

HAITI SHORT-TERM JUDICIAL TRAINING ADMINISTRATION OF JUSTICE (AOJ) PROJECT

REPORT

July, 1995

SUMMARY

On January 17, 1995, the National Center for State Courts (NCSC), in conjunction with the US Department of Justice, began an emergency training program for all judicial officers across the Republic of Haiti. At the program's end, 160 *juges de paix*, 140 *juges de paix suppleant*, 12 *commissaires*, 25 *substitut commissaires*, and 20 *juges d'instruction* had taken part in the sessions. (See Annex 1) Port-au-Prince was the training site for the first three weeks. The team then spent one week in each of the eight regional capitals, conducting 2-day classes for every group of participants.

Juges de paix and their *suppleants* were lectured on the following topics: powers of the *juges de paix*; relationship between the *juges de paix*, the prosecutors, and the police; orders which the *juges de paix* may issue; investigation techniques; interrogation and examination of witnesses; complaints and information; and ethical considerations facing the *juges de paix*. Relevant provisions of the rural code were also covered. At the request of the Ministry of Justice, a "colloque" was conducted for the *commissaires* and *juges d'instruction* as formal instruction was deemed inappropriate for that group.

Each participant was provided with a "Petit Guide," a collection of laws, law commentary and forms which pertain to the performance of responsibilities of the office of *juges de paix*. (See Annex 2) At the end of each weekly session, the Minister of Justice visited the class and presented certificates of participation. (See Annex 3)

The NCSC team consisted of Stephen Schiller, Circuit Court Judge, Chicago, Illinois; Dennis Byron, Justice of the Eastern Caribbean Supreme Court; Rosemary Barkett, Circuit Judge, US Court of Appeals, Eleventh Circuit; Jacob Wit, Judge of the High Court of Justice of the Netherlands Antilles and Aruba; and Phillip Brutus, Haitian-American defense attorney practicing in Miami, Florida (not all were present at the same time). Sepideh Keyvanshad, an attorney working in Washington, DC, was the on site coordinator, and Madeleine Crohn, an NCSC consultant, was home office coordinator. The Department of Justice team consisted of Carl Alexandre, Trial Attorney, U.S. Department of Justice; Jean D. Larosiliere, Assistant U.S. Attorney, District of New Jersey; and Marceau Edouard, Assistant District Attorney, Bronx, New York. At the urging of ex-Minister of Justice Mallebranche, and as a condition for ensuring the participants' attendance, *juges de paix* and *suppleants* were paid Haitian\$90 per day, *commissaires* and *juges d'instruction* were paid Haitian\$140 per day, and the Haitian faculty received Haitian\$200 per day.

BACKGROUND

In December 1994, the National Center for State Courts (NCSC) was requested by the USAID Mission in Haiti to “initiate short term training for justice personnel to parallel that already established for the Haitian police as part of standing up a functioning justice system” (Article III - OBJECTIVE - PIO/T No: 521-0238-3-30149 - see Annex 4). Over a one week period, the NCSC Regional Administration of Justice (RAOJ) Director, Mark G. Visnic, developed a proposal and recruited faculty for the project to include: a Team Leader (Judge Stephen A. Schiller), a Senior Advisor (Justice Dennis Byron), three Trainers (prosecutors Jean D. Larosiliere and Henri Alexander, and attorney Phillip J. Brutus), a Home Office Coordinator (Madeleine Crohn), and an On-Site Coordinator (Sepideh Keyvanshad). The Delivery Service Order (10), under the NCSC Requirements Contract (LAC-0669-Q-10-1041-00) was signed on December 15, 1994.

The initial design of the project called for approximately two months of on-site training, to be followed by an assessment of the short term project and development of a more comprehensive curriculum. Three faculty members (Schiller, Larosiliere and Brutus) agreed to spend 10 days in Port au Prince in late December 1995, to begin preparations for the project.

PROJECT IMPLEMENTATION

PREPARATION PHASE

Judge Schiller and Phillip Brutus spent nine days in Port au Prince (from December 15 to December 23, 1994). Shortly before the scheduled trip, Jean D. Larosiliere informed the NCSC that he would not be able to participate in the project. On December 16, the NCSC learned from the Office of Development and Training (OPDAT) of the US Department of Justice that OPDAT would sponsor, under a separate agreement with the USAID, a team of prosecutors to complement the NCSC sponsored faculty. Carl Alexandre, Trial Attorney, US Department of Justice, and Jean Larosiliere, Assistant US Attorney, District of New Jersey, joined Schiller and Brutus in Port-au-Prince on December 16.

