outlay and lower level of skill and training required for the operator.

C. CONCLUSIONS

1. Computer-aided trial record transcription offers considerable promise in helping reduce delay of appeals.

2. After a slow start, this new technology is now taking hold.

D. RECOMMENDATIONS

1. That, to accelerate installation and assist in institutionalizing the CAT system, the courts provide additional training in computer theory and programming for selected operators,
2. That, to save on costs, the Court should reconsider trial record retention policy,
3. That the Court should consider audiotaping as an alternative technology for recording testimony in lesser tribunals.

II. COURT REGISTRIES

A. SUPREME COURT REGISTRY

1. Findings

a. Adequate Space

Under the project the major thrust for the reorganisation and modernisation of the Court registry system has been directed at the Supreme Court Registry. We found that the Registry of the Supreme Court has been removed from cramped, inadequate and disorderly surroundings into a newly refurbished, spacious, well-lit and orderly section of the ground floor of the building. There is now an adequate quantity of racks for storing files, and apparent capacity in the medium term to accommodate the additional files which will have to be opened from time to time.

b. Filing System

The system employed is to place the files in broad categories e.g., common law, equity, divorce, probate and administration. Each file is lettered in accordance with the first letter of the surname of the first Plaintiff of the case to which it relates and then numbered consecutively in the order of filing in the series for the year of filing. The records for the particular case are kept in softcover file jackets, with haphazard means of attachment. The files are stacked on the racks on their back edge.

Files are removed from the racks when required, e.g. by the Registrar to deal with an application for a date for a judicial hearing, or to add newly filed papers, or to allow inspection by an attorney or interested member of the public or to send it to a judge who is hearing an application relating to it. An attempt is being made to record the whereabouts of files by entering the date, person by whom it is removed and place to which it is sent on sheets of paper. Occasionally however, files and documents become separated, and the documents for which the appropriate files cannot be found are placed in a lost file bundle. This causes difficulty in sorting where there are large numbers of such documents.

c. Use of Personnel

Members of the Registry staff also serve as court ushers and registrars to the judges when sitting in open court or in chambers. The result is that the staff manning the Registry is greatly depleted during the hours in which the judges are sitting. The situation causes delay not only in the acceptance

of documents for filing but in the placing of those documents in the appropriate files and in the replacing of files in their places on the racks with resultant misplacing of documents and files.

d. Storage and Disposal

There is no defined system to separate inactive or completed files for storage in an appropriate place. The disposal of files is governed by the long standing rule that records should be kept for twenty-five years before they are destroyed, but there appears to be no regular programme for disposing of files which attain their regulated life span.

e. Automation and Microfiliming

There is no automated system installed as yet. The feasibility of the computerization and microfilming of the Court Registry is being examined under the project. To this end proposals were obtained from local firms and Management Control Systems has been selected to carry out the task. They have submitted a report on the methods which should be employed to establish a modern and efficient system of filing, recording, retention and retrieval of data in the Supreme Court Registry as well as the Registry of the Court of Appeal. This Report has been analysed by USAID/IRM and is being clarified and developed to define adequately the hardware and software requirements of the proposed scheme. We are not convinced, however, that this report reflects adequate input of a court administrator experienced in computer applications to court record keeping.

Reviewing the current studies for computer and microfiche applications to the registry, and also to library functions, we do not sense that the studies have given sufficient attention to practicality of specific uses, nor are we convinced that they adequately reflect experience in legal applications. Comparing cost to need of microfiching records, for example, the utility may not justify the cost of processing. This is a particularly important factor for a government whose financial resources are as limited as those of the GOJ.

Without questioning the computer expertise of the consultants used, we suggest that such specialized applications of these technologies would benefit from the perspective of consultants combining court administration/library background with experience in such computer and microfiche applications.

2. Conclusion

There is no doubt that the placing of the Registry in improved accommodation has caused improvement in the service it offers, reduced the incidence of lost or misplaced files and created a better and healthier atmosphere for its staff. Nevertheless there are still problems in loss of files, difficulty in tracing a file if the file number is not known and delays in the progress of court proceedings when documents or files are mislaid.

3. Recommendations

We recommend:

1. That the Court consider formulating realistic rules for the storage of files which are inactive. This might be done by storing them in suitably tagged boxes, and keeping a properly compiled index for such files.
2. That the costs of converting inactive files to computer memory or microfiche as an alternative to the preceding recommendation be carefully analyzed, having due regard to the cost thereof relative to the likelihood and frequency of need to refer to such files.
3. That consideration be given to storing the files on the shelves in cardboard containers suitably constructed and labelled so that the files can stand erect in batches, removed and replaced without causing others to fall or without being pushed into others and so become misplaced.
4. That consideration be given to charging a reasonable and realistic search fee to any person who wishes a file to be removed from the racks for inspection.
5. That consideration be given to using movable racks whereby lateral shifts would allow greater storage space while allowing free access to passages between the racks.
6. That the system of using a colour scheme to distinguish files for different years which has been commenced, should be carried through to completion and continued with all new files.
7. That it should not be permissible for anyone to keep a file for more than two days without reporting it to the Registry for re-entry in the records.
8. That where the files in which documents are to be placed cannot be found, those documents should be separately recorded,

placed in "temporary file jackets" and sent to the appropriate officer or filed in its place on the filing racks.

9. That consideration be given to reducing the number of the registry staff assigned to each court from two to one, and that greater use be made of the judges' orderlies in the announcement of the opening and closing of the courts' sittings and the calling of witnesses;

10. That consideration be given to establishing deposit boxes in which, on payment of a rental fee by the attorneys, the Registrar would place documents being returned to attorneys.

11. That where attorneys do not collect documents within a set period, say five (5) days, they should be sent by registered post to their addresses on the record.

12. That before further action is taken on computerization of the registry, counsel be sought from a court administrator experienced in computer applications to court recordkeeping.

B. COURT OF APPEAL REGISTRY

1. Findings and Conclusions

It appears that the increased space provided for the Court of Appeal Registry in the current programme will be adequate for the foreseeable future. As in the case of the Supreme Court, there is no clear system for the disposal of old and inactive files. The filing system is also similar to that described for the Supreme Court. By reason of the lesser volume of cases filed in the Court of Appeal, there has not been the same incidence of lost or mislaid files and it is generally felt that this Registry operates efficiently.

2. Recommendation

That many of the improvements and modernisation proposed for the Supreme Court Registry should also be considered for the Court of Appeal Registry.

C. RESIDENT MAGISTRATES' COURTS REGISTRIES

1. Findings and Conclusions

The registry system in the Resident Magistrates' Courts is largely rudimentary, in many cases untidily maintained and adversely affected by inadequate space. In some cases the refurbishing work will alleviate without eliminating these

problems. In these Courts there is now a massive accumulation of inactive files which should be disposed of.

2. Recommendations

1. That, as in the case of the Registries of the Superior Courts, a programme for the storage and ultimate disposal of old, inactive and dead files should be implemented.

