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Court Administration as a Tool for Judicial Reform

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**Court Administration as a Tool for Judicial Reform:
An International Perspective**

**Institute for Court Management
Court Executive Development Program
Phase III Project
April 2001**

Christie S. Warren

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I. Abstract

This paper focuses on court administration as a component of judicial branch reform in the United States and other countries.

Over the past fifty years, state and federal court systems in the United States have undergone a process of significant change. At the beginning of the twentieth century, courts were largely dependent upon the executive branch of government for administrative support and were for the most part externally dominated, disorganized, and poorly managed. By the end of the century, they had undergone a process of administrative innovation and improvement that changed the way they were managed. In other countries, judicial sector reform has been more recent. Events such as the birth of new nations, the dissolution of national boundaries, the collapse of government systems and the creation of regional and international organizations have all prompted reanalysis of court functions.

Research conducted during this project was aimed at discovering whether judicial sector reform in other countries has resulted in training needs in the field of court administration. If training needs were identified, a survey would then be carried out to ascertain whether sufficient training programs exist to meet those needs. The ultimate goal of the project was to determine whether lessons learned during the era of judicial branch reform in the United States might prove useful to the judiciaries of other countries in which similar reforms are underway.

Research was begun by reviewing literature on judicial reform in the United States. Documents prepared by agencies and organizations implementing international judicial sector reform programs were then reviewed, and personnel working in these programs were consulted. Court administrators in other countries were asked to provide information about existing court management training programs. Recent critiques of international aid programs were examined and adult educators were consulted to determine how to design an international training program free of identified problems.

Although a number of constraints, including a lack of objective data and literature, language, and difficulties in communication due to geographic distance, presented obstacles during this project, its general objectives were met. A wide variety of court administration training needs were identified. Few, if any, training programs were found to exist to meet those needs. Training programs that do exist have not been designed for implementation outside the countries in which they are located, and they do not appear to be flexible enough for use in legal systems other than those for which they were designed.

In conclusion, the creation of a flexible, adaptable court administration training program suitable for implementation in a variety of legal systems would fill a substantial need. To address criticisms levied against many international aid programs, principles of education for development and faculty development should be utilized. Flexible curricula should center around general core competencies such as those promulgated by the National Association for Court Management and value-based standards such as the Trial Court Performance Standards. Curricula should be designed in consultation with counterparts in recipient countries after needs

assessments have been carried out. In addition, international trainers should be oriented to the cultural norms, legal traditions, and current political landscapes of the countries in which they train. If these criteria are incorporated as part of an international court administration training program, lessons learned in this country during the judicial reform movement of the last fifty years can provide useful guidance to other nations on their own path of judicial sector reform.

II. Introduction

Over the past few decades, judicial reform has become an integral part of the process of economic, political, and administrative development.¹ In the United States and throughout the world, there is a growing recognition that economic and social progress cannot be achieved on a sustainable basis without respect for the rule of law.²

Historical events create opportunities for governmental, including judicial, reform. The collapse of the Soviet Union resulted in a collection of independent states, each newly responsible for its own government. Judges and court administrators in these socialist systems, previously unfamiliar with even the most basic concepts of the functioning of a judiciary in a democracy, were suddenly faced with the responsibility of creating new institutions.³

¹ Carl Baar, "The Development and Reform of Court Organization and Administration." 19 Public Administration and Development, 1999. 339 – 351.

² Maria Dakolias, Court Performance Around the World: A Comparative Perspective. World Bank Technical Paper No. 430, 1999. 1.

In Latin America, the fall of military dictatorships and the advent of democratic principles have paved the way for governmental reforms. At the same time and in many of the same countries, the transition of legal systems from written procedures based on civil code traditions to oral legal proceedings has required large-scale judicial changes.⁴

Unification of formerly partitioned countries such as Germany (and potentially Ireland) also provides opportunities for restructuring government institutions. Wars of independence in East Timor and the Congo and the destruction of the judicial system in Cambodia have resulted in the need to build entire systems from the ground up.⁵

While historical events unfold in individual countries, regional and global justice issues are becoming more prominent. Entry into regional associations such as ASEAN and the European Union require adherence to extra-national laws and treaties. The creation of international tribunals such as the International Court of Justice and war crimes tribunals raise issues relating to international principles of justice and rules of procedure. Prosecutions of war criminals outside countries in which their crimes were committed raise fundamental questions about the role of courts.

³ James G. Apple, "Starting Down the Long Trail of Judicial Independence: The Experience in Russia, the Newly Independent States, and Central and Eastern Europe." Yearbook of the Centre for the Independence of Judges and Lawyers, 2000. 171 – 187.

⁴ See, for example, Linn Hammergren, Judicial Training and Justice Reform. Working paper #PN-ACD-021. Center for Democracy and Governance; Bureau for Global Programs, Field Support, and Research; U. S. Agency for International Development, 1998. 32.

⁵ See Rajiv Chandrasekaran, "Square One: Untrained East Timorese Must Build a Nation From Scratch." Washington Post March 29, 2000. A16: "Almost seven months after East Timor's overwhelming vote for independence from Indonesia and its subsequent devastation by militia groups backed by the Indonesian military, the East Timorese people and the United Nations administrators now in charge are finding the task of rebuilding from ground zero far more complicated than they ever imagined. . . . During the 24 years that Indonesia ruled this former Portuguese colony, no East Timorese were appointed as judges or licensed to practice law. Those jobs went to Indonesians, all of whom fled to Indonesia-controlled western Timor and other parts of the archipelago after last

In the world of business and investment, pressure on governments to reform comes from both local and foreign interests. At the national level, privatization of state enterprises raises issues concerning contracts, labor, and competition that many judiciaries are ill-equipped to handle. At the international level, economic integration with other regions compels countries to change their laws and legal processes. When countries join international or regional organizations such as the World Trade Organization or the European Union, they must comply with certain legal prerequisites.⁶ Finally, as nations try to become more attractive to international investors, they find that inefficient or corrupt judiciaries may repel investment.⁷

As the significance of national boundaries becomes attenuated and old barriers (political, geographic, cultural and economic) fade, opportunities for regional and international study, comparisons, and information-sharing increase. Identifying common interests and themes among judiciaries of different countries is the order of the day. Public trust and confidence in judicial systems is now compared internationally.⁸ Judicial education

August's referendum. 'We are starting the court from scratch,' said Louis Aucoin, a Boston University law professor who is the United Nations' acting director of judicial affairs. . ."

⁶ See Philip P. Pan, "Top Judicial Officials Say China's Corruption is Deep." *Washington Post* March 11, 2001: A18: "China's top two judicial officials said today the government remains hobbled by graft, bribery and collusion with organized crime, acknowledging the Communist Party's crackdown on corruption has not fully succeeded. In speeches to China's parliament at its annual session, the officials also highlighted major problems with the country's legal system, including corrupt prosecutors, incompetent judges and lack of enforcement of verdicts. . .Hu Angang, a prominent Chinese researcher, estimates that official malfeasance has cost China about \$150 billion over the past decade. Pressure to solve the problem is increasing as China attempts to overhaul its legal system in anticipation of joining the World Trade Organization. Nearly 1,300 judges and 500 prosecutors were punished for breaking party or administrative rules last year, the judicial reports said."

⁷ Edgardo Buscaglia and Maria Dakolias, *An Analysis of the Causes of Corruption in the Judiciary*. Legal and Judicial Reform Unit, The World Bank, 1999. 1.

⁸ Each year, the World Competitiveness Yearbook (International Institute for Management Development, Lausanne, Switzerland) analyzes and ranks the competitiveness of 47 world economies in the following categories: domestic economy, internationalization, government, finance, infrastructure, management, science and technology, and people. The level of citizens' confidence in their judicial systems is included in the government rankings.

programs are conducted regionally as well as nationally.⁹ The impact of specific administrative reforms on systemic problems such as judicial corruption is now compared between the courts of different countries.¹⁰ Judicial efficiency is assessed internationally.¹¹

As stated by one international judicial educator,

“As we approach the close of the twentieth century, local society is affected increasingly by social, economic, cultural, and demographic processes that cross national boundaries and merge domestic and international concerns. Although local practices and beliefs mediate such global forces, globalization reshapes local cultural and institutional boundaries, and intensifies interactions worldwide.”¹²

This paper will outline the judicial reform movement in the United States during the second half of the twentieth century and the more recent advent of international judicial reform efforts. It will then survey some of the judicial administration training and reform needs identified by international court personnel and provide an overview of some of the training programs that exist to train court administrators.

Many of the problems currently experienced by judicial systems in other countries, both developed and developing, are not different from those that arose during the judicial reform movement in the United States over the last fifty years. This paper will conclude by finding that there is an identified need to develop a flexible, comprehensive curriculum in basic court administration principles that can be adapted to a variety of systems. However, to ensure that such a program is relevant and useful, and to avoid charges of cultural insensitivity, the

⁹ For example, in October 1998, the Conference on Judicial Education in the Americas was held in San Juan, Puerto Rico. Representatives of judiciaries from all countries in Latin America, the Caribbean, the United States, and Canada attended.

¹⁰ Buscaglia and Dakolias, An Analysis of the Causes of Corruption in the Judiciary.