The two teams visited with USAID officials, representatives of the Ministry of Justice, the then Minister of Justice Ernest Mallebranche, and other individuals and organizations. Judge Schiller’s report and preliminary conclusions following the pre-assessment visit are attached as Annex 5. (Carl Alexandre’s internal reports to OPDAT may be available through the US Department of Justice).

In early January 1995, USAID/Haiti confirmed that training would begin in Port-au-Prince on January 17, 1995; participants would include magistrates from various levels of the judiciary from the capital and adjacent regions. At that point, it was uncertain whether additional training, if any, for the magistrates in the other eight departments would take place in Port-au-Prince or in “hub cities.”¹ Moreover, Minister Mallebranche had shown some reluctance about providing training to the judiciary before vetting of its members had taken place. Therefore, another point of uncertainty was the

¹ Capitals of the eight geographic regions in Haiti.

participation of a Haitian faculty - he did not want to select the Haitian faculty until the conducting of a vetting process.

The OPDAT and NCSC teams agreed to meet in Washington for two days (January 9 and 10) to coordinate logistics and outline lesson plans. They continued such preparation upon arrival in Haiti. The OPDAT logistics coordinator returned to the US on 1/13/1995, and Sepideh Keyvanshad - NCSC on site coordinator - left for Haiti on 1/16/95. Following negotiations with the USAID and US Ambassador Swing, Minister Mallebranche agreed to appoint a Haitian faculty. Honoraria to the faculty and to participants at the training was paid directly by USAID, while per-diem reimbursements and other expenses related to logistics (Haitian faculty and participants) became the responsibility of the NCSC under its contract for the project.

TRAINING SESSIONS

In Port-au-Prince

Port-au-Prince, January 17 to February 3

22 *juges de paix* and 1 *suppleant* from 21 cities and villages attended the first week of classes, held at the Holiday Inn Hotel, Centreville. Minister of Justice Mallebranche inaugurated the program. Classes started at 9:00 a.m. and ended at 5:00 p.m., with one-hour lunch breaks. Haitian faculty consisted of Jean David Kalim and Gerard Charles Alerte, Justices of the *Cour de Cassation*; Jean-Claude Banica, *Commissaire du Gouvernement*; Baniface Alexandre, *Substitut Commissaire du Gouvernement*; Emmanuel Dutreuil, Court of Appeals, Port-au-Prince; Kesner Michel Thermesi, Chief Prosecutor, Port-au-Prince; Robert Augustin, Chief of Minister's Cabinet; Alcan Dormeus, Director of Judicial Affairs; and Guy Michel Pradiou, Counselor for Judicial Affairs. The graduation ceremony was held at the USAID Mission. Minister of Justice Mallebranche, and William Swing, US Ambassador to Haiti, spoke to the graduates and presented them with Certificates of Participation, which they had both signed. Judge Stephen Schiller and Carl Alexandre also gave speeches. The ceremony was recorded and broadcast by a television station and several radio stations. (See Annex #6 for transcript of the first week of training)

Mallebranche also inaugurated the second week of classes, attended by 3 *juges de paix* and 16 *suppleants*. However, he resigned from his post on that day, and was replaced by Jean Joseph Exume. On Thursday, Minister Exume, and his Secretary of State (Deputy Minister of Justice), Carole Demerville, visited the training session. Judge Schiller had to return to his court in the US at the end of this session. Ambassador Swing and Minister Exume attended the closing ceremony, and once again, presented the certificates.

To prevent interference with court schedules, classes for *commissaires* and *juges d'instruction* took place in the afternoon of the third week. 2 *commissaires*, 9 *substitut commissaires*, and 7 *juges d'instruction* attended the sessions. Jo Ann Harris, Assistant Attorney General, US Department of Justice, made a one-hour visit to this group. She addressed the class by talking about the importance

of, and her dedication to, public service. Carole Demerville presented the certificates at the session's end, since the Minister and the Ambassador were attending ceremonies at the new police academy.

Port-au-Prince, February 3-12

During this week, preparations were made for the upcoming sessions outside of Port-au-Prince, including the printing of Petit Guides, printing of certificates, signing of the certificates by the minister, and purchase of supplies. Sepideh Keyvanshad and Carl Alexandre, along with Alcan Dormeus, Director of Judicial Affairs, and Jim Silverwood from OPDAT, made a one-day trip to St. Marc and Gonaives to deliver invitations to the *commissaires* of those cities regarding the training sessions, and to make arrangements for accommodations and training site.