2. That consideration be given under such programme to employment of temporary clerks to list these records so that they may be destroyed in accordance with the prescribed procedures, and that those which though inactive are not yet old enough to be destroyed be stored in suitably labelled boxes.

III. ACCESS TO LAW AND JURISPRUDENCE

A. THE SUPREME COURT LIBRARY

1. Identified Need

This institution performs a critically important function in the administration of justice in Jamaica. This is where trial judges look for current legal materials to assist them in the trial and determination of issues before them. This is where legal practitioners, many of whom cannot afford private law libraries, look for legal materials to assist them in the presentation of their cases. This is where officers of the Court look for recorded judgements in order to determine the current status of the law on issues before the Court. From the very nature of court proceedings the speedy retrieval of accurate, relevant information on the status of the law on any issue before the Court can be critical for the outcome of a case.

2. Project Response

In view of these considerations this sub-component was designed to address and resolve the following issues:

- (a) Updating the Library's legal materials from Commonwealth and United States jurisdictions;
- (b) Computerisation of the functions and activities of the Library in order to:

Facilitate classification of all lending and reference publications;

Facilitate cataloguing of all publications by classification number, author, title and subject;

Facilitate ready identification of the location of publications and other materials;

Facilitate recording and retrieval of information regarding publications on loan and reference;

Facilitate indexing and timely retrieval of judgment and gazetted subordinate legislation;

Facilitate classification filing and timely retrieval of correspondence.

- (c) Procurement of commodities required for the efficient operation of the Library - photocopying machines, microfiche readers and book-labelling machines.

An allocation of US\$305,000 was provided for the achievement of these purposes, including the microfiche conversion of records

3. Implementation Status

Pursuant to the relevant A.I.D. requirement, a U.S. supplier, Lambet Company Inc. was contracted to procure US\$150,000 worth of text books, law reports and journals for use by the Supreme Court and Resident Magistrates' Courts. The contractor subcontracted out the procurement order and in the result US\$30,000 worth of unordered and oversupplied books were dispatched to Jamaica. Active consideration is being given to the disposal of these volumes and to getting the contractor to accept responsibility for the error.

Management Control Systems was engaged to undertake a study relating to the computerisation and microfilming of the Supreme Court's records. The study and draft contract documents inviting quotations from a number of preselected firms are awaiting approval by USAID pending submission of additional information from Management Control Systems requested by USAID. In the meantime, the Library has acquired a photocopier which is reproducing documents for legal practitioners and other interested persons at a cost of J\$1.00 per page. The library has not yet received the computer. In terms of training, the deputy librarian was identified to attend the Annual General Conference of the Caribbean Association of Law Librarians held in Georgetown, Guyana from 25-29 July, 1988, but was disqualified on the grounds of ill health. The conference was attended by Mrs. Yvonne Lawrence, the incumbent Librarian.

4. Book Procurement

Among project components is the procurement of substantial quantities of legal texts and reports from abroad. For this procurement, allegedly at the insistence of the AID Mission in order to satisfy AID procurement regulations, the books were procured as follows:

AID contracted with a Procurement Specialist Agency in the United States, which in turn subcontracted with an individual, who in turn ordered the books from the publishers for delivery to the Supreme Court Library in Kingston, Jamaica.

This procedure involved a certain amount of delays, but the most troublesome aspect was that between the purchasing agent and the subcontractor occurred certain misinterpretation of purchasing instructions. A substantial number of books were ordered contrary to the original request of the Supreme Court

Library. The Supreme Court Library is still holding the books which were not ordered. The Library is relying on AID to negotiate a settlement permitting a credit from the suppliers such that the Supreme Court Library will be able to use the funds for procurement of books which it does need.

This sort of incident is an embarrassment to AID as well as an inconvenience to the Supreme Court Library. Accordingly, the evaluation team strongly recommends that, as a damage control measure, the AID Mission make every effort to arrange the appropriate credit.

Such complicated arrangements tend to invite problems of this nature. Even had the procurement gone smoothly, however, we would suggest that this situation was more appropriate for host country procurement. The Supreme Court had ample experience in procurement of books and other publications from abroad. Even if it had not, project institution-building objectives would include developing such competence that the Supreme Court could continue to procure necessary books and publications from abroad to keep its library current. We find it hard to believe that under such circumstances AID regulations require that AID do the procurement rather than the host country agency. If AID regulations were to require such procedures, there should be provision for exception, for which this situation provided ample justification.

5. Possible Opportunity - Computerized Research

Although not specifically included in the original project design, we suggest the area of legal research as one which might be particularly appropriate for application of computer technology. Experience elsewhere indicates that computerized legal research can introduce substantial efficiencies by providing access to extensive data bases without need to purchase and maintain the corresponding books and publications and space for storage thereof. Also, computerized research is a service which could be offered to the legal profession at reasonable fees to help carry acquisition and operating costs.

6. Findings and Conclusions

1. The Supreme Court Library is spacious and well appointed and could accommodate many more legal materials, especially after conversion of records to microfilm.

2. The Government's commitment to reform in this area has been amply demonstrated by the recent increase of user fees from \$25 and \$50 dollars for practitioners with less than three years and more than three years experience respectively to a flat fee of \$100. In addition the General Legal Council has increased the

fee for practitioners in order to accommodate an annual grant to the Library for its upkeep.

3. The professional staff of the Library have the required experience to procure its legal materials and the requirement to engage the services of a U.S. supplier may be waived with probable beneficial effects for economy and efficiency.

7. Recommendations

1. That the Government should keep under review the need for reforms in this area.

2. That AID should waive any requirement to engage the services of a U.S. procurement agency for the procurement of legal materials for the Library.

3. That, relative to the books which the AID procurement services/agent ordered by mistake, AID should make every effort to arrange promptly the appropriate credit for the GOJ.

4. That the Court should require persons and individuals other than members of the Library to pay a higher price for the copying of documents.

B. LAW REVISION AND GAZETTE PUBLICATIONS

1. Identified Need

The statutory provisions operating in Jamaica fall into two broad groups (1) Acts of Parliament and (2) subsidiary legislation, comprising regulations, statutory rules and orders. The Acts of Parliament have been compiled in one set of volumes in loose leaf binders and the subsidiary legislation in another. We found that both the Courts and legal practitioners were suffering from the unavailability of these volumes. In many of the Resident Magistrates' Courts even where the Laws exist they are not kept up to date and some of the loose-leaf contents have been removed and not replaced.

Also, the Acts, Rules and Proclamations and other Regulations are supposed to be printed and published in the Gazette as soon as they are made, but invariably the Gazettes do not become available until several months after the laws have been promulgated with the result that lawyers, the public and the Courts are often unaware of the true text of these provisions.

2. Project Response

The amendment to increase the funding of the Jamaican component of the Project had as one of its aims the printing and updating of the Laws of Jamaica. Tenders for publication of the updated laws with appropriate binders are now being evaluated with a view to the signing of a contract.

