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**LAW AND DEVELOPMENT OR
COMPARATIVE LAW AND SOCIAL
CHANGE—THE APPLICATION OF OLD
CONCEPTS IN THE COMMONWEALTH
CARIBBEAN**

BRUCE ZAGARIS*

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I. INTRODUCTION

Nearly twenty years after the foundation and decline of United States law and development programs, such a program, known as the Administration of Justice program, is flourishing in the Commonwealth Caribbean.¹ This article traces the origin, oper-

1. For background generally on the Commonwealth Caribbean legal system, see V.

ation, and classification of this recent program and its application to a new project in the Commonwealth Caribbean. To set the stage for this analysis, the evolution of the law and development movement in the 1960s, its evolution and the reaction against it in the 1970s, and its revival in 1985 in Central America and in 1986 in the Commonwealth Caribbean, are traced. The discussion considers the foreign policy background of the new program and how that background is reflected in the program. Next the article discusses the goals and components of the Commonwealth Caribbean project. The article also is designed to classify and analyze the new trends in light of current scholarly discussions. Significantly, although some of the prior patterns of the law and development movement are followed, new ground has been broken. In particular, the conception and implementation of the project shows progress in using local resources as well as in multilateralizing the activities. Because the Commonwealth Caribbean project is only in its stage of infancy, the discussion of its components and classification are necessarily tentative and incomplete.

II. CONCEPTS

Law and development has been referred to as the specialized area of academic study in the United States concerned with the relationship between the legal systems and development — that is, the social, economic and political changes — taking place in developing countries.² Indeed the definition of the field of law and development has always been relatively flexible and not rigidly limited by accepted theory.³ An abundance of literature about the United States law and development programs exists.⁴ The motivations and rationale for the law and development movement have been catalogued chronologically.⁵ Initially legal assistance was used

NEWTON, COMMONWEALTH CARIBBEAN LEGAL SYSTEMS: A CASE STUDY OF SMALL JURISDICTION (Council Legal Education, East Indies and Commonwealth Legal Education Association 1985).

2. Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1064.

3. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, 25 AM. J. COMPAR. L. 457, 459 n.8 (1977) (quoting from the statement of purposes of the \$3 million grant to establish the International Legal Center, as set forth in the 1966 FORD FOUNDATION ANNUAL REPORT 23).

4. For a discussion of the chronological origins and evolution of the law and development movement, see Burg, *Law and Development: A Self-Estrangement*, 25 AM. J. COMPAR. L. 492, 495-98 (1977).

5. J. GARDNER, LEGAL IMPERIALISM 7 (1980).

as an administrative mechanism for nation building and as a means of bringing stable and predictable commercial transactions within an implicit liberal capitalist economy.⁶ This concept of national development was based on industrialization and economic growth.⁷ Later legal assistance was provided to promote political development, rule of law, participatory democracy, and in general more humanistic notions of development.⁸ Throughout, a missionary and humanitarian desire to share legal modernity and technical skill with developing countries motivated the law and development movement.⁹ However, professional self-interest, namely the service-oriented self-image of the American legal profession and an interest in expanding one's sphere of professional activity and perhaps opening a specialization as a development lawyer, also motivated participants in the law and development movement.¹⁰

This article analyzes three models for classifying the law and development movement. The three models then will serve as a basis for classifying and analyzing the Administration of Justice project for the Commonwealth Caribbean. The first model, law and development or comparative law and social change, comes from Professor John Henry Merryman, an academic who has examined, written, and taught law and development as well as the law of Latin America and the Caribbean. The second model, the role of law in social change, comes from Abelardo Valdez, who has been a policy-maker and practitioner, specializing in the Caribbean and Latin America. The third model is a process of transference of the models postulated by James A. Gardner. Although the three models are well known among law and development scholars, there is by no means unanimity among scholars concerning the validity of the primary models.

6. For a discussion of the relationship between modern law and economic development, see Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 YALE L.J. 1, 6-8 (1972)[hereinafter Trubek I]; Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972 WIS. L. REV. 720 [hereinafter Trubek II].

7. J. GARDNER, *supra* note 5, at 7.

8. *Id.*; Burg, *supra* note 4, at 504. For an early discussion of a broad view of law and development, see Friedman, *On Legal Development*, 24 RUTGERS L. REV. 11, 57 (1969).

9. J. GARDNER, *supra* note 5, at 7.

10. *Id.*

A. *Law and Development or Comparative Law and Social Change — The Merryman Thesis*

Recently scholars such as John Henry Merryman have dissected and analyzed the emergence in the 1960s of the "law and development movement" as a potential new field of scholarship. As Professor Merryman and others have explained, the movement received generous support from the Ford Foundation, the United States Agency for International Development (USAID), and from its own foundation, the International Legal Center, established in 1966 as a spin-off of the Ford Foundation.¹¹ According to Professor Merryman, the dominant intellectual style of the movement contributed to its decline.¹² Merryman also postulates that a sub-field — comparative law and social change — is responsive to the interest of the persons who performed the most significant law and development work and offers a useful paradigm for its continuation, albeit under another name.¹³

1. The Intellectual Origins of the Law and Development Movement

According to Merryman, the idea of progress, the movement toward law reform, the emergence of an interest in law and society and its various components (sociology of law and politics), the notion of social engineering through law, and the post-World War II commitment by the United States to foreign assistance were the intellectual origins which led to the law and development movement.¹⁴ One of the analogues of law and development to which Professor Merryman refers is especially relevant to the Commonwealth Caribbean: colonial administration. The experience in colonial administration is important to the law and development movement for several reasons.¹⁵ The principal objective of much of the colonial administration was exploitation, although in later times

11. Merryman, *supra* note 3. For a discussion of the sponsorship of law and development by USAID and the Ford Foundation, see Burg, *supra* note 4, at 496-97.