Separately, the NCSC home office had recruited additional faculty, when plans for continued training were solidified. Judge Jacob Wit, and Judge Rosemary Barkett, agreed to join the project. NCSC developed a schedule to accommodate the active members of the judiciary. With the exception of the session in Cap-Haitien, at least one, and often two, judges participated in the training. Attorney Phillip Brutus and On Site Coordinator Sepideh Keyvanshad were able to stay for the duration of the project to ensure continuity, and provide support to the entire team.

In Regional Capitals

In an attempt to decentralize the administration of justice in Haiti, and at the recommendation of the Ministry of Justice, the training team traveled to and spent one week in each departmental capital (Gonaives, Hinche, Cap-Haitien, Fort-Liberte, Port-de-Paix, Jeremie, Les Cayes, and Jacmel). Each department consists of between 1 and 3 jurisdictions, and each jurisdiction has its own *commissaire*, *substitut commissaires*, and *juges d'instruction* (many of these posts were vacant). The Ministry of Justice chose Jean-David Kalim, Jean Claude Banica, and Baniface Alexandre as the Haitian instructors to travel with the team.

The US Military provided helicopter transport for the instructors until March 31, the date of the turn-over of forces from the United States to the United Nations. After that point, ground transportation was used for Jeremie, Les Cayes, and Jacmel, although helicopters were provided sporadically.

Gonaives, February 13-18

The team's first stop outside of Port-au-Prince was Gonaives, consisting of the Gonaives and St. Marc jurisdictions, in the Artibonite region. A total of 19 *juges de paix*, 19 *suppleants*, and 8 *commissaires*, *substituts*, and *juges d'instruction* from 21 cities attended the sessions. The first day of classes was held at a hotel; the remainder was held at the Department Delegate's office. The NCSC team was composed of Justice Byron and Phillip Brutus for the first four days; Judge Schiller had returned to Haiti on that week, and was in Gonaives for the *commissaire* and *juge d'instruction* training. Sepideh Keyvanshad and Phillip Brutus traveled to Hinche by helicopter to make arrangements for the upcoming week.

The Minister of Justice and his staff, along with General Donald Campbell, the head of the Civil Affairs Brigade of the US Army in Haiti, and in charge of the Ministerial Advisory Team, attended the closing ceremonies. The Minister distributed the Certificates of Participation.

Hinche, February 20-25

Hinche was the site of the second training session. It is the capital of the Central region, and consists of the Hinche and Mirebalais jurisdictions. The team members waited five hours for the arrival of the helicopter which was to transport them from Gonaives to Hinche. While in Hinche, they stayed at the Army Special Forces compound, due to suspected anti-American activities by the peasants' movement (MPP) in the region. Judge Byron and Sepideh Keyvanshad made a two-day trip by car to arrange for the Cap-Haitien session.

Classes were held in a small room on the side of the old FADH (Force d'Armée d'Haiti) building, then occupied by the IPSF (interim police force). The NCSC instructors were Justice Byron and Phillip Brutus. The other instructors remained the same. A total of 24 judges, commissaires, and substitutes from 13 cities attended the classes. The Minister visited this class on the Thursday of that week. Accompanying the Minister and his staff were General Campbell, and Jane Nandy, USAID mission deputy director of the Government and Democracy program.

Cap-Haitien, March 6-11

After a one week break due to the carnival festivities in Haiti, training was resumed in Cap-Haitien, capital of the Northern department. Grande Riviere du Nord is the other jurisdiction in this region. The judges from Grand Riviere du Nord were not present for the first day of classes because they had not received timely notice. They were, however, eventually informed by the Civil Affairs team, and attended the rest of the sessions. As Justice Byron had to return to St. Lucia to resume his court activities, Phillip Brutus was the sole NCSC instructor for that week. The other faculty members remained the same. The site of the training was an outdoor restaurant/bar/night club. The number of trainees for this session was 53, from 25 cities. During the week, Sepideh Keyvanshad and Carl Alexandre traveled to Fort-Liberte to meet the *commissaire*, inform him of the upcoming classes, and make the following week's arrangements.

On Saturday afternoon, the Minister of Justice, General Campbell, USAID representatives and their staff attended the graduation ceremony. The Civil Affairs Brigade also distributed to the *greffier* of each court various legal forms and legal texts. The books had been printed by the U.S. Army's Psychological Operations unit.