3. Recommendations

We recommend:

1. That consideration be given to using a modestly priced type of binder so as to make the laws more accessible to young practitioners and a wider number of persons;
2. That the printing of the revision sheets be carried out on an ungoing basis and distributed at regular intervals not exceeding two months at an annual subscription;
3. That, because the prompt printing, publication and distribution of the Acts and Regulations is important to the function of the justice system, the GOJ should consider the relative advantages and disadvantages of having them produced by a private firm or firms, and that, in any event, were the Government Printing Office to continue, this work should be assigned higher priority.

IV. FACILITIES RENOVATIONS

A. FINDINGS AND CONCLUSIONS

1. Identified Needs

a. Buildings

(1) Supreme Court

The Supreme Court building houses various important functions, including: the courtrooms and judges' chambers for the principal civil and criminal trial courts and the Court of Appeal, the registry in which court records are kept, the administrative offices for the court system, and the Supreme Court law library which also serves the private bar and other government offices, including the Attorney General's. This building is a principal subject of rehabilitation so that the vital court functions housed therein may be better performed and the image of the justice system in the national capital be substantially improved.

In the course of our evaluation, we were able to see various portions of the structure before rehabilitation and others after rehabilitation. On the basis of information that the entire structure had previously been in a condition similar to those portions not yet rehabilitated, we conclude that the rehabilitation was much needed and served a highly useful purposes.

(2) Parish Courthouses

As with the Supreme Court building, many of the parish courthouses have suffered severe deterioration over many years of lack of proper maintenance. Within available funding 16 courthouses have been selected in accordance with criteria weighting relative need and importance.

Although the evaluation team did not have the opportunity to visit all of the courthouses, we were able to visit a representative sample including six in the vicinity of Kingston and central Jamaica. We visited courthouses in various stages of renovation from barely started to fully completed.

The team was impressed with the need for rehabilitation, but we were most impressed with the unanimity of view expressed in our several interviews with representative members of the judiciary and staff and lawyers in the communities. Without exception they gave highest priority to the need for putting their courthouses in good condition. They expressed serious concern for the image of the justice system. Further they

stressed the importance of working conditions as they bear on the morale of those who work in the courts and on the ability of the system to attract and keep professional and paraprofessional staff with the necessary qualifications. It is these Clerks of Courts and their deputies, and the public prosecutors, along with the police, with whom the public deals most in their contact with the administration of justice. They also constitute the pool of justice system professionals from which the judges and magistrate are selected.

(3) Special Concerns

(a) Future Maintenance Costs

Among particular concerns in facilities renovation was abatement of heat, and in some cases traffic noise, as factors interfering with administration of justice within the courtroom. We were impressed that, in general, the Courts have not relied excessively on airconditioning to address noise and heat problems. Airconditioning systems involve high capital outlay at the outset, high energy operating costs, and, following the initial warranty periods, increasingly high service and maintenance costs (if maintained, otherwise complete loss of the systems). In general, the Courts seem to have limited airconditioning to a practical minimum, relying more on air circulation and fans to control heat, and using the alternative of closing off adjacent streets as a means for controlling noise.

In other aspects of building design as well there has been commendable concern to design for minimum maintenance cost, recognizing that funds available for maintenance may be limited.

(b) Security

Another priority design requirement for courthouse renovation, particularly in Kingston, was protection of judges from public contact while exercising their judicial functions. Such concern for privacy extends beyond the judges' chambers to the passages between chambers and courtroom, and goes beyond protecting dignity of office to protecting the judge from intimidation or other extrajudicial measures to influence outcome of litigation.

(4) Provision for Expansion

While the existing Supreme Court building will be a much improved facility following completion of the renovation under the project, it is already apparent that it will not be adequate for the future needs of the system. Indeed, the number of

courtrooms and judges' chambers is now inadequate for the additional judges already recruited for service.

In view of the heavy investment in refurbishing the existing Supreme Court facility it is vital for realization of return on that investment that there be provision for expansion to meet future needs without moving to a completely new location. The existing structure is not susceptible to expansion. However, it appears that there is Government-owned space at a relatively convenient location just across the street which would be appropriate for expansion of the Supreme Court facilities. We understand that the space is already being considered for such purpose. We add our voice to those urging that an option or some other arrangement be negotiated promptly to assure the availability of such space for expansion of the court facilities once funds for such purpose are available.

(5) Long Range Plan

In our examination of project design and implementation documentation as well as in our interviewing, we found no lack of concern for the need for increased availability of funds for maintenance if the accomplishments of the project are to be sustained. In discussing this issue with some representative leaders of the Bar, however, we detected concern that the justice system would operate more efficiently from various aspects, but particularly from the aspect of reduced maintenance costs, with fewer courthouses.

Ready access is an important element of a good system of justice, and traditionally the Jamaican system of justice has made a special effort to place the courthouses within reasonable access of all citizens. We have heard some views, however, that the system of public transportation now provides comparatively reasonable access to the major towns so that the historical patterns may need reconsideration.

We do not find in the preparation of this project, that there was sufficient study and analysis of the potential for consolidating facilities to make the system more efficient over the longer term. We have found, however, that, in general, of the facilities selected for renovation there would be little question as to continuing need. Accordingly, we limit our observation to noting the need for such study and analysis of the system to determine how consolidation of facilities might make the system more efficient over the longer term. See VII.C below. We strongly urge that such study and recommendations be completed before there is any substantial further work in renovation of existing facilities or construction of new facilities.

b. Furniture and Equipment

(1) Suitability

Among items included for AID financing under the renovation component, were much furniture and equipment. In general, we found the furniture to be appropriate in style and cost and the equipment appropriate as to level of technology.

We did however find some arguable exceptions. In various judges' chambers we found lounges of a distinctly porch furniture style with brightly coloured plastic cushions on white cast iron frames. In a rural registry we found large boxes containing the latest most sophisticated IBM electric typewriters, which were still unused nearly a month following delivery. The cause of nonuse was alleged to be "lack of proper wiring", but we found that the two prong plug readily fit into the three prong receptacle. We suspect from the partially opened top box and our interview with the typist, that the staff was somewhat intimidated by the rather formidable piece of modern technology. These typists were relatively inexperienced as a result of high turnover, the better typists moving on to jobs in nearby Kingston as soon as they had acquired marketable competence.

On the other hand in Mandeville, at somewhat greater distance from Kingston, we found a typist with 12 years of experience, highly regarded by her superiors, but still toiling with a manual typewriter that dated back to at least 1972. She expressed her longing for an electric typewriter which would be faster and more versatile. We suspect that the Mandeville situation was somewhat exceptional, and that in general the manual typewriters are still more appropriate for most rural courthouses. We have to respect, however, the fact that this is the sort of decision best left to Jamaicans and with the use of their own funds.

Apart from the issues of appropriateness of style and technology, the item by item process of approval by AID of furniture and equipment for individual rural courthouses is highly management intensive for both the Government of Jamaica and AID. For that reason, as well as to protect AID from the risk of potential embarrassment from erroneous decisions as to appropriateness of furniture and small equipment items, we suggest that AID financing is best left to the "bigger ticket" items such as construction and training.