¹¹ Edgardo Buscaglia and Maria Dakolias, Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account. Legal and Judicial Reform Unit, The World Bank, 1999.

¹² John K. Hudzik, Issues and Trends in Judicial Branch Education 1999. The Judicial Education Reference, Information, and Technical Transfer Project, 1999.

participation of local counterparts should be incorporated as much as possible. To that end, needs assessments should be carried out, curricula should be developed in consultation with local counterparts, and trainers should be familiar with modern principles of developmental education and oriented to the culture, legal traditions, and learning preferences of students in recipient countries.

III. Relevant Literature

A principal constraint in writing this paper was the absence of relevant literature. While the history of judicial administration in the United States, both at the state and federal level, has been well documented, comparable information on international judicial reform efforts is not as readily available. Democracy building, the rubric under which judicial reform efforts are often included, has generated its own collection of literature, but international judicial reform as a relatively recent phenomenon is not yet the subject of extensive formal commentary outside the agencies who sponsor and implement reform projects.

As stated by the author of one recent commentary,

“Although democracy aid has become a remarkably extensive field of activity, it remains understudied and poorly understood. Some of the more experienced people and organizations in the community of democracy promoters are gaining considerable expertise. They rarely distill their knowledge into written form, however, and when they do it is usually in informal internal memos. Some of the organizations involved carry out evaluations of their own work, but those reports rarely circulate outside the sponsoring organizations and. . .rarely cut deep. . .Bureaucratic imperatives reinforce this tendency, above all the pressure to keep moving from one project to the next.”¹³

¹³ Thomas Carothers, Aiding Democracy Abroad: The Learning Curve Carnegie Endowment for International Peace, 1999. 8-9.

The nature of democracy assistance as a competitive business is a further cause for the absence of literature. Program implementers are not motivated to share their knowledge and ideas with one another since assessments, program materials, and evaluations generated during the course of one project are often used as the basis for seeking funding for other projects. Project funds are often used to pay overhead costs of implementing organizations, making competition for contracts fierce. Independent consultants whose services are used to meet program mandates are frequently required to sign contracts in which they agree not to disseminate any materials they develop in conjunction with the program. Further, the absence of objective literature is compounded by difficulties in obtaining raw material and data that would permit cross-cutting comparative studies.

At the other end of the spectrum, the field of adult education contains an abundance of objective literature, studies, and data. In particular, monographs published by the Judicial Education Reference, Information and Technical Transfer Project were the source of valuable assistance in this project.

IV. Methodology

Research for this paper was conducted as follows:

1. An informal survey was carried out to determine whether there was a need for training in basic principles of court administration in the international context. Since international judicial reform programs are funded and implemented by a variety of organizations and agencies located throughout the world, it was not possible to administer a single survey instrument to collect this data. Instead, requests for information were sent directly to project

implementers in the field, who were asked to identify court administration training needs in their region. This research was conducted by telephone, fax, mail, and e-mail over the period of a year.

2. Input was received from personnel who had implemented judicial sector reform programs in Argentina, Bosnia, Bulgaria, Cambodia, France, Haiti, Ireland, Italy, Macedonia, the Maldives, Pakistan, Poland, Romania, Spain, Venezuela, and various other countries in Central and Eastern Europe, the former Soviet Union, and Latin America.

3. International donors, including the World Bank, the United States Agency for International Development, the United Nations Development Programme, the Inter-American Development Bank, and the Asian Development Bank were contacted to obtain materials relating to international training programs, including assessments, studies, and diagnostic reports.

4. Information on existing court administration training programs was collected from court administrators in different regions of the world. Program descriptions and curriculum materials were reviewed to determine the scope and extent of existing training programs. Responses were received from Australia, Canada, England, France, the Netherlands, New Zealand, Romania, Russia, the United States, and various countries in Africa, Asia, and Latin America.

5. At the conclusion of this research, it became apparent that there was a need for a flexible curriculum in basic court administration principles that could be modified for use in the international arena. With few, if any, exceptions, training programs that did exist had been

designed for court administrators in the countries in which the programs were offered. None were easily capable of transfer to other systems.

6. Assessments of past and present international Rule of Law programs were studied to ascertain reasons for failure. Consistent factors leading to unsuccessful implementation of judicial sector programs were identified.

7. Discussions with judicial branch educators in the United States and other countries were then undertaken to flesh out the component parts of a flexible training program in court administration useable in a variety of systems. Their recommendations were incorporated.

8. Interviews were conducted with court administrators from Ireland who were in the process of taking a one-week training program at the National Center for State Courts in order to assess the effectiveness of a prototype training program designed for non-American judicial administrators. Their recommendations were incorporated.

9. A final draft of this paper was sent to judicial branch educators for review. Final recommendations were incorporated.

Obstacles faced during the execution of this project included:

1. Absence of objective literature

As stated above, very little objective literature exists in the field of international judicial sector reform. The literature that does exist is limited, subjective, and usually not available to the public.

2. Absence of uniform data

No comprehensive survey of administrative issues facing courts around the world has been carried out. Since international aid programs are funded by many donors, both in the United States and other countries, and implemented by a large number of contracting agencies, it was not possible to administer a single instrument to permit uniform collection of data. Therefore, no systematic analysis of trends and needs could be conducted. Given this obstacle, it was only possible to include a representative list of administrative training needs facing international court systems in this paper.

3. Language

Many studies and reports are written in languages other than English. Program descriptions and curriculum plans for training programs in other countries are written in the languages of those countries.

4. Remote location of resources

Although some information was available from central funding agencies, most assessments and reports were located in the countries in which programs were implemented. Personnel with the most relevant information and data were also in those countries. Communication and transfer of materials were often problematic.

V. **Analysis: Judicial Branch Reform in the United States and Other Countries**

A. **Judicial Reform in the United States: A Brief Overview**¹⁴

Judicial administration in the United States is in reality a creature of the last half of the twentieth century. At the beginning of the 1900s, both state and federal courts depended heavily on the executive branch of government for administrative support and were subject to

¹⁴ This section is largely a summary taken from Robert W. Tobin, An Overview of Court Administration in the United States, 1997.

detailed regulation by the legislative branch. Rudimentary case management was supplied by clerks who handled court records and sometimes scheduled court cases.

1. State Court Reforms

Although the federal courts had achieved a highly compact organizational structure before 1900, the structure of the state courts at the turn of the century was very disorganized. State courts had been created to serve a variety of local needs, not to conform to theories of organizational coherence. In the nineteenth century, each judge ran his or her courtroom as a separate administrative entity and operated in isolation from other judges in the same court. Administrative systems and skills were lacking.

In the middle of the century, judges, organized state bars, and students of the judiciary began to look critically at the state court system and concluded that courts, particularly trial courts, were externally dominated, highly disorganized, often unprofessional, and poorly managed. As a consequence, the integrity of the state court system was seriously undermined.¹⁵

Over the next few decades, state courts underwent a process of administrative innovation and improvement that dramatically changed the way they were managed and led to an administrative infrastructure staffed by professional managers. This trend paralleled a general pattern of reform and centralization in government management. One of the principal reforms undertaken was the creation of central administrative offices in most state judicial

systems; these offices had authority from the Chief Justice to carry out the administrative policy of the Supreme Courts. Judicial councils were also created in many states as planning and policy bodies for the courts. These councils were designed to ascertain the needs of the court system, propose policy and planning objectives for court improvement, and make recommendations on legislation.

Another significant development during this period of judicial reform was the emergence of court administration as a distinct profession. In 1950, the first state court administrator was selected, ushering in a rapid period of development of the profession of court administration. By 1977, forty-six states had state court administrators.

Next, national organizations of court administrators were created, court administrative mechanisms were developed, and federal government funding was granted to support court administrative reforms.

2. Federal Court Reforms

In the federal court system, a parallel process of self-examination took place during the same period. This process started under William Howard Taft, the only person in American history to serve as both President and Chief Justice of the United States Supreme Court. In 1914 Taft delivered a strong critique of the federal court system, which led to the creation of the Judicial Conference of the United States in 1948. The Conference surveyed the business of the federal courts, assigned judges to circuits or districts, monitored the effects of rules and

¹⁵ Robert W. Tobin, Creating the Judicial Branch: The Unfinished Reform, 1999. vii.

procedure, recommended legislation to Congress for improving the federal courts, and proposed procedural rules.

In 1939, recognizing that the Conference needed staff support and an administrative arm to perform various services vital to the daily administration of the courts, Congress created the Administrative Office of the United States Courts. Until that point, administrative services had been provided by the Department of Justice within the executive branch of government. Creation of the Administrative Office of the Courts freed the federal court system from dependence on the other two branches of government and was a milestone in the development of court administration in the United States.

3. Professionalizing Judicial Branch Administration

In both the federal and state court systems, the mid-1960s saw the beginning of a period of rapid growth in the professionalization of judicial education and trial court administration. Judicial educators and trial court administrators began to create their own organizations, which played a major role in building their professions. These organizations were formed to provide support, forums for networking, and training programs.