Fort-Liberte, March 13-18

To conduct classes in Fort-Liberte, capital of the Northeast department, the team had to travel the one and a half hour distance between Cap-Haitien and Fort-Liberte each morning and afternoon. There was only one hotel in Fort-Liberte, and the proprietor refused to receive any guests until she had properly cleaned the rooms after the International Police Monitors' departure. Thus, the team made the commute every day on the unpaved road between the two cities.

Classes were held in the city's library. The total number of trainees was 36 from 18 cities. At the end of the Monday class, the *commissaire* delivered dismissal letters to ten *juges de paix* from the Ministry of Justice. Their replacements attended the Wednesday-Thursday session.

Judge Rosemary Barkett arrived from Miami on Monday afternoon, and took part in instructing the remaining classes. The other faculty remained the same. Due to the difficult travel and the small number of participants for the *commissaire/judge d'instruction* session, the Friday class was canceled. Sepideh Keyvanshad and Carl Alexandre traveled by helicopter to Port-de-Paix to make the necessary arrangements for the following week.

The Minister of Justice, General Campbell, and their staff attended the last day of classes. Once again, the Civil Affairs Brigade distributed legal forms and texts. Judge Barkett, along with the Minister of Justice, and the Commissaire made closing remarks. At the end of the ceremony, Judge Barkett and Carl Alexandre returned to Port-au-Prince with the Minister's party, while the rest of the team continued on to Port-de-Paix.

Port-de-Paix, March 20-25

The training in Port-de-Paix, capital of the Northwest department, began with the following instructors: Phillip Brutus, Jean Larosiliere, Marceau Edouard, and the Haitian faculty. On Wednesday, Brutus and Larosiliere returned to Port-au-Prince, and Judge Barkett arrived in Port-de-Paix. Carl Alexandre had also been scheduled to arrive in Port-de-Paix on that day; however, he remained in Port-au-Prince for the remainder of the program.

Classes were held at the Tropical, an outdoor hotel/restaurant. The number of participants totaled 21 from 9 cities. The Minister of Justice, General Campbell, and their staff attended the graduation ceremony, distributing certificates of participation, and legal forms and texts. The team flew back to Port-au-Prince at the end of the ceremony.

Jeremie, April 3-8

After a one week break, the team drove for nine and a half hours to their next destination, Jeremie. The instructors in Jeremie, the capital of de la Grand'Anse department, consisted of Judge Jacob Wit, Marceau Edouard, and the Haitian faculty. No *juges de paix* were present at the Monday class, as they had not been informed of the sessions. A broadcast was made on the local radio station, requesting the judges' presence for the remainder of the training.

Classes were held at the Hotel la Cabane conference room. By the week's end, 25 judges, prosecutors, and *juges d'instruction*, from 13 cities, had attended the training sessions. The Minister of Justice spoke at the end of the Saturday class and distributed certificates. The team flew back to Port-au-Prince on that day with the Minister.

Les Cayes, April 17-22

After another one week break, this time for the Easter holidays, training began in Les Cayes. Consisting of the Cayes, Aquin, and Anse-a-Veau jurisdictions, Les Cayes is the capital of the Southern department. Judge Byron, Judge Wit, Phillip Brutus, Jean Larosiliere, and the Haitian faculty instructed this group at the American University of the Caribbean. Les Cayes had the largest number of *juges de paix* and *suppleants* of all the other departments for a total of 56. A total of 9 *commissaires*, substitutes, and *juges d'instruction* also attended.

Judges Byron and Wit visited the Court of Appeals in Les Cayes, and invited the Court's justices to attend the Friday and Saturday colloques. Those judges expressed displeasure that they had not already been invited by the Ministry to participate as instructors for their region. Sepideh Keyvanshad traveled to Jacmel to make arrangements for the team's final destination.

The graduation ceremony was conducted, with the presence of the Minister of Justice, General Campbell, and their staff. Major General Kinzer, the head of the UN command in Haiti also attended the ceremony. Legal forms and texts were distributed to the *greffiers*.

Jacmel, April 24-29

Jacmel was the final training site. It is the capital of the Southwest department, and includes the jurisdictions of Jacmel and Petit Goave. The instructors - Judge Byron, Judge Wit, Phillip Brutus, Jean Larosiliere, and the Haitian faculty - stayed at La Jacmelienne hotel, and conducted classes at the hotel's conference room. Some of the participants had already attended the training sessions in Port-au-Prince in January, as they had been part of the group invited by the Ministry.