(2) Disposal

The GOJ should reform its disposal policy and/or procedure to expedite disposal of items of equipment and furniture which

have outlived their usefulness. In every facility we visited, including the most recently and handsomely refurbished courthouses, we would find masses of broken furniture and typewriters, and other equipment either lying out in the open in public areas or taking up valuable storage space. The cause given was the slow and cumbersome nature of GOJ procedures for disposal of inventoried property.

Such displays not only detract from the improved image of the justice system sought by the project, but are also costly. The longer such items are held, often in vulnerable locations, the more they depreciate in salvage value.

2. Implementation

a. Supreme Court Building

While we heard from all sides that the rehabilitation of the Supreme Court building was much needed and appreciated and that the quality of contractor performance was generally of a high level, there was considerable concern expressed over the substantial delay in its completion. From comparison of the original project schedules with the current status of construction, it is obvious that the construction is far behind schedule and will require extension of the project completion date.

Among the causes of delay in construction were several which were clearly unavoidable. Hurricane Gilbert of September 1988 did not cause any extensive damage to work done at the Supreme Court building. It did however, lead to a heavy demand on construction capability and materials within Jamaica. Certain categories of skilled workmen were in short supply even before the hurricane.

After the hurricane, with the consequent increased demand for all construction resources, human and material, the situation worsened substantially. Foreign exchange scarcity has caused some difficulties in obtaining imported materials, which include such basic construction materials as steel reinforcing bars. Even locally produced cement has been in occasional short supply subsequent to the hurricane.

Another major problem for the Supreme Court work has been the need to provide for continuance of essential court operations at the same time the construction is proceeding. This has required extensive phasing of the construction so that most of the building can be usable at any given time to permit essential operations to continue. Initially the work was divided into six phases in order to provide for continuance of operation; in order to accelerate work at this point, the implementing agencies are

joining the fifth and sixth phases. It has not been feasible to use nighttime for construction to accelerate progress and to minimize disruption of operations because of the difficult security situation in the part of Kingston in which the Courthouse is located.

Apart from such unavoidable obstacles, however, there were certain causes for delay which might have been avoidable. One alleged cause of delay has been slowness of the architect in preparing plans and specifications. The architect was selected by waiver of competition because he had a longstanding history of satisfactory work for the Supreme Court including extensive knowledge of, and experience with, the building itself.

While we do not question the justification for waiver of competition in this case, we do note that it presents some of the risks as well as benefits of such waivers. It could be that the architect has taken his continued relationship with the Supreme Court for granted and this has been a factor in failure to adhere strictly to construction schedules and timely provide plans and specifications for bidding. In fairness to the architect, however, we should note that we have heard no substantial criticism otherwise of his work, indeed we have heard praise for the quality of the work and the detail conscious manner in which the work has been supervised.

Another delay factor of arguable avoidability was suspension of work because of payment delays. During April-May 1989, the GOJ experienced severe cashflow problems. Resulting delays in payment of GOJ share of construction progress payments led contractors to suspend work for a month or more during that period. The GOJ was catching up on its payments and work was resuming at the time of the evaluation team's visit to Jamaica in late May 1989.

b. Parish Courthouses

In carrying out the renovation work on the various courthouses, separate contracts were awarded for each courthouse. While sacrificing some efficiencies of scale and therefore resulting in somewhat higher cost, such procedure did provide opportunities for smaller contractors to participate in the program.

Another factor contributing to increased cost of courthouse renovation was the retention of architectural services for every courthouse. While such services were of marginal utility for smaller projects consisting of little more than interior and exterior painting and roof repair, the architects did help insure quality of performance and reduce some of the monitoring burden for USAID and GOJ project staff.

The work on the parish courthouses has experienced substantial delays and cost increases, but again, as with the Supreme Court building in Kingston, principally due to uncontrollable factors. The destructive force of Hurricane Gilbert extended throughout the Island and affected the availability of skilled workmen and construction materials for all contractors.

In our extensive interviews relative to the construction aspects of the program we were continually impressed with the knowledge and competence of the USAID and GOJ engineers assigned to the project. Further they are to be commended for the effectiveness of their system for monitoring construction progress.

B. RECOMMENDATIONS

1. That, to reduce demands on limited project management staff and expedite project implementation, AID should concentrate its financing on higher cost items and leave lower cost items to host country financing;
2. That, to reduce demand for storage space, improve appearance of facilities and better realize salvage values, the Government of Jamaica should reform property disposal policies and procedures;
3. That the Government of Jamaica should start planning and providing now for future expansion of the Supreme Court facility;
4. That the Government of Jamaica should perform cost benefit analyses of courthouses to determine the economic feasibility of consolidation as a means to improve cost efficiency of the system.

V. TRAINING

A. SUBSTANCE OF COMPONENT

As an input designed to enhance efficient delivery in the administration of justice, with a view to generating popular confidence in the rule of law, the training sub-component of this component is very important. Also, we must recognize the importance of such training in attracting and retaining good people in the justice system.

In more specific terms, the stated objective of this sub-component is to:

- reinforce and expand the judiciary's role in the decision of cases;
- develop the technical abilities of the staff of the courts in such areas as court management, statistical systems and budgeting;
- encourage recourse to the courts by the populace for the determination of their rights and so enhance popular respect for the rule of law.

Operationally, this sub-component consisted of short-term training courses, both local and overseas, for various court personnel as follows:

1. Judges of the Supreme Court and the Court of Appeal

Seminars on:

- Constitutional Law and Human Rights in the Americas
- Recent Developments in Criminal Law, Trial Problems and Solution Current and Future Drug Problems
- Reform of Criminal Law
- Criminal Law and Sentencing
- Sentencing Reform and Amendment to the Dangerous Drugs Act
- Conduct of Trials, Assessment of Damages, Identification Evidence
- Future of Appellate Courts

Courses in:

- Judicial Writing
- Police Powers
- Health Law and Ethics

2. Resident Magistrates

Seminars on:

- Recent Developments in Criminal Law and Granting of Bail; Need for Reform
- Resident Magistrate as Coroner, Quantum of Damages, Sentencing, Evidence, Customs and Taxation

Conference on Legal Pluralism, Sexual Offences, Problems facing the Commonwealth Jurisdictions.

3. Prosecutors

Seminars on:

- Recent Developments in Criminal Law and the Handling of Witnesses
- Recent Developments in Criminal Law: Evidence and Criminal Procedure
- Dangerous Drugs, Forfeiture of Assets, Computer Technology and Hearsay Evidence.

4. Other Court Personnel

Seminars on:

- Various Subjects: Criminal Law, Law of Contract, Law of Tort, Divorce

Course in Procedure and Practice in Courts' Offices

In addition to the above, a workshop on fraud in the securities market was attended by the Attorney General, the Director of Public Prosecutions and the Deputy Parliamentary Counsel. The Senior Parliamentary Counsel also attended a course on intellectual property, and the Chief Court Reporter attended a two day demonstration course in the use of computer-aided transcription systems.