Before 1961, only four state judicial education organizations had existed. By 1971, there were 12 such organizations. Between 1971 and 1980, the total number of state judicial

education organizations increased to 38; currently over 67 state-based organizations are actively engaged in providing continuing judicial education.¹⁶

State court administrators (as distinguished from judicial educators) began to create their own organizations in 1965. That year, the National Association of Trial Court Administrators and a parallel organization, the National Association of Court Administration, were created. In 1985 these two organizations were merged to form the National Association for Court Management (NACM).

In the federal system, the Federal Judicial Center was created in 1967 as a research arm to give the federal judiciary the ability to explore managerial and administrative reforms without turning to outside organizations. Since that time, the Center, along with the Administrative Office of the United State Courts, has organized and conducted a variety of judicial training programs for federal judges and court personnel.

In 1970, at the request of United States Chief Justice Warren Burger, the Institute for Court Management was created. ICM began to certify and train court managers and develop the knowledge and skill base for the emerging court administration profession. In 1971, again at the request of Chief Justice Burger, the National Center for State Courts was created as a research and consulting arm of the state courts as a counterpart to the Federal Judicial Center. During this decade, when court administrative offices were rapidly being created, the National Center was deeply involved in improving court administration.

¹⁶ Maureen E. Connor, Claiming Status in An Emerging Occupation: A Study of State Judicial Education in America. The Judicial Education Reference, Information, and Technical Transfer Project, 1999. 1.

In 1990, the National Association for Court Management began a two year process of defining core areas of court management skills and responsibilities that all court managers should possess irrespective of the court system in which they worked. Ten core competencies were identified: purposes of courts and court systems; leadership; resource allocation, acquisition, budget, and finance; vision and strategic planning; caseflow management; information technology management; public information and media relations; employee training and development; ancillary services and programs; and human resource management. These competencies represent areas in which NACM believes that court managers should have acceptable levels of knowledge, skill, and ability.¹⁷

In summary, the second half of the twentieth century saw exponential growth in the field of court administration in the United States. In both the federal and state court systems, responsibility for administering the courts was transferred from the executive to the judicial branch of government. New planning and policy bodies were created within the judicial branch, and court administration emerged as a discrete profession. Judicial training and court administration organizations were set up and core competencies were identified. The politics, localism, corruption, mediocrity, and anarchy that characterized the courts at the beginning of the twentieth century¹⁸ gave way to a substantially more orderly administration of justice.

¹⁷ “Core Competency Curriculum Guidelines: History, Overview, and Future Uses.” The Court Manager, Winter 1998. 6 – 18.

4. Incorporating Developmental Principles in Judicial Branch Education

The last decade of the twentieth century saw the incorporation of principles of education for development into many judicial branch training programs in the United States. This educational approach is based upon the premise that teaching should focus not only on helping judicial personnel to master curriculum content but also on helping them develop the more generalized abilities they need in order to meet the complex demands placed on them.¹⁹ Thus, the development of the students themselves in training courses is equally as important as mastery of the nominal subject of the training. Reorienting training programs to these goals requires that questions traditionally considered irrelevant be addressed: how can judicial education be changed so that it is oriented to the development of persons within the judiciary? Is there a way to design courses to foster the development of judges so that they are able to think in increasingly complex ways? What kinds of teaching practices would be used in such a program? What are the implications of gender and racial diversity for effective judicial education programs? Education for development theories link what has been learned from good practices in judicial education to research that illuminates how professionals change and grow throughout their careers. These principles, although originally developed to train judges, are now used to train all judicial sector participants, including court administrators, judicial educators, and support personnel. This broader approach to learning and development is considered to be uniquely relevant to the changing environment of court systems; it requires

¹⁸ Tobin, An Overview of Court Administration in the United States. 11 – 15.

¹⁹ Charles S. Claxton and Patricia H. Murrell, Education for Development: Principles and Practices in Judicial Education. The Judicial Education Reference, Information and Technical Transfer Project Monograph Three, 1992. 3,4.

that educators reconsider the learning demands of a more diverse population that absorbs and applies new information in a wide variety of ways.²⁰

B. International Judicial Reform: A Convergence of Interests

International judicial reform efforts began in earnest several decades after similar efforts were underway in the United States. Although there are many reasons, both domestic and global, for current efforts to strengthen international judiciaries, the genesis of most international judicial reform efforts may be broadly attributed to three interests: institution strengthening, increased foreign investment, and the protection of human rights.

1. Institution Strengthening and the Rule of Law²¹

During the past several decades, judicial reform has been a particularly significant component of United States foreign policy. One impetus for judicial sector assistance to foreign governments has been the unfolding of “the third wave” of democratization in the world. The expansion of democracy that began in Southern Europe in the mid-1970s and spread to Latin America and parts of Asia in the 1980s accelerated dramatically after 1989 with the fall of the Berlin Wall, the breakup of the Soviet Union, the unexpected surge of democratic openings in sub-Saharan Africa, and further democratization in Asia.²²

Throughout the world, the United States has attempted to support transitions away from

²⁰ Pamela A. Bulloch, Education for Development. The Court Manager. Volume 9, Number 3, Summer 1994. 15.

²¹ Much of the information in this section is a summary of material taken from Harry Blair and Gary Hansen, Weighing In On the Scales of Justice: Strategic Approaches for Donor-Supplied Rule of Law Programs. United States Agency for International Development Program and Operations Assessment Report No. 7, 1994.

authoritarianism. In places such as Latin America, where authoritarian governments have given way to more democratic systems, judiciaries that are institutionally weak, heavily politicized, and corroded by corruption have been left behind.²³

A number of national and international development assistance organizations, including the Inter-American Development Bank, the United Nations Development Programme, and the Canadian International Development Agency have become involved in administration of justice reform efforts worldwide. One of the most influential participants in the field of justice sector reform is the United States Agency for International Development, which promotes court reform as a means of strengthening democracy and the Rule of Law.

The support of USAID for Rule of Law programs began in the 1960s, a period known as the “Law and Development Decade.” During this time, the Ford Foundation and USAID developed law faculties throughout Asia, Africa, and Latin America. The goal of these programs was to enhance the capacities of law schools in developing countries to train lawyers who would spearhead political and economic reforms. However, by the end of the 1970s, the Law and Development program had become the object of controversy, criticized roundly as imperious and ethnocentric. Program efforts to inappropriately transplant Western concepts into non-Western cultures ultimately caused its downfall.

In the 1970s, the agency’s legal development work focused on alleviating poverty by meeting basic needs and giving the poor a larger voice in the development process. Legal

²² Carothers, Aiding Democracy Abroad: The Learning Curve, 5.

assistance projects were featured during this period. Late in the decade USAID focused on human rights abuses, particularly with respect to women and people whose rights were violated because they voiced political dissent. Other donors, including the Ford and Asia Foundations, continued to focus on legal assistance projects during this time.

Recent efforts to strengthen the legal sector began in the mid-1980s, prompted by court reform efforts in Central America. Following the murder of nuns in El Salvador, the United States Congress appropriated funds for improving courts and police services in that country. Subsequently, similar programs were initiated throughout Central and South America and the Caribbean. The primary emphasis of these efforts has been on enhancing the stature of the judiciary, strengthening the authority and autonomy of the courts, and correcting inefficiencies in court administration and procedure that result in case congestion and delays in case processing. Project activities have included modernizing court administration, including automating case processing, legal codes, personnel systems, and budget and planning systems; training judges; hiring more judges, public defenders, and prosecutors; expanding and strengthening the role of public defenders; professionalizing the police force; reforming penal codes; and introducing career and merit appointments for judges and other judicial personnel.

Since the early 1990s, and consistent with an increased focus on democracy as an agency objective, USAID has included legal reform projects within its democracy program.

²³ Lawyers' Committee for Human Rights and the Venezuelan Program for Human Rights, Education, and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System, 1996. 1.

Judicial reform promotes the rule of law, which is considered a fundamental component of democratic government.²⁴

Today, USAID funds Rule of Law programs in Africa, Asia and the Near East, Europe and Eurasia, and Latin America and the Caribbean. The President of the United States made budget requests for fiscal year 2001 that included \$22.8 billion for programs in international affairs, of which \$7.5 billion (34%) were earmarked for USAID.²⁵

The agency summarizes its current interest in legal and judicial reform in this way:

“The term ‘rule of law’ embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. A predictable legal system with fair, transparent, and effective judicial institutions is essential to the protection of citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals. In many states with weak or nascent democratic traditions, existing laws are not equitable or equitably applied; judicial independence is compromised; individual and minority rights are not truly guaranteed; and institutions have not yet developed the capacity to administer existing laws. Weak legal institutions endanger democratic reform and sustainable development in developing countries.

Without the rule of law, a state lacks (a) the legal framework necessary for civil society to flourish; (b) adequate checks on the executive and legislative branches of government; and (c) necessary legal foundations for free and fair electoral and political processes. Beyond the democracy and governance sector, the accomplishment of other USAID goals relies on effective rule of law. For example, civil and commercial codes that respect private property and contracts are key ingredients for the development of market-based economies. USAID's efforts to strengthen legal systems fall under three inter-connected priority areas: supporting legal reform, improving the administration of justice, and increasing citizens' access to justice.”²⁶

²⁴ Baar, “The Development and Reform of Court Organization and Administration.” 341.