The final ceremony took place on April 29, with the presence of the Minister of Justice Exume, Carole Demerville, General Kinzer, General Campbell, Kitty Hall from USAID, the delegate and the mayor of Jacmel. Carl Alexandre and Marceau Edouard returned to Jacmel for the ceremony; Carl Alexandre was the Master of Ceremony. The following people gave speeches: Minister Exume, Judge Kalim, Judge Wit, and General Campbell. The ceremony was taped and broadcast by local radio and television stations.

FOLLOW UP AND CONCLUSIONS

When the short term judicial program ended, the USAID developed a set of new activities as interim initiatives until an Institutional Contractor is selected to oversee management of the AOJ project (target date - fall 1995). AID decided that continuing judicial education would take place over 6 months, and assigned the project to the US Department of Justice.

In March, 1995, the NCSC submitted to AID a preliminary report on changes (design, personnel and budget) due to the evolving nature of the project, and a budget modification request (final approval pending). In May, the National Center convened a meeting of three of the NCSC sponsored faculty - Judge Schiller, Justice Byron and Judge Wit. After a preparatory discussion on

May 15, 1995, at the NCSC offices in Rosslyn, the judges and the NCSC Home Office Coordinator (Madeleine Crohn) briefed Mr. Mark Schneider, Assistant Administrator, Bureau for Latin America and Caribbean, and Ms. Norma Parker, Deputy Assistant Administrator, Bureau for Latin America and Caribbean, on the program. They made these observations and recommendations:

Haitian Magistrates may be at the receiving end of mixed messages. There exists no real experience with, or understanding of, an independent judiciary - notwithstanding provisions of the 1987 Haitian Constitution. Participants expressed fear about challenging Ministry of Justice orders, even if the orders were in violation of the law. The few unwilling to obey such orders said that resigning or getting fired were the only options. Such incidence occurred at least once while training was underway - thus undermining the message and credibility of the training.

The curriculum content was flawed by an over-emphasis on prosecutorial issues. Beyond technicalities, an important goal of the short term training project was to infuse a sense of dignity and purposefulness about the judicial function. In a system of law, judges have an oversight responsibility regarding the justice system. This responsibility is intentionally distinct from those of prosecutors or defense counsels.² Judicial members of the faculty found it difficult to convey this information, or to balance presentations more evenly. Instead, presentations were dominated by matters related to criminal investigations. US based examples were used too often, and inappropriately, for many of them were not readily transferable to the Haiti circumstances. This was particularly problematic, since, in Haiti, the prosecution of cases is conducted by *commissaires*, who are in some respects identified by the judiciary, and in certain instances by the *juges de paix* (indeed, the charging process involves the *juge d'instruction*) - such is the case in most civil law systems. In addition, misunderstandings of purposes and roles developed, such as an inference that the training team was attempting to impose a foreign system of law on Haitians.

There should have been more substantive participation by Haitians in design of procedures and curriculum content. The design (purpose and goals) of the training, its relationship to other needed reforms (such as constitutional and legal/procedural reforms), and its substantive aspects (for example, how should magistrates interpret the law) were not discussed with the Haitian Government, and the Government was not asked or required to be involved in the rationalization of their system. Thus, there appeared to be no investment by the Haitians in the intellectual development and conceptualization of a new system, this despite the availability of knowledgeable and experienced Haitian experts. Nor were there any apparent plans for such to occur at a future point.³

The NCSC faculty felt that its presence and role were ambiguous. At the training sessions, the NCSC faculty was not introduced to the Haitian magistrates. As a result, the NCSC sponsored judges found it difficult to explain why and how their experience could be

² Whereas prosecutors and defense counsels have a narrow realm of responsibilities, i.e. to the defendant, the plaintiff, or the state, judges are responsible for the justice system in general.

³ The Haitian faculty limited its presentations to lectures (speeches) on substantive law

relevant to their Haitian colleagues on the bench. Such confusion was somewhat alleviated in informal, small group discussions during breaks or at the end of training sessions - not a sufficient or appropriate remedy.

The project objectives were not sufficiently clear. The NCSC faculty was aware that the project was one of urgency, and that it would not be possible to develop or present a traditional, structured curriculum. However, this difficult situation was worsened, because the Ministers of Justice (or their staff) provided no guidance on their aspirations for the project; nor did they appear "invested" in its delivery and outcome. This lack of participation and Haitian ownership deeply affected the quality and impact of the project.

Further details on observations and recommendations by the NCSC sponsored faculty are in Annex 7. These reports were sent to USAID/Haiti. It is not clear whether these reports were communicated to DOJ representatives in charge of the medium-term training program (Summer - Fall, 1995).