B. APPROPRIATENESS, RELEVANCE AND TIMELINESS OF TRAINING

In addressing these issues, the evaluators were constrained to be cautious and tentative in their findings and conclusions. In the first place, contraction of the time originally allotted for evaluating the Jamaica component militated against interviewing a fairly representative cross section of trainees benefiting from the programme. Second, the training programme

omitted to incorporate a self-evaluation component which would have allowed for examination of the trainees' appreciation of the various courses, seminars and conferences. And, given the tight time-frame within which the evaluators were required to operate, it was not feasible to structure, disseminate, retrieve and assess appropriate instruments in this regard.

1. Lack of Self-Evaluation

Although the Administration of Justice Project has financed a wide variety of training for a large number of participants at short-term courses both in Jamaica and abroad, we find no evidence of any systematic self-evaluation for the training provided. Needless to say, the participant's perceptions of course content, its relevance and delivery through contemporaneous evaluation during the training program, would have been and still could be highly useful in improving the training through response to participant "feedback". For example, we heard numerous course participants express regret that the training programs did not include more time for questions and discussion.

The Supreme Court coordinator of training states that she conducted some oral questioning of returning participants as to their satisfaction with the training courses. There does not, however, appear to be any record of the results of such questioning as to who was interviewed and what they said.

Further, it does not appear that the training programmes themselves included any evaluation reported back to either the Government of Jamaica or the USAID Mission. Nor, apart from the Supreme Court Coordinator's oral questioning, does it appear that the GOJ implementing agencies or the USAID Mission conducted any post training interviews or questionnaires to ascertain the quality and appropriateness of the training and participants' satisfaction therewith.

Accordingly, we strongly recommend that between the AID Mission and the GOJ training coordinator an appropriate course evaluation system be devised and implemented either by questionnaire or by interview or a combination of both. Such evaluation would best be included as a part of the course, to be completed by each participant in writing at the end of the course. Alternatively the participants could be required to complete such questionnaires upon their return.

2. Design and Implementation Planning

The Ministry of Justice training coordinator has submitted, and the AID Mission has approved, a training plan identifying

various training courses and seminars of a short-term nature. Some of the training was relatively sharply focussed with specific objectives obviously in mind, e.g. judicial writing for judges, the training of the court reporters in computer-aided transcription of trial testimony. Other training seemed to be of more disparate nature without evidencing any clear objective in mind. For example, a parastatal enterprise course for the Registrar and a legislative drafting course for certain judges seemed of particularly questionable relevance.

We believe that such lack of training focus reflects lack of definition of training needs and objectives in the original project design as stated in the Project Agreement. In the absence of such definition and accompanying criteria for acceptance and rejection of training proposals, there is a tendency for the project training component to become a slush fund subject to all sort of requests from various directions for courses of varying relevance to program purposes and objectives. Project management becomes more of an administrative burden than necessary and the impact of the training is more elusive in relation to the objectives of the project.

3. Needs at Lower Levels of System

The general scenario emerging from discussions held by the evaluators with some resident magistrates, clerks of the court and practitioners is one where the most disquieting institutional malfunctioning appeared to occur at the lower scale of the system. At this level, judicial proceedings are presided over by judges of the inferior court traditionally known as resident magistrates, the majority of whom have long ceased to reside within their jurisdictions. The resident magistrates are normally required to perform a variety of administrative duties in addition to their judicial functions. Recently, enlargement of their jurisdiction has increased the burden of judicial functions required of them. Relatively low remuneration and other unattractive conditions of employment operate to deprive the magistracy of the best available legal expertise and experience. In the result, the number of experienced resident magistrates are continually depleted only to be replenished by inexperienced recruits from law school.

A similar situation appears to obtain for clerks of the courts, the overriding majority of whom lack professional training and relevant experience. Paralegals employed in various subordinate clerical positions also record a very high turnover rate due to unsatisfactory conditions of employment.

Consequently the administration of justice at the level of resident magistrates' courts appears to be characterised by an ever-growing number of files with pending or unresolved matters,

both civil and criminal, with probable adverse implications for popular perceptions of the administration of justice. For example, matters relating to probate, administration and bankruptcy which would ordinarily have been commenced by practitioners in the resident magistrate courts are being submitted to the Supreme Court where the available expertise still exists. Some of the training courses organised or conducted for Court personnel addressed some of the deficiencies of the system.

4. General Relevance

Subject to the foregoing and to the comments appearing below concerning the administration of justice in areas other than criminal law and procedure, the evaluators have concluded, on the basis of an examination of the areas identified in the programme, that the training programme appears to have been conducted in areas designed to enhance the administration of justice and to impact favourably on popular perceptions of the rule of law. In this connection, areas suggesting themselves for comment are:

- constitutional law and human rights
- conduct of trials, identification evidence and sentencing
- police powers
- granting of bail, handling of witnesses
- reform of criminal law
- summations and directions to juries
- fraud in securities markets
- amendments to Dangerous Drug Acts.

5. Timeliness

Given the situation described above, the timeliness of the training undertaken must be the subject of a reasonable inference from the conditions which are known to exist in Jamaica - a secular tendency towards increased criminal activity, the absence of trained prosecutors in the Courts, the high turnover of clerical staff in the Courts due to low wages and poor career prospects, contracting opportunities for judges and magistrates to interact with their colleagues in other jurisdictions and even in the same jurisdiction, all of which reinforce the belief that the training programme provides a timely and welcome opportunity to acquire new skills and insights into the administration of justice and to alleviate the burden of a relatively humdrum, exhausting and mechanistic existence. Quite apart from these general observations, there can be no doubt that with the burgeoning of drug trafficking offences, money laundering and other white collar crimes training in relevant areas is both necessary and timely.

C. FINDINGS AND CONCLUSIONS

1. Accomplishments

The Training Programme appears to have largely achieved the human resources development objective of having organised and conducted training for judges, resident magistrates, court personnel and prosecutors in the subject areas perceived to be relevant for improving the efficiency in the administration of justice and enhancing public confidence in the rule of law.

a. Amount and Type of Training

To date, 24 seminars/courses/conferences/workshops have been attended by selected personnel. Before the end of the financial year 1989-90 consideration is being given to organising/conducting training for 21 resident magistrates, 15 crown counsels, 2 registrars, 1 master of the Supreme Court, 1 deputy director of public prosecutions and 2 assistant directors of public prosecutions. The total cost of the Programme is expected to be US\$190,000 of which the Government of Jamaica will contribute US\$53,000.

b. Participants

In terms of a broad overview of this sub-component, it was found that all judges of the Supreme Court and Court of Appeal and all resident magistrates benefited from training programmes conducted in Jamaica. In addition, approximately 22 judges of the Supreme Court and the Court of Appeal benefited from overseas training in areas related to the performance of their functions. Four resident magistrates benefited from overseas training. All prosecutors in the Office of the Director of Public Prosecutions and the resident magistrates courts took part in local training courses. All clerks of the Supreme Court and resident magistrates courts also benefited from a seminar on Procedures and Practices in Courts' Offices. The Attorney General, Director of Public Prosecutions, Deputy Parliamentary Counsel and Senior Parliamentary Counsel attended seminar/courses abroad. Sixty subordinate paralegal personnel were expected to benefit from a variety of seminars in the areas of criminal law, contract, tort and divorce. In relation to the total establishment of professionals and paralegal personnel employed in the court system of Jamaica, the evaluators consider that this coverage is extensive.