²⁵ “USAID’s FY 2001 Budget Request.” < <http://www.usaid.org> >

²⁶ Ibid. “Agency Objectives: Rule of Law.” It should be noted that this definition of the Rule of Law is not universally accepted. See Barry M. Hager, “The Rule of Law: A Lexicon for Policy Makers.” Mansfield Center for Public Affairs, 1999.

2. Foreign Investment²⁷

Foreign investment opportunities have also heightened interest in judicial reform. An objective, efficient, and reliable justice system reassures investors that arbitrary state action will not result in a loss of funds. International investors and businesses view a stable judicial environment with predictable rules and practices as a necessary prerequisite to long-term economic growth and the infusion of international funds. The United States government's interest in strengthening judicial systems in developing countries, for example, may be at least partially attributable to the fact that its fastest growing export markets are in those countries. These markets have been growing at a rate of 13% a year since 1987. United States exports to developing countries in 1997 totaled \$275 billion, up from \$239 billion the year before.²⁸

Many developing countries themselves are now giving priority to judicial reform as a necessary precondition for encouraging new investment. There is a growing awareness that a judiciary able to resolve cases in a fair and timely manner is an important prerequisite for economic development. In many developing countries, conflict resolution is inconsistent and a large backlog of cases stifles private-sector growth and erodes individual and property rights.

In the 1990s, the World Bank emerged as a leading architect of international legal and judicial reform efforts in its borrowing member countries. In its efforts to promote economic

²⁷ Much of information in this section is taken from the work of Edgardo Buscaglia, Javier Said, and Maria Dakolias in Court Performance Around the World: A Comparative Perspective; A Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account; An Analysis of the Causes of Corruption in the

development, the Bank came to view respect for the rule of law as a necessary prerequisite to a stable and predictable environment for economic transactions. The absence of a functioning legal framework could “greatly hinder development, discourage and distort trade and investment, raise transaction costs and foster corruption”.²⁹ As Bank President James D. Wolfensohn stated,

“Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible. A Government must ensure that it has an effective system of property, contract, labor, bankruptcy, commercial codes, personal rights law and other elements of a comprehensive legal system that is effectively, impartially and cleanly administered by a well-functioning, impartial and honest judicial and legal system.”³⁰

In 1992, the World Bank approved its first loan dedicated solely to judicial reform, the \$60 million Venezuela Judicial Infrastructure Project.³¹ That project was originally designed to improve the administrative capacity of the Judicial Council, modernize courtroom management, and reopen a judicial training school. The Bank currently funds freestanding legal and judicial reform projects in Benin, China, Cambodia, Lao, the Philippines, Thailand, Albania, Armenia, Croatia, Georgia, Kazakhstan, the Russian Federation, Ukraine, Argentina, Bolivia, Colombia, the Dominican Republic, El Salvador, Guatemala, Peru, Venezuela, Trinidad and Tobago, Morocco, West Bank and Gaza, the Republic of Yemen, Bangladesh, and Sri Lanka.³²

Judiciary; Judicial Reform in Latin American Courts: The Experience in Argentina and Ecuador; and Judicial Reform: A Process of Change Through Pilot Courts. Legal and Judicial Reform Unit, The World Bank, 1999.

²⁸ “USAID’s FY 2001 Budget Request.” < <http://www.usaid.org> >

²⁹ Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights, Education and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System. 1 – 2.

³⁰ Maria Dakolias, Court Performance Around the World: A Comparative Perspective, 1999. Foreword by Sherif Omar Hassan, Assistant General Counsel, Operations and Legal and Judicial Reform. vi.

³¹ Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights, Education and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System. 1.

³² Initiatives in Legal and Judicial Reform. World Bank Legal and Judicial Reform Unit. 2000.

Although the genesis of Bank-funded judicial reform efforts varies from one country to another, they all share four core goals: judiciaries that are impartial, predictable, accessible, and efficient.³³ Pursuant to these goals, the Bank has conducted studies on subjects such as quantitative assessments of judicial sector performance in various countries, factors affecting procedural time, capital budgets and technology, how judges spend their time, cost per case, budget resources, factors that influence clearance rates, and leadership and management in the courts.

Other multilateral development institutions are also now involved in international judicial sector reform activities, including the Inter-American Development Bank and the Asian Development Bank.

The Inter-American Development Bank was established in 1959 to help accelerate economic and social development in Latin America and the Caribbean. Annual lending by the bank has grown dramatically from the \$294 million in loans approved in 1961 to \$10 billion in 1998. In 1999, the Bank approved funding for judicial institution strengthening projects in El Salvador, Argentina, Bolivia, Panama, and Peru.³⁴

The Asian Development Bank was founded in 1966 to promote social and economic progress in the Asian and Pacific regions. Recent activities in the field of judicial reform include the completion of a six-economy study on the role of law and legal institutions in

³³ Dakolias and Said, Judicial Reform: A Process of Change Through Pilot Courts. 1.

³⁴ "About the IADB." < <http://www.iadb.org> >

Asian economic development.³⁵ Through some of the programs it funds, the Bank has begun to address the need for systemic legal reform in its developing member countries.

3. Protection of Human Rights

The relationship between independent judiciaries, efficient legal systems, and the protection of individual rights has been understood in the United States since the time the Constitution was written. Alexander Hamilton, in Federalist Number 78, noted that

“The complete independence of the courts of justice is equally requisite to guard the constitution and the rights of individuals.”

More recently, the United Nations³⁶ and human rights advocacy groups such as the Lawyers Committee for Human Rights have focused on judicial reform as one of the most effective mechanisms for ensuring the protection of individual human rights against governmental abuse.³⁷

Weak or corrupt judiciaries foster a variety of human rights abuses. In many developing countries, inconsistent application of laws and a large backlog of cases erode individual and property rights and violate human rights. Court delays affect the fairness and efficiency of judicial systems; they impede the public’s access to the courts, which in effect

³⁵ “About the ADB.” < <http://www.adb.org> >

³⁶ The United Nations has stated that “[d]emocratization is a world movement that affects North and South, East and West. In recent years there has been an almost universal recognition that a democratic system of government is the best model to ensure a framework of liberties for lasting solutions to the political, economic and social problems that our societies face.” < <http://www.un.org> >

³⁷ Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights and Education and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System. 11 - 12.

weakens the rule of law and the ability to enforce human rights.³⁸ Criminal court delays can threaten the rights of defendants held in pretrial detention for long periods of time; they can also threaten social stability when defendants are free for so long before trial that the likelihood of their conviction declines and the likelihood increases that those who are involved in continuing criminal activities will commit other offenses.³⁹

In developing countries such as Cambodia, the lack of court calendars results in the indefinite incarceration of defendants following arrest, often in excess of six months. Judges uninstructed in the law return convictions in the absence of any evidence whatsoever.⁴⁰ In March 2000, Amnesty International reported that “Cambodia’s judicial system is weak and struggles to deal with the demands placed upon it. Both the civil and military courts are subject to political pressure, and allegations of corruption in criminal cases are commonplace.”⁴¹

In Haiti, a nonfunctioning judicial system results in widespread human rights violations including warrantless arrests, pretrial detentions lasting longer than legally permissible prison sentences, military domination of the judicial process and of criminal investigations, judicial corruption, and forms of alternative “expedited” justice.⁴²

³⁸ Dakolias, Court Performance Around the World: A Comparative Perspective, 1 – 2.

³⁹ Baar, “The Development and Reform of Court Organization and Administration.” 342.

⁴⁰ International Human Rights Law Group, Cambodian Court Training Project: Baseline Assessment, 1995.

⁴¹ “Kingdom of Cambodia: Law and Order – Without the Order.” Amnesty International Report - ASA 23/01/00, March 2000. < <http://www.amnesty.org> >

⁴² Lawyers Committee for Human Rights. Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti, 1990.

In Venezuela, the United States Department of State has chronicled persistent human rights abuses that include “arbitrary and excessively lengthy detentions, abuse of detainees, extrajudicial killings by the police and military, the failure to punish police and security officers accused of abuses, corruption and gross inefficiency in the judicial and law enforcement systems, deplorable prison conditions, a lack of respect for the rights of indigenous people, and violence and discrimination against women.”⁴³ The Lawyers Committee for Human Rights found that constitutional mechanisms in that country designed to protect human rights – the courts and the public prosecutor – failed to take appropriate steps to hold government agents and agencies accountable. The resulting impunity only fueled ongoing abuses.⁴⁴

A recent example of the cause and effect relationship between weak judicial systems and human rights violations has arisen in Kosovo, where the failure of the courts to effectively manage caseloads resulted in the need to extend legally permissible periods of pre-charging detention from six to twelve months and a concomitant widespread violation of human rights.⁴⁵

⁴³ United States Department of State. “Country Reports on Human Rights Practices for 1994.” 520. (See Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights, Education and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System. 69.)

⁴⁴ *Ibid.* 69.

C. Court Administration Training Needs in Other Countries

Efforts to reform the administration of court systems are often undertaken as part of more comprehensive Rule of Law programs implemented by international funders. Although court management per se is rarely the initial focus of international judicial reform efforts, once judicial sector work begins, systems that are “poorly managed and administered, with archaic practices such as clerks wielding special wax stamps and presiding over filing systems of a Dickensian nature”⁴⁶ are often discovered.