2. Local v. Overseas Training

More than 50% of the expenditure on this sub-component was incurred in relation to overseas training, totalling approximately 70 training days and almost exclusively confined to actors in the upper level of the system. While we heard favourable comment on training programs, from the judges especially, we have to question the value of programs of three to five days duration, requiring travel to such far off destinations as Sydney, Australia; Toronto, Canada; or London, England. While such trips may be enjoyable as well as informative, in terms of cost relative to substance they are relatively harder to justify as a use of scarce resources for accomplishment of project objectives.

In contrast, the local training programmes accommodated considerably larger numbers of participants at all levels of the system, especially at the lower levels where the greatest need for training is perceived to exist. The question falling to be determined, therefore, is whether, on the basis of a cost-benefit analysis, the deployment of funds on a relatively small number of participants on overseas training can be justified. The evaluators submit that any such justification would be assisted by a finding that participants benefiting from overseas training are employed as instructors and presenters in the local training programs. Further, with such multiplier effect, one participant per program outside the Caribbean region should be sufficient.

3. Alternative Local and Regional Facilities

While we noted occasional training programs scheduled for resort hotels during the high season, we were impressed that overall the training administrators were cost sensitive in arranging local training. In further pursuit of increased cost effectiveness, we suggest more consideration be given to use of university facilities both for local training and for regional programs under the auspices of the UWI and other Caribbean institutions and organizations.

4. Emphasis on Criminal v. Civil Administration of Justice

The subject areas in which training was conducted encompassed a broad range of issues in both the criminal and civil administration of justice. As mentioned above, many of these issues engage the everyday concerns of substantial numbers of citizens coming into contact with the legal system, especially in the criminal sphere. As such, the trial and determination of these issues are more likely than not to impact positively or

negatively on popular perceptions of the rule of law in the administration of justice.

These subject areas however, appear to incorporate a bias in favour of crime-related issues and this in turn tends to support the inference that the public perception of the administration of justice based on the rule of law is less likely to be determined by the trial and determination of civil issues. In the present submission, however, civil issues consume a substantial portion of the Court's time especially in areas relating to property law, family law, business law, probate, administration and bankruptcy. Consequently, public confidence in the rule of law is likely to be critically determined by popular perceptions of the administration of justice in the civil sphere. Indeed, negative perceptions in this context might very well determine the incidence of resorting to self-help contrary to law. In the premises, the evaluators submit that the direction of this sub-component would have been better informed by an in depth analysis of the needs of the system which appear to be greater in the civil administration of justice.

5. Omission of Solicitor General's Department

Consistently with this perceived bias, the personnel of the Solicitor General's Department appear to have been omitted from the training sub-component. This omission, however, does not appear to have been justified in the light of the project goals and purposes and the role of the Solicitor General in the legal system. The Solicitor General performs the role of adviser to the Government in civil matters; he participates actively in the negotiation, drafting the conclusion of important transnational contracts with foreign investors and advises the Government generally on international economic law. Consequently, initial perceptions by foreign investors of the existing legal infrastructure in Jamaica are likely to be influenced by the quality of legal expertise available to Government negotiating teams.

Further, since the Government continues to be the largest employer of persons in various walks of life, the Solicitor General and his staff would need to keep abreast of legal developments concerning issues ordinarily arising between the Government and its employees. Although many of these issues may be resolved out of court, the manner of their resolution will inform perceptions about the administration of justice and influence public confidence in the rule of law. These considerations also appear to argue in favour of inviting and accommodating an input from the Solicitor General in the design and implementation of this sub-component.

6. Emphasis on Higher v. Lower Courts

In the ordinary course of events the Resident Magistrate's Court is the place where the administration of justice either begins or ends. It follows, therefore, that public confidence in the rule of law is in large measure determined by the quality of justice perceived to be dispensed in these institutions. Consequently, the emphasis given to the training of judges of the Supreme Court and the Court of Appeal appears to have been somewhat misconceived. In the present submission, consideration should be given to enlarging the opportunities for training Resident Magistrates and to augmenting the subject areas for such training to include issues ordinarily arising in the civil administration of justice.

D. RECOMMENDATIONS

1. This sub-component should incorporate a self-evaluation element which would allow for participants' timely reaction to the nature, frequency and duration of the training provided. In the absence of such an element submissions in this context are likely to be inadequately informed.
2. Given the critical role of resident magistrates in the administration of justice, this subcomponent should place greater emphasis on the training of such personnel.
3. The subject areas identified for inclusion in this subcomponent should be enlarged to accommodate issues ordinarily arising in the civil administration of justice.
4. Given the role of the professionals in the Solicitor General's Department and the practice of promoting them to sit on the bench, beneficiaries of this subcomponent should also be drawn from this Department.
5. Where feasible, this subcomponent should access relevant capabilities of local and regional institutions such as the U.W.I. law faculty.
6. The source, origin and nationality waiver should be maintained for this subcomponent to allow for maximum flexibility in organising/conducting courses best suited to the Jamaican experience.
7. Participants benefiting from overseas training should be engaged as instructors or presenters in local training programmes.
8. To the extent feasible the design of this subcomponent should be predicated on an in-depth needs analysis of the system.

9. Consideration should be given to establishing a Training Committee comprising representatives of the Judiciary, Bar Association, General Legal Council, Council of Legal Education and the Solicitor General's Office.

10. In any extension of the Project consideration should be given to allocating funds to this subcomponent in order to accommodate the recommendations submitted in this context.

VI. POLICY REFORM

Recent indications in a statement of Government policy to cut back on expenditure in the justice sector do not augur well for sustaining initiatives undertaken in this Project.

This Project is based on perceptions that the adequacy of the legal infrastructure impact importantly on the overall investment climate and the prospects for national development and growth, Government expenditure on establishing and maintaining an efficient and credible system for the administration of justice must be seen as an investment in economic development justifying priority claims on the public purse. Consequently, the Government needs to be sensitised about the value of this linkage and the importance of sustaining its legal system at a level of credibility that accords with national development goals.

A. MAINTENANCE

Apart from extending the work of refurbishing the court buildings which are not within the Project, it is essential to establish an effective and adequate maintenance programme for the buildings already repaired so that they do not lapse again into the appalling condition which had developed. This requires adequate budgeting provision and the necessary administrative organization. We were informed that the amount budgeted for the financial year 1989/1990 for maintenance of all the Court buildings throughout the Island was J\$10,000. This sum is only a token of the amount required. For the Government of Jamaica to meet its commitment, a sum greatly in excess of that figure will have to be provided in the Budgets for 1989-90 and the ensuing years.