A brief survey of court systems around the world reveals a wide variety of administrative reforms and training needs that have been identified by justice sector employees themselves as well as by those implementing international assistance projects. In some countries, courts have requested assistance in reforming archaic practices that have remained unchanged for a century or more. In many undeveloped countries, basic case management reforms are needed before more substantive reforms can take root. In comparatively developed countries, reform efforts already underway often result in the identification of additional training needs.

The survey below does not purport to represent a scientific assessment of administrative reform and training needs in other countries. The information was taken from donor-sponsored assessments of Rule of Law programs, technical working papers, and interviews with court personnel from many courts. Since the material was collected and generated by a

⁴⁵ Interview with William G. O’Neill, former Senior Advisor on Human Rights, UN Mission to Kosovo.

⁴⁶ Carothers, Aiding Democracy Abroad: The Learning Curve, 174.

variety of individuals and groups pursuant to no common instrument, the identified needs are not organized in any cohesive fashion. They have simply been extracted from reports that were written to serve many different functions.

This list is not intended to be prescriptive; the opinions stated are those of personnel interviewed. No agreement or lack thereof with the assessments should be inferred. The information was collected simply to outline some of the training needs in the field of court administration.

1. In 2000, the newly-formed Central and East European Law Initiative Judicial Training Institute conducted a regional needs assessment as part of its curriculum development process. Perceptions of trainers from 24 countries in Central and East Europe and the Newly Independent States were surveyed.⁴⁷ The trainers reported local judges' training preferences, in order of priority, as follows:

1. Court administration
2. Information technology
3. Case/courtroom management
4. Judicial independence
5. Ethics/corruption/integrity

2. In 1998, the Asian Development Bank conducted an assessment of the court system of Pakistan.⁴⁸ The Bank found that

⁴⁷ Central and East European Law Initiative Judicial Training Institute, Results of Training Needs Assessment, 2000.

⁴⁸ Paul M. Li, Findings and Recommendations on Pakistan Legal and Judicial Reform Advisory Technical Assistance Project, 1998.

“Pakistan’s current judicial system is essentially the same as that under British rule some 50 years ago. That system was never designed to handle the volume and complexity of modern litigation. Consequently, court delays of between 8 to 20 years are now common, and the Government admits of ‘up to 30 years to adjudicate a dispute concerning a relatively straightforward contract’ . . . Pakistan. . . has virtually no case dispositions without trial. It adjudicates by trial nearly 90 percent of its civil cases. . . . Aside from court congestion and delay, Pakistan very much needs to modernize its court administration system and judicial education and training.”

3. In 1998, the Asian Development Bank conducted an assessment of the courts in the Republic of Maldives.⁴⁹ Among the Bank’s findings there were that

“[i]n addition to the absence of a well-trained judiciary, there are no trained court administrators and support staff in the Maldivian court system. . . The lack of judicial and court management training has seriously hampered the development of the Maldivian court system into an efficient and effective justice system. . . [Needed is] a specialist in court management, which deals with the internal operation of the courts including: budget and accounting systems; personnel rules and policies; staff recruitment, training, promotion and discipline; code of conduct and anti-corruption systems; recordkeeping methods and statistical reports for management purposes, use of computers and other modern technology to facilitate the above functions. . . procedural manuals and standardized court forms for staff and litigant use; and perhaps most importantly, case tracking methods for effective case management.”

4. In 1996, the International Human Rights Law Group completed a report on the state of court administration in the provincial and municipal courts of Cambodia.⁵⁰ It found that

“[s]ystematic and neat file management across the nation does not exist. Files are not kept tidy or in any understandable order. . . There are no alphabetical indexes kept to record the names of parties. If the file number is not known, researching a file relies upon knowledge of the ‘time’ the matter went to court, and the relevant registers scanned to find an entry. . . nationwide training on record management is required to satisfactorily improve file keeping. . . Clearly absent in Cambodian courts is a transparent, predictable system of case management. . . There is no systematic monitoring of. . . cases. The informal

⁴⁹ Paul M. Li, Report and Recommendations Relating to Court Improvement Component of Technical Assistance to the Republic of Maldives to Strengthen Legal System. 1998.

⁵⁰ Jennifer Akers, Court Administration in the Provincial and Municipal Courts of Cambodia. 1996.

method which does exist relies upon an unhealthy collaboration between the Prosecutor, Investigating Judge, and Trial Judge.”

5. In 1992, an assessment team filed a report and recommendations on the Bulgarian court system.⁵¹ The team reported that at the conclusion of each court proceeding, relevant case documents were hand-stitched into case file jackets using a needle and thread. Court administrators did not exist; judges were required to maintain and track case files themselves.

“Tracking the workload and maintaining a collective calendar of the work of multiple panels of justices without the assistance of a case manager requires the [judge] to regularly set aside his judicial responsibilities to handle these administrative tasks.”

6. A 1998 assessment of the court system of Haiti⁵² found that

“[t]here is a suspicion that files are ‘lost’ to deprive court users of justice. Proper file numbers and complete folders will facilitate transfer of files to the parquet and timely review by the prosecutor of cases of defendants in custody. The clerks must be trained more thoroughly in basic records management techniques both to operate more efficiently and to dispel public distrust. Records management is part of the responsibility of the clerks but has been given little attention. The evaluation team was discouraged, but not surprised, by the chaotic treatment of records in [Justice of the Peace] courts. . . Even if records can be found, the process is often highly inefficient. For example, we asked a clerk to retrieve a file using a number randomly selected from the registry. After quite a long time, he proudly presented the proper file folder. On examining the file, we saw that the case number was not written on it. When asked about the retrieval process, the clerk responded that he had to look through all of the folders in the filing cabinet. He had either not been told or did not understand that he should write the case registry number on the jacket and place the jackets in numerical order in the cabinets.”

⁵¹ Markus B. Zimmer and Richard Seidel, The Bulgarian Court System: Report and Recommendations Made Pursuant to a CEELI-sponsored Evaluation and Technical Assistance Visit, 1992.

⁵² Creative Associates International, Inc., Administration of Justice and Human Rights Fund II Programs Evaluation (Haiti), 1998.

7. In 1996, the Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights and Education and Action jointly reported on the court system of Venezuela. They found that

“ . . . [t]he penal and civil courts are encountering serious case backlogs, procedural congestion, and judicial delays with the resulting effect of inefficient, costly, and detrimental delivery of judicial services. These delays contribute to the appearance of impropriety and public perceptions that the courts are unresponsive, corrupt and politically influenced.

The delays are extensive and affect the constitutional due process rights of those accused of crimes. The backlog at the trial court level increased fivefold between 1986 – 1991, resulting in an increase in the average processing time for criminal cases to 1,136 working days, 10.4 times the legal requirement set forth in the Code of Criminal Procedure. . . . Many of the accused spend more time in prisons awaiting judicial processing of cases than that called for by the maximum penalty they could have received for the crime for which they are charged.

The failure of the courts to act expeditiously in land disputes between *campesinos* and large landholders has contributed to growing tensions in the countryside over the last several years, resulting in violent clashes which have left hundreds of *campesinos* injured and arrested, and several dead. . .

The lack of proper court administration is reflected in archaic procedures, inadequate control mechanisms, duplication of effort, poor records management, and weak administrative and logistical support to the judges.”⁵³

8. In Italy, court personnel describe a highly complex and hierarchical administrative structure in which approximately 27,000 non-judicial personnel are employed. During the competitive selection process, potential staff are examined on their knowledge of civil, criminal, administrative, and constitutional law. No attention is paid to whether applicants possess managerial and practical skills although their job responsibilities include performing all administrative tasks in the courts, including registering incoming cases, keeping records, and operating the budget.

9. In Spain, modernization of the courts has been a significant object of concern in the last few years. Each year, the increasing obsolescence of the size and organization of the courts' administration is reported in annual reports. The two main areas of reported dysfunction are in personnel and material needs.
10. In France, an ambitious program to computerize all courts is underway and link them via internal internet. Training assistance is needed.
11. In 1996, Minister of Justice for Ireland Mrs. Nora Owen found that the litigant in the Irish court system was enmeshed in a process that was costly, complex, and subject to delays that were the cause of stress, anxiety, and grave injustices. Court staff were over-burdened and poorly organized and court facilities were sometimes in ruinous states of disrepair and almost invariably lacking basic necessities. Consequently, ordinary citizens of Ireland usually entered the court system only as a reluctant last resort.⁵⁴
12. In courts throughout Latin America, times to disposition have been increasing and reaching unprecedented levels since 1987. For example, the 1993 median times to disposition in the civil jurisdictions of Argentina, Ecuador, and Venezuela are 2.5, 1.9, and 2.4 years, respectively. Times to disposition have increased 76 percent since 1987. The variability in times to disposition has also been increasing at an alarming rate during

⁵³ Lawyers Committee for Human Rights and the Venezuelan Program for Human Rights, Education and Action. Halfway to Reform: The World Bank and the Venezuelan Justice System. 69.

⁵⁴ Working Group on a Courts Commission: First Report (Summary) Government Publications Office, Dublin, 1996.

the past decade resulting in a lack of uniformity in the quality of the services provided.⁵⁵

13. In Argentina, judicial statistics reports indicate that the number of pending cases in the judicial system went from 880,000 in 1991 to over 1,200,000 in 1993.⁵⁶

14. A 1999 report on the Judicial Assessment Programme implemented by the United Nations Mission in Bosnia and Herzegovina cited a wide variety of administrative impediments ranging from cantonal court structures that cannot be unified due to continuing antagonism between warring factions to backlogs whose numbers are greater than the number of cases decided in those courts during the last calendar year. The responsibilities of the court clerks do not include case management. Instead, individual judges keep track of the work and cases in their departments. Undue delay and postponements are avoided only if parties complain to the Court President, who then examines the file in question. Case processing therefore depends upon the individual initiative of parties and their access to the Court President.⁵⁷

15. A 1998 report on the Polish judicial system states that more than five million new cases were filed during 1996. However, no automated systems existed and most work was done on manual typewriters. Because low entry-level salaries attract only candidates with few if any job skills or experience, courts could not rely on new hires to have typing skills. Recording of court proceedings was therefore done in longhand.

⁵⁵ Buscaglia and Dakolias, Judicial Reform in Latin American Courts: The Experience in Argentina and Ecuador. 3.

⁵⁶ Ibid. 8.

⁵⁷ "Report for the Period November 1998 to January 1999." Judicial System Assessment Programme, United Nations Mission in Bosnia and Herzegovina, 1999.

Budgetary processes in that country were similarly crippled. Although the Polish constitution provides that the judiciary shall be a separate and independent branch of government, total budgetary outlays for judicial and prosecutorial systems in the years 1989-95 totaled approximately 1.5% of total governmental spending. No central budgetary authority existed for the courts. The annual process for developing budgetary projections provided for participation by the courts only to the extent that they individually generated their own requirements. Because there was no central office for the judiciary to oversee and consolidate budgetary requirements for the court system, essentially no one in the judiciary had any idea what the total budgetary requests for any given year were or what final appropriation was.⁵⁸

16. A 1997 assessment of the judiciary in Macedonia reported that neither trial nor appellate courts utilized cover sheets to simplify the process of organizing and classifying cases. Case folders were of poor quality and did not stand up to use over time. Since they were not structured to stand on end, they could only be shelved prone. Nothing on the case file designated the calendar year of the case except a notation written in longhand on the cover; whenever a file was needed, each case had to be examined during the search process.

Office automation in the Macedonian courts was limited to the use of electronic typewriters with limited memory and electronic functionality. These were the exception rather than the rule; most typewriters in use were older manual models.⁵⁹

⁵⁸ Markus B. Zimmer, Report on the Judiciary of Poland. 1998.

17. A 1998 assessment of the courts of Romania described a judicial system hamstrung by a highly centralized authority structure that governed and administered the courts. Administrative processes and procedures were based on an information storage and retrieval model developed more than 100 years ago. The case information system on which all courts relied was based on an archaic series of manually maintained case registers or logs into which various items of case information were painstakingly recorded by hand. Reporters found that

“[a] failure of leadership and vision marked apparent indifference to reform. Preliminary suggestions for improvement were met without a positive attitude. Institutional barriers such as centralized control and micromanagement of the courts by the Ministry of Justice and archaic codes and procedures contributed to the malaise. The attitude on the part of some court officials was as much one of resignation to the existing system as of enthusiasm for the future progress of the court system as a primary institution of government.”⁶⁰

D. Existing Court Administration Training Programs

The need for administrative reforms and training in court systems throughout the world has been expressed. Administrative reforms have proven effective in remedying institutional problems such as corruption, as in Chile and Ecuador, where increasing the use of computers while reducing the number of procedural steps in commercial cases, the median disposal time, and the number of court personnel who interact with each case all contributed to reducing

⁵⁹ Markus B. Zimmer, James F. Davey, Cary Horrocks, and Brian Le Duc, The Macedonian Judicial System: Report and Recommendations Pursuant to a CEELI-Sponsored Review of Administrative Structures and Procedures, 1997.

⁶⁰ Markus B. Zimmer and Robert St. Vrain, Romanian Court Review: Implementation Plan, 1998.

court corruption.⁶¹ There are, however, very few programs equipped to meet the level of need.

The absence of court management training may be attributed in part to several factors. In many countries, the judiciary is located within the executive branch of government. To the extent that courts are managed, they are managed by Ministries of Justice. In systems in which courts bear the responsibility for managing themselves, judges carry out administrative responsibilities in addition to their judging duties. Staff members who may be available to assist judges are often civil servants selected through competitive processes; they typically receive no initial or ongoing training and are expected to learn management skills on the job.

In countries in which court management training is available, it is almost always offered to judges as a small part of the curriculum in judicial training institutes. Rarely is management training available to court employees other than judges.

A survey of some existing court administration training programs is outlined below.

Canada

The Commonwealth Judicial Education Institute at the School of Law at Dalhousie University in Halifax, Nova Scotia sponsors occasional workshops on court administration.

⁶¹ Buscaglia and Dakolias, An Analysis of the Causes of Corruption in the Judiciary. 7.

Australia

The Australian Institute for Judicial Administration conducts educational programs in court administration for judges, court administrators and members of the legal profession. It maintains ties with the Institute of Judicial Studies in New Zealand and Papua New Guinea and recently undertook a five year study to consider expanding its programs beyond Australia. The Institute sponsors an annual conference for court administrators and in 1998 also sponsored a seminar on Technology for Justice.

New Zealand

The New Zealand Department for Courts offers a comprehensive course leading to a National Certificate in Public Sector Courts Practice. The course, recognizing key technical skills and competencies of a person who wishes to pursue a career in court administration, requires that enrollees complete at least sixty credits. The course is generally expected to be completed within three years. A separate Maori Land Court track recognizes special skills that are needed to practice in these courts.

In the nine courses offered within the general judicial training curriculum of the New Zealand Institute of Judicial Studies in 1999, only one (Accounting and Auditing) addressed administrative or management issues. The balance focused on substantive legal concepts.

Europe

?? France

The Ecole Nationale des Greffes trains greffiers (courtroom clerks) and Greffiers en Chef (Chief Clerks). The school offers initial training for clerks at the beginning of their careers and also continuing education classes available throughout their careers. The initial training program is twelve months in duration; four of these months are spent in a classroom setting.

The Ecole Nationale de la Magistrature provides training in court administration principles to new judges, whose responsibilities include supervising the work of the Greffiers en Chef. However, this training is neither comprehensive nor in-depth. If they choose, judges may attend court administration classes later in their careers at the Ecole Nationale des Greffes in addition to continuing judicial education classes offered at the Ecole Nationale de la Magistrature.

?? England

Courts in England are managed by the Lord Chancellor's Department within the executive branch of government. Administrative court staff are civil servants employed by the Court Service under the auspices of the Lord Chancellor. The Lord Chancellor's Department provides job skills training and management training for staff depending on the nature of their job responsibilities. In recent years, emphasis has been placed on self-learning rather than traditional lectures or week-long sessions, which were formerly organized.

Since April 1999, however, civil judges have had responsibility for managing cases, rather than simply adjudicating them. As a consequence of this shift in case management responsibilities, judges must now work closely with administrators in this limited area. A joint course for judges and administrators in case management was held in 1999 to facilitate the new division of responsibilities. Judges receive no other training in administrative principles, although a pilot seminar in Judicial Leadership was conducted in 1999 for the Judicial Presidents of some of the larger administrative tribunals.

?? Netherlands

The Stichting Studiecentrum Rechtspleging (Judicial Training Institute) provides initial and ongoing training and education for judges, public prosecutors, and other court staff. The Institute offers a complete range of legal and professional courses. In addition to training officials from the judiciary of the Netherlands, the Institute also conducts training programs for the islands of the Netherlands Antilles and Aruba.

Latin America

In Latin America, courts have traditionally been administered by judges. Training is usually on-the-job, beginning with informal apprenticeships following a college education.⁶²

In recent years, institutionalized judicial training schools have become the dominant model for training judges in Latin America. Some of these schools also provide training for

prosecutors, defense advocates, and police in addition to court staff. Since court administrators per se do not exist,⁶³ there are no training programs dedicated exclusively to them. Internationally-funded development projects provide management training in some countries, but their programs are often ad hoc, impermanent, and responsive to specific needs.⁶⁴

Central and Eastern Europe

In Central and Eastern Europe, courts have traditionally been located within Ministries of Justice. Auxiliary staff with low-level administrative responsibilities have usually had the equivalent of a high school education, although some now have law degrees. No formal job training has been available; experience has been gained on the job.

?? Romania

In 1999, legislation was passed to create a College of Clerks. Curriculum planning is underway at this time. Training has been recommended to accompany a redistribution of administrative responsibilities from judges, who are now required to spend the bulk of their time on non-judging tasks, to administrative staff.⁶⁵

⁶² Hamnergren, Judicial Training and Justice Reform. 6.

⁶³ The one exception is Costa Rica, where regional administrators staff each of the seven provinces.