Recommendation: That GOJ budget and appropriate adequate amounts for justice system maintenance, and that AID insist thereon as condition of continued project financing.

B. ADMINISTRATION

The work of refurbishing the physical plant of the justice system which is being carried out under the Project will not achieve its potential effectiveness unless there are corresponding improvements and reorganisation in related areas of the machinery of justice. It is essential that persons with management training and administrative experience be assigned to the management of the court system. In our view, judges, professional registrars and clerks of courts who have specialised functions to perform should not be burdened with the

administrative management and problems of physical maintenance of the courts.

Recommendation: That there be established within the court system a sufficient number of administrative posts and that persons with appropriate qualifications be appointed thereto.

C. SERVICE FEES

The improvement effected to the stock of books in the Library of the Supreme Court must also be maintained. The Library fees for practitioners have been increased and a subvention is now being provided by the General Legal Council which has increased the annual practising certificate fee for this purpose. The legal profession is therefore making a greater contribution to the maintenance of the Library. Satisfactory arrangements appear to have been made for the charges made by the Library for photocopying, providing cyclostyled copies of the judgments of the Court of Appeal and Supreme Court and the use of the other facilities of the Library.

The fees for filing documents in the Supreme Court and Court of Appeal have not been increased but this is being considered. The fees in the Resident Magistrates' Court have been increased.

Recommendation: That to increase available funds for maintenance of services, the justice system continue to set, and increase as necessary, fees for service as appropriate.

D. STRENGTHENING OF RESIDENT MAGISTRATE COURTS

The jurisdiction of the resident magistrates' courts has been significantly extended. At the same time these courts are burdened by history rather than logic with certain non-judicial functions, eg. kerosene and liquor licensing, that should more appropriately be assigned to executive branch agencies. This increases the pressures on these courts which already suffer from many of the handicaps mentioned in this Report.

Recommendation: That a short as well as long term programme for strengthening these courts be established, including review of their functions and provision of adequate training in resident magistrates' court procedures for the assistant clerks who are in direct contact with the public and carry out the bulk of the everyday functions of the courts' offices.

E. PART-TIME MAGISTRATES

Despite increases in the established number of resident magistrates, there is still a shortage at this important level and this has delayed the disposal of cases. Apart from improving the conditions of service of these officers so as to attract and retain more persons in these positions, consideration should also be given to retaining the services of private practitioners to carry out judicial duties on a temporary or part-time basis. Other jurisdictions, including some states in the United States, have had satisfactory experience with alternative systems of engaging such professionals for limited periods, including the period of the summer vacation, or of engaging them over an extended period but for a limited number of days each week should be explored.

Recommendation: That GOJ consider appointment of temporary masters and part-time magistrates to assist in addressing shortage of magistrates.

F. WOMEN IN DEVELOPMENT

Throughout our visits and interviews we were favorably impressed by the number of women active at all levels of the justice system, as judges, lawyers, clerks of court, etc. While there is still room for more equality of representation in the senior levels of the judiciary, Jamaica and its justice system are to be commended for obvious progress in implementing Jamaican policy favoring equal opportunity without regard to gender.

G. COMPENSATION

The problems experienced in the system of the administration of justice have largely been caused by the difficulties in recruiting and retaining trained personnel. The emoluments paid to Judicial and Legal Officers have been relatively low. Despite an annual graduation of thirty or more lawyers from the local Law School, only three or four enter the Public Service each year.

The position of clerk of courts in the resident magistrates' courts have legally to be filled by a professionally qualified attorney, but of some 34 posts only 4 are so filled. In addition to low salaries, these officers experience difficulty in obtaining cars so that they may efficiently carry out their duties. In some of the rural parishes where there are outstations at which courts are conducted several miles from the central capital Courts Office, the clerks of the courts have no cars and have to resort to the unreliable public transportation system.

We recommend that despite the financial constraints to which the Government may be subjected, a specific programme to meet these needs be established. Consideration should be given to removing the determination of judicial salaries and emoluments from the normal civil service machinery. Incentives should be given on the basis of specialised training e.g. in legal record keeping, legal librarianship, computerised registry work, and court reporting.

Recommendation: That the GOJ give high priority to compensation of key justice system positions at levels sufficient to attract and keep well qualified and motivated personnel.

H. SUPPORT FOR LAW REFORM

It is of critical importance that the system of law administered by the Courts be continuously modernised and rationalised. The utilization of Specialist Committees to examine and report on the reform of different areas of law should be expanded. The excellent system of Family Courts should be extended throughout the Island, and family counselling and technical support staff provided for the effective operation of the new Matrimonial Causes legislation, as well as the Juvenile and Family Courts generally. Criminal bail laws, practices and procedures need review in the effort to relieve the overcrowding of jails and the potential injustice of extended incarceration of criminal defendants pending trial for relatively minor offenses. The GOJ Law Reform Agency is presently lacking in capacity to analyse and develop such proposals and initiatives.

Recommendation: That the Law Reform Agency of Government be provided with the necessary technical support services, in the form of skilled legal draftsmen, research assistants, technological equipment such as word processors.

VII. SPECIAL ISSUES

A. PUBLIC RELATIONS

1. Publicity

In our discussion of the project with various Jamaican officials and lawyers, we found a generally high level of awareness within the Ministry of Justice and the Supreme Court concerning the project and its objectives. Among other governmental agencies, and members of the bar in general, we found more ignorance and misconception concerning the project than might have been expected. For example, the Solicitor General's Office had heard of the project and expressed particular interest in meeting with the evaluation team, but was not well informed on the purpose or the substance of the project. The Solicitor General was particularly interested in the training components and the computerized information access elements of the project but did not know much about them.

Similarly, the President of the Jamaica Bar Association welcomed the opportunity to learn more about the project from the evaluation team, and said there was substantial ignorance and misconception among the Bar in general as well as himself concerning the objectives of the Administration of Justice program. He noted a prevalent conception that the Administration of Justice programme was really just another aspect of U.S. efforts to restrict narcotics flows. The team explained that the Administration of Justice Project derived much more from concern for respect for human rights, strengthening democratic institutions and enhancing the credibility of democratic governments. He said that such explanations would be very helpful in improving acceptance and respect for the program among lawyers, and more generally among the Jamaican public.

Accordingly, we recommend that the Mission and the GOJ implementing agencies make more of an effort to publicize the project in terms of its objectives relative to human rights and democratic institutions. For example, the President of the Bar Association said that he would welcome an occasion for the AID Mission Director to discuss the project and its objectives with leaders of the Jamaican Bar.

2. Visibility

Aggravating the frustration caused by construction delays has been a certain low visibility of the work already accomplished. For example, early phases have included work on the registry, which as noted elsewhere in this evaluation was worthy of highest priority. It has also included rehabilitation of certain courtrooms and judges' chambers. Left to last

however, has been refurbishing of the building exterior and the areas by which the public gains access to the building. In other words, the most highly visible elements of the Supreme Court renovation, as far as public image is concerned, have been the most delayed.