⁶⁴ Hamnergren, Judicial Training and Justice Reform. 10.

⁶⁵ Zimmer and St. Vrain, Romanian Court Review: Implementation Plan. 67.

?? Russia

Preliminary steps are being taken to develop guidelines and training manuals for court administrators in the Judicial Department of the Russian Federation. Plans are underway to hire over 2500 court administrators within the next year. Minimal training programs are being planned to train these new personnel.⁶⁶

International assistance programs in this region have provided only limited management training for court staff. There are currently no plans to implement long-term training programs in court administration.

Asia⁶⁷

Although the judiciary is well-managed in Singapore and Japan, judicial administration is a phenomenon of the last two decades in most other Asian countries. Training in administrative practices has for the most part been a function of international assistance projects, sponsored most often by the Asia Foundation. Even in comparatively developed systems such as in Korea, judicial administration has traditionally been neglected during training programs.

Judicial training institutes exist in Korea, Pakistan, Sri Lanka, Singapore, the Philippines, and Taiwan, but court administration is not the focus in any of their curricula. Administrative reforms have been difficult to implement for a variety of reasons including

⁶⁶ This information was obtained from Honorable Betty Barteau, Director of CEELI programs in Russia.

⁶⁷ Information in this section is taken from conversations with Erik Jensen, Director of Research, Program in International Law, Business and Policy at Stanford Law School. Mr. Jensen also serves as Senior Advisor for Law Programs at the Asia Foundation.

lack of incentive on the part of judges, who are paid low salaries, and a disinclination to adhere to performance standards.

United States

In the United States, judicial management training is provided in both the state and federal systems.

In the federal court system, the Administrative Office of the Courts provides more than one thousand training programs each year for federal court employees throughout the United States. Although the Office is also marginally involved in training personnel from international judiciaries, its regular yearly training programs are designed for federal court employees and managers.

The Federal Judicial Center also offers training programs for judges and court staff in the federal system. In 1999, the Center provided 906 educational programs for more than 37,000 federal court employees.⁶⁸ Although the majority of these programs were for judges and focus on substantive law, training was also given in 1999 in caseflow management, executive team development for judges and senior managers, and job responsibilities for managers and staff.

At the state level, the Institute for Court Management at the National Center for State Courts has trained more than 2,000 court personnel per year over the past 30 years. Founded

in 1970, the Institute has led the drive to improve the operations of the state courts by training court personnel in key administrative positions.

The Institute sponsors the Court Management Program, which provides training in purposes and powers of courts, judicial independence, the role of courts with respect to the public and media, judicial leadership, and court management practices. Courses in caseflow management, human resources management, fiscal management of the courts, and technology management are also offered.

The Institute also offers a Court Executive Development Program, which provides comprehensive instruction in the technical, interpersonal, and conceptual skills needed by court managers and leaders. Graduates of the program are designated Fellows of the Institute for Court Management; many Fellows have gone on to assume positions of leadership in state court systems throughout the United States.

⁶⁸ 1999 Annual Report of the Federal Judicial Center.

VI. Conclusion and Recommendations

The significance of the effective administration of justice to society has been recognized in the United States from the time our government was conceived. In the Federalist Papers, a series of essays written to promote public support for the new Constitution, Alexander Hamilton stated,

“The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.”⁶⁹

More recently, it has been acknowledged that well-managed judicial systems impact not only the judges and court employees who staff them.

“The introduction of court administration is more than a judicial acceptance of the latest trends in public administration. Court administration is the means of preserving judicial independence in the modern era.”⁷⁰

The path to the effective administration of justice in the United States has not always been smooth. Although it can be said that judicial independence and the effective administration of justice are two of the cornerstones of our government, two hundred years after the founding of our country trial courts still lacked the elementary rudiments of a credible judicial system: independence, accountability, integrity, management, and quality. These problems were attributable to conditions markedly similar to many of those currently described in other countries.

⁶⁹ Alexander Hamilton, “The Federalist, No. 17.” 1787.

⁷⁰ Tobin, An Overview of Court Administration in the United States. 9.

Successful judicial reform in the United States over the past 50 years has required that institutional systems and processes be strengthened while maintaining appropriate respect for diverse local cultures. Cohesiveness has been built by identifying common values and by developing standards, principles of leadership, and professional organizations and associations. Great technical experience and many insights have been gained during the judicial reform process in this country. While lessons learned in this country might prove useful in other judicial systems in which similar reforms are underway, they should not be isolated from lessons also learned in the fields of international aid and judicial branch education during the past decades.

A. The Need for Court Administration Training in the International Arena

The transparent, effective management of court processes is a necessary part of the administration of justice in any nation. Archaic, complex systems notable for their lack of transparency are havens for corrupt practices. Modernized, transparent processes with decreased numbers and complexity of procedural steps have been shown to reduce many of the significant problems faced by courts in other nations.⁷¹

Despite the fact that court administration is now a central component of many judicial reform efforts, there are no comprehensive, flexible programs available to deliver necessary training in the international arena. In countries in which court administration training is offered, it is frequently minimal and sporadic. Further, with the possible exception of the Judicial Training Institute in the Netherlands and the Australian Institute for Judicial Administration,

⁷¹ Buscaglia and Dakolias, An Analysis of the Causes of Corruption in the Judiciary, 5-8.

national training programs have not been not designed for implementation outside national boundaries. Since responsibility for administering courts is now shifting from judges to professional administrators in many parts of the world, creating a flexible training program in basic principles of court management would meet an existing need. However, such a program should include components that will help maximize its relevance in other countries and avoid the criticisms often levied against international judicial sector programs.

B. Recommended Program Components

1. Training Local Counterparts

Although USAID has long maintained an official policy supporting capacity-building of local personnel in recipient countries,⁷² recent criticisms of foreign aid, including legal and judicial reform projects, highlight a failure to successfully transmit knowledge and increase capacity in the communities that receive assistance.⁷³ Until recently, international program

⁷² In November of 1993, USAID Administrator Brian Atwood issued a Statement of Principles on Participatory Development, which outlined key concepts of USAID's approach to development. These principles were:

1. Development priorities are to be set in the host country by those who must sustain them, and decisions about development assistance reached jointly with them;
2. USAID assistance complements the "social energies" and commitments shown by the recipient society;
3. USAID programs are accountable to the end user or customer; and,
4. USAID programs aim to strengthen the capacity of the host-country society--particularly the poor--to take the next steps in improving conditions and opportunities in a sustainable way.

The goal of the Agency's renewed emphasis on participation was to make the Agency's programs and procedures more conducive to, and USAID staff more skilled and committed to, broadening access of people to their country's economy and their society's decision-making processes. Agency efforts to enable staff to use participatory approaches more fully and effectively included the development of a listserv to provide opportunities for USAID staff in Washington and in the field and development practitioners around the world to exchange information, share ideas, and discuss issues related to participatory development; a series of summaries that described specific development challenges and how USAID used the concepts of participation to address those challenges; and forums to allow USAID staff and other development practitioners to learn from each other's experience in implementing participatory approaches. See < <http://www.usaid.org> >

⁷³ Assessing Aid: What Works, What Doesn't, and Why. A World Bank Policy Research Report. 1998. 5. See also Carothers, Aiding Democracy Abroad: The Learning Curve, 265 -267.

implementers often focused on doing the job themselves and only occasionally transferring necessary skills to local partners. Recent examinations of reasons why some programs succeed while others fail have led to the conclusion that educational development of local personnel is a key factor leading to successful implementation of project goals. The World Bank has noted that

“[p]rojects need to focus on creating and transmitting knowledge and capacity. The key role of development projects should be to support institutional and policy changes that improve public service delivery. Even where money may not stick, the local knowledge and institutional capacity created by the catalyst of aid projects can.”⁷⁴

Enhancement of local capacity was also emphasized in a recent critique of U.S.-sponsored development projects:

“With experience, aid providers and the intermediary organizations carrying out democracy programs have become increasingly aware of the deficiencies of their basic method. Some have begun to ask themselves tougher questions about how they operate and to modify their methods in response. The thrust of these modifications is to increase participation in democracy programs by people and organizations of the recipient countries, or, more briefly, increased localism. . . Increasing localism is making most progress with project implementation. The key here is replacing the notion that Americans involved in the assistance are *themselves* responsible for producing changes in target countries with the idea that the aid’s role is to help people of the recipient countries bring about change. . . Aid providers are beginning to look harder for experts in the recipient countries themselves and to invest in training that can develop such experts. Training programs increasingly include the ‘training of trainers’ rather than simply bringing in trainers from the outside for the duration of the undertaking.”⁷⁵

Consistent with these findings, consideration should be given in the initial design stages of any international program to developing a core strategy for training local counterparts not only

⁷⁴ Assessing Aid: What Works, What Doesn’t, and Why. 5.