In fairness, we should note that there are some valid reasons that such work should be left for the last. Construction crews have had to pass through the public access areas to get to their other work in the building, and they might damage them somewhat in the course of later work if such areas were done first. Some might argue that the bad impression from viewing areas which had not been refurbished would be only worsened by having seen and passed through refurbished areas.

Nevertheless, we suggest that in future projects of this nature, particularly projects in which the image of the institution is an important aspect, more weight might be given to public relations impact in determining priority of those aspects of the project which are most visible to the public.

B. WHERE FROM HERE?

The Administration of Justice project has had substantial impact, particularly over the short term. The court refurbishing efforts in particular are highly visible. The library replenishment and code republication are useful in improving legal services and will produce tangible improvement in the situation of many members of the legal profession as well as the court system. Computerization of court reporting and in the library and the registry are institutional changes of some consequence over the longer term. Further, by raising the hopes of previously discouraged lawyers and jurists, the program itself has helped stir up interest in other change and the need for extensive legal reform over the longer term.

As people are motivated to think more deeply about the legal system, however, there is increased realization that the problems addressed by the project are in large part only the symptoms of a far larger fundamental problem. There are serious questions whether Jamaica can really afford to maintain the justice system and establishment it now has. Economic prospects are such that budgets for essential public services, of which the justice system is only one, cannot realistically be expected to increase substantially in real terms. The share of the national budget now going to administration of justice is not much less than the people of Jamaica can afford; and at this level of support the system is steadily deteriorating. The deterioration is measured not just by the condition of the courthouses, but also by the lack of qualified entry level professionals, the clerks of courts

and their deputies, and the public prosecutors from which the future judiciary will be drawn.

Improved working conditions can substitute to some degree for monetary compensation, but even the best decorated and equipped courtrooms and registries will be insufficient to attract the necessary qualified people at current levels of compensation. Levels of compensation must be increased throughout the system, but particularly at the lower entry levels in order to attract and keep adequately trained and otherwise qualified people.

Within current budget levels compensation can be increased only by reducing the number of personnel substantially. Courthouses can be maintained adequately only by reducing the number of courthouses. If the essential level of services in the system are to be sustained such reductions of personnel and facilities can be accomplished only by substantially increased efficiency throughout the system. The poorer the country, the more precious the resources, the less the country can afford inefficiency in any system.

Accordingly, we recommend the undertaking of a thorough study and analysis of the system to determine where further efficiencies may be achieved. Since it is the the Jamaicans who will have to carry out the recommendations of such a study, and the Jamaicans who will be most be affected by the actions to be taken, and further because the Jamaicans are the most knowledgeable of their system of justice and its social, political and economic context, such study is best carried out by the Jamaicans themselves. Some outside consultant assistance may be useful to help gain the benefit of experience elsewhere, and under the circumstances external financial resources may be needed to help cover the cost of such an effort. We suggest that a high level commission with senior representatives of the Court system, Solicitor General's Office and private bar among other would be best qualified to carry out such study, with staff support from a team of professionals specially recruited and compensated for necessary research, analysis and report drafting.

Recommendation: That to address the needs of the justice system more effectively with the limited funds available, the agencies of the system, including representatives of the law schools and the organized bar, with such outside help as necessary, should conduct a thorough analysis of the system to determine and prioritize needs, and determine where greater efficiencies with consequent savings may be realized.

ANNEX ONE

METHODOLOGY

This evaluation was conducted over a ten day period in Jamaica. The evaluation team consisted of three members. The team leader was a U.S. lawyer from private practice with previous AID legal experience as an assistant general counsel and regional legal adviser and AID project/program management experience including several assignments as mission director. The other team members included a Guyanese lawyer practising in Jamaica, with extensive experience with regional organizations, including service as General Counsel of the International Bauxite Association. He was also a published author of works on regional and legal subjects. The other member of the team was a practicing Jamaican lawyer with extensive experience in Jamaican and Commonwealth Caribbean bar groups and programs. He also was a published author with a specialty in constitutional law.

To carry out the evaluation, the members of the team reviewed thoroughly the basic project documentation: the project identification document, the project paper and project agreement. Beyond this the team members reviewed extensively the documentary files of the project, including periodic reports and project implementation correspondence.

The team members used most of their time, however, to conduct extensive interviews with participants in and beneficiaries of the project, including the Attorney General, Minister of Justice, judges, registrars, prosecuting attorneys, legal aid and public defender attorneys, law students, law librarians, clerks of court and their deputies and assistants, construction contractors and architects, et al. Among the implementing agencies the team members interviewed all members of the Ministry of Justice project committee and AID mission project committee. In addition, one or more members of the team interviewed officers of the AID/Washington Latin America Bureau office for Administration of Justice.

Before leaving Jamaica, the team prepared a draft of the evaluation report which was discussed with members of the AID project committee and then with members of the Ministry of Justice project committee. Their comments have been incorporated into the final report.

ANNEX TWO

JAMAICA: PARTIAL LIST OF PERSONS INTERVIEWED

AID/WASHINGTON:

Ms. Debra McFarland
Mr. Thomas Carothers
Ms. Kathy Buller
Mr. Thomas Geiger
Ms. Norma Parker

USAID/JAMAICA:

Mr. Dennis Darby
Ms. Rosalie Henry
Mr. Robert Leonard
Mr. Rodney Johnson
Mr. William Joslin
Mr. Myron Golden
Mr. Thomas Tift
Ms. Patricia Lerner
Mr. Charles Mathews
Mr. Mansfield Blackwood

GOVERNMENT OF JAMAICA:

Ms. Hazel Harris, Supreme Court Project Coordinator
Ms. Audrey Henry, Clerk at Mandeville Court
Ms. Sandra Mitchell, P.S. Ministry of Justice
Mr. Carl Rattray, Minister of Justice and Attorney General
Mr. Derrick Morris, Project Director
Mr. Norman Anderson, Renovation Coordinator
Mr. Edward Zacca, Chief Justice
Mr. FNU Moody, Magistrate
Mr. FNU Wilson, Family Court
Mr. FNU Harrison, Registrar
Ms. Carol Forde, Deputy Librarian
Hon. H. R. Marsh, Judge

JAMAICA PRIVATE SECTOR:

Mr. John Quinton, Ray-Quinton Architects
Mr. Barlow Ricketts, Attorney at Law
Mr. Franklin Phipps, President, Jamaica Bar Ass's.
Mr. FNU Coombs, Contractor
Mr. David Muirhead
Mr. William Coke, Attorney
Mr. Donald Allen, Attorney
Ms. Myrtle Johnson, Attorney

Mr. Keith Smith, Attorney
Mr. R. A. Salmon, Attorney
Mr. George Magnus, Attorney
Ms. Nancy Anderson, Attorney
Mr. K. C. Burke, Attorney
Ms. Leila Parker, Attorney
Mr. Crofton Miller, Attorney