⁷⁵ Carothers, Aiding Democracy Abroad: The Learning Curve. 265 –267.

to utilize effective court administration principles but also to becoming trainers of those principles themselves. Although this strategy requires a more comprehensive programmatic approach, over time it is more likely to result in successful transmission of program content.⁷⁶

Consideration should also be given to utilizing principles of education for development when designing the training program.⁷⁷ These principles, which emphasize the diversity of learners and the development of generalized abilities over a simple mastery of course content as a means of equipping learners to meet new and complex demands placed on them, resonate in the context of international training. The developmental theory of adult education presupposes that learners come from a wide spectrum of backgrounds; its inherent respect for cultural diversity makes it naturally adaptable to a variety of cultures and settings. The focus of education for education for development is on overarching issues such as the larger context in which learning will take place, the goals of training programs, finding cost-effective ways to develop and present training programs in changing environments, and the types of programs that will fulfill the broader purposes of courts by supporting their basic missions while still meeting the immediate needs of employee and organizational development.⁷⁸ The theory of education for development therefore directly address many criticisms that have been levied against foreign assistance programs.

⁷⁶ The need to increase local participation in and ownership of aid programs has led one author to suggest that strategic planning, goal-setting, and evaluation of program results should also be conducted according to a participatory model. Such a participatory model involves people from the recipient country in identifying their own indicators of success and developing their own research methods, as well as methods for results reporting. The principal benefit of this strategy is that it engages the recipients directly in the task of assessing the value of an aid intervention. Carothers, *Aiding Democracy Abroad: The Learning Curve*, 301.

⁷⁷ Claxton and Murrell, *Education for Development: Principles and Practices in Judicial Education*,.

2. Needs Assessments

Deficiencies in international aid programs are often attributable to rigid strategies having little or no relevance in foreign contexts even though they may have common sense appeal in donor countries.⁷⁹ This is a frequent criticism of U.S.-sponsored programs, which often reflect ideas about democracy and institutions that are specific to America and whose applicability to other countries is uncertain. Programs that rely heavily on features of American systems can result in a poor fit in other contexts or, worse, simple irrelevance.⁸⁰

Many programmatic pitfalls can be avoided by administering a needs assessment prior to designing and implementing any international program. A needs assessment helps to ensure that programs and courses are focused and relevant, and that training addresses the needs of the learners and not simply the interests of program implementers. When assessing training needs in the international context, it is especially important to seek and incorporate input from system participants in the recipient country, both to make sure that needs have been accurately identified and also to give learners a voice in the curriculum development process.

3. Curriculum Design

The curriculum of a well-designed training program must be relevant. Issues of significance to court administrators in the United States will not necessarily be relevant in other countries. Although a comprehensive needs assessment helps to ensure curriculum relevance,

⁷⁸ Bulloch, *Education for Development*, 15.

⁷⁹ *Aiding Democracy Abroad: The Learning Curve*, 96 et seq.

the diversity of legal systems in the world today must also be factored into curriculum development. Less than two decades ago, the number of legal traditions in the modern world was easily divided into three categories: civil, common, and socialist law.⁸¹ Today the number and nature of legal systems is both greater and more complex due to systemic reforms and information-sharing among different regions of the world.⁸² It should not be assumed that an expert in case management in the United States courts can train court managers in a country with a civil law tradition. The path of a case, methods of reducing delay and backlog, and many other issues must be analyzed differently in systems outside the United States.

Nevertheless, there are undoubtedly some basic concepts relevant to court administration that can be used as a starting point for the development of a flexible international curriculum that can be modified for use in a variety of systems. For example, the ten core competencies for court managers in the United States identified by the National Association for Court Managers⁸³ could provide a useful point of departure for discussion about general international curriculum

⁸⁰ Ibid, 98.

⁸¹ Mary Ann Glendon, Michael W. Gordon, and Christopher Osakwe, Comparative Legal Traditions. 1982.

⁸² One example of a new program designed to offer training in principles traditionally considered relevant only in common law systems to civil law practitioners is the

⁸³ The National Association for Court Management Core Competency Curriculum Guidelines flow from a process begun in 1990 when NACM undertook a survey of all its members to evaluate its goals, priorities and services. Survey results clearly indicated that the nation's trial court managers wanted and needed more diverse education and training. NACM responded by forming a professional development study committee in 1992. Drawing on the 1990 survey, the committee worked to focus NACM educational programming by reaching consensus on core areas of court management skill and responsibility. A list of 10 core competencies was formulated, areas in which court managers should have acceptable levels of knowledge, skill and ability. The ten interrelated and interdependent core competencies are: (1) purposes of courts and court systems; (2) resources, budget, and finances; (3) visionary and strategic planning; (4) caseload management; (5) information technology management; (6) public information and

development. While the total constellation of core competencies might not be applicable in every country, individual competencies (what court managers should know and be able to do) are general enough to be adapted for use in other court systems.

Similarly, the Trial Court Performance Standards may serve as a useful basis for a discussion of standards for optimum trial court performance in other countries.⁸⁴ The standards define a general philosophy and widely-shared conception of what optimum trial court performance entails. Sine they are general, flexible, and non-prescriptive, they should be a useful basis for curriculum development in a variety of systems.

4. Orientation of Trainers to Local Environments

One of the five principal reasons cited by one author for the failure of international aid projects is a shallow understanding of the society being assisted and cultural arrogance on the part of democracy promoters who force idealistic and simplistic schemes onto cultures they do not understand.⁸⁵ Therefore, the design of international assistance programs

media relations; (7) employee training and development; (8) ancillary services and programs; (9) human resource management; and (10) leadership. See <http://www.nacmnet.org/corecompfinal.html>

⁸⁴ The twenty-two standards developed by the Trial Court Performance Standards Project between 1987 and 1990 are intended to be used by trial courts for purposes of internal evaluation, self-assessment, and self-improvement and are accompanied by a comprehensive measurement system designed to facilitate assessment of whether the standards have been met. The standards are divided into five groups: (1) Access to Justice; (2) Expedition and Timeliness; (3) Equality, Fairness and Integrity; (4) Independence and Accountability; and (5) Public Trust and Confidence; (5) See Trial Court Performance Standards With Commentary, Bureau of Justice Assistance. July 1997.

⁸⁵ See Carothers, Aiding Democracy Abroad: The Learning Curve, 255: “On a cold January day in Bucharest several years ago, I met with a visiting American consultant who was working on a small project funded by USAID to improve Romania’s court administration. The consultant, a state court administrator from a small U.S. state, was halfway into a six-week trip to identify the administrative problems of Romania’s courts, to come up with some solutions, and to interest some Romanian court officials in those situations. His diagnosis, reached after visiting several courts, was that the root cause of the obviously flawed administration of the courts --- the chaotic record-keeping, the tremendous delays and inefficiencies, and the general lackadaisical attitude about delivering justice –

should include appropriate orientation in cultural norms, legal traditions, and the current political landscape of recipient countries. Personnel from recipient countries should assist in conducting this orientation.⁸⁶

Trainers should also be familiar with principles of adult education, including preferred learning styles. Principles of adult education stress that learning should be learner-centered, and experience has shown that geographic and cultural variations often translate into differences in preferred learning styles.⁸⁷ Since the goal of training is to foster the development of learners, trainers should be skilled in a variety of training techniques and prepared to explore the most effective methods of reaching learners in other cultures.

In conclusion, it can be argued that globalization will impact no governmental institution more than the courts. Disputes are an inevitable part of human interaction. The ability of civilization to carry on, and indeed progress, in the next millennium will depend upon our ability to develop trustworthy, orderly, and efficient ways to resolve disputes both at the local community level and among the people of the world.

was Romanian court personnel's lack of understanding of basic filing methods. He was particularly struck by the many different sizes of the different official forms. If the experts only had a standard size of paper for their forms, he explained to me, their filing problems would be solved. His proposed solution was to order a three-year supply of paper from the United States---he knew just the right company in his home state---and persuade several Romanian courts to use it for their forms, replacing the odd-sized paper they were using. Once Romanians see how well it works in a few courts, he told me, they will realize how valuable a well-run court can be and will use the new paper nationally."

⁸⁶ Orientation of this nature is often provided by the United Nations as part of its work in setting up transitional administrations. See, for example, Working in East Timor: Culture, Customs and Capacity Building. United Nations Transitional Administration in East Timor Language and Training Unit. January 2001.

⁸⁷ For example, when a Learning Styles Inventory was administered by this author to members of the Judicial Training Institute in Bosnia, most students preferred abstractions and principles as a means of taking in new information and reflections on experience for processing it. When the same test was administered in East Timor,

This paper has focused on the path of judicial reform in and from the point of view of the United States. If we are able to create flexible training modules, abandon rigid assumptions, and learn from the experiences of people in other nations, knowledge we have accumulated along our own path of judicial reform might provide valuable insights into the development of procedures and institutions to facilitate resolution of the increasingly complex range of disputes likely to arise in the next century.

most students preferred direct experience for taking in new information and reflections on experience for processing it. See Claxton and Murrell, Education for Development: Principles and Practices in Judicial Educatio, 22.

VII. List of Appendices

- A. The Australian Institute of Judicial Administration Incorporated**
- B. National Certificate in Public Sector Courts Practice: Programme Handbook**
(Department for the Courts, The Open Polytechnic of New Zealand)
- C. The Development of Administration of Courts in the Netherlands**
- D. Overview of Judicial Training Centers Supported by ABA/CEELI (As of September 1998)**
- E. Ecole Nationale des Greffes: Guide du Greffier Stagiaire;**
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