12. Merryman, *supra* note 3, at 460.

13. *Id.*

14. *Id.* at 461. For a useful and critical discussion of the post World War II missionary zeal behind the law and development movement, see GARDNER, *supra* note 5, at 35-38.

15. For a useful discussion of the colonial administration's effect on the legal system in the Commonwealth Caribbean, see NEWTON, *supra* note 1, at 42-51. See also Patchett, *Reception of Law in the West Indies* 1973 JAMAICA L.J. 17; Morrison, *The Reception of English Law in Jamaica*, 1979 W. INDIAN L.J. 43.

increasing emphasis was placed on colonial development.¹⁶ Since the colonial government was legalistic in its approach to colonial governance and used law as an instrument of colonial progress, law became an important component of colonial administration.¹⁷ Professor Merryman points out, however, that despite the substantial existence of law and development literature, relatively little study has been made of the experience or theory of related disciplines.¹⁸

2. The Intellectual Style of the Law and Development Movement

Professor Merryman classifies the law and development movement into three categories: (1) whether their principal thrust is in the direction of action or inquiry; (2) whether they express theoretical interests; and (3) whether they employ a quantitative approach to the description and discussion of reality.¹⁹ The intellectual style in the law and development movement of the United States has emphasized action. American participation in law and development has been motivated by a desire to accomplish development. Rather than trying to learn from the study of some aspect of law in one or more developing societies, the U.S. lawyer has been more interested in accomplishing development and in engineering social progress through law reform.²⁰

This preoccupation with action causes Americans to proceed on law and development work without trying to build or test a theory or to examine its implications. Rather, the attempt is to proceed on more or less implicit working assumptions, without the need for or any real interest in theory. Since American lawyers are accustomed to *stare decisis*, the practical, professional bias of

16. For a discussion of the view that the British colonial administration emphasized exploitation, see Lindsay, *The Myth of Civilizing Mission: British Colonialism and the Politics of Symbolic Manipulation* (Kingston: I.S.E.R., U.W.I., Working Paper No. 31, 1981).

17. Merryman, *supra* note 3, at 467-68. For additional discussion of the imposition of formal legal systems by colonial rule, see Metzger, *Legal Services to the Poor and National Development Objectives*, in *LEGAL AID AND WORLD POVERTY: A SURVEY OF ASIA, AFRICA, AND LATIN AMERICA* 3 (1974).

18. Merryman, *supra* note 3, at 472. For instance, references are often made to colonial administration, the post-World War II occupation, the administration of internal colonies, regional development, law and social change, and leading law reform, etc. However, Professor Merryman explains that the fact that no meaningful attempts to examine these related disciplines have been made is not unusual.

19. *Id.* at 473.

20. *Id.* at 474.

American legal education is impatient with theory.²¹ The concept of the lawyer as a social engineer is not prominent in Britain or in British colonial history. Hence, British legal scholarship has a distinct intellectual style — more modest and more philosophical — and is addressed to a differently-constituted legal order.²²

According to some critics, including Professor Merryman, the problem with the law and development movement is that Americans have not had time to propose and test a theory and to become well acquainted with the foreign culture.²³ Instead, Americans have used the access of the law and development project and the project funds to become experts on local law. They have taken with them an implied superiority of their own domestic “development” over foreign “underdevelopment” expertise — that is to say, the notion that their work in so-called developed or modernized legal systems automatically has given them a superior status over attorneys from less developed or less modern legal systems. The recommendation of foreign law and development attorneys would determine whether money would be forthcoming for legal projects, providing additional leverage. As a result, the American lawyers working in law and development have had a privileged status and have had an opportunity for lateral entry at the very top without the usual requirement of slow advancement through the local legal culture either in the United States or in the target country.²⁴ As a result, Professor Merryman diagnoses that the law and development movement has suffered from an unfamiliarity with the target culture and society (including its legal system), lack of theory, artificially privileged access to power, and relative immunity to consequences. In other words, the U.S. attorneys have failed at proposing or executing third world law and development action. Hence, the movement was largely misdirected and the decrease of interest in law and development, within USAID, the foundation, and among the law and development scholars, is the result of recognition that American law and development work was ineffectual or harmful as technical assistance, and peripheral as scholarship.²⁵

21. *Id.* at 475.

22. *Id.* at 479.

23. *Id.* at 479. See also J. GARDNER, *supra* note 5, at 8 (discussion of the difficulties of American legal assistance due to its cultural unawareness, ethnocentricity, and its sociological vacuum).

24. Merryman, *supra* note 3, at 481.

25. *Id.* For similar criticisms of ethnocentricity of the law and development movement and its cause of the demise of the movement, see Trubek I, *supra* note 6, at 16-21.

According to Professor Merryman, third world law and development action is premature until the U.S. legal community has tested a reliable theory (vis-a-vis the target society).²⁶ After the theory is reliably tested, the U.S. law and development effort will be more responsible and productive if it limits itself to third world law and development.²⁷ In that way, the United States can begin to build theory of the sort that eventually may provide a more adequate basis for third world action. Hence, Professor Merryman and others believe that the future of the third world law and development movement lies in inquiry and the pursuit of theory.²⁸ It would be properly named "comparative law and social change." The name would draw the readers' attention to the core field of study: law and social change (which includes development). According to Merryman, "comparative" reminds us that we are working with other societies and other legal systems, including those in developing countries. The new designation also provides a greater dimension which allows the scholar interested in studying law and social change in developing countries two disciplinary homes, two groups of interested colleagues, and two bodies of relevant literature.²⁹ Most importantly, Merryman and others have concluded that the law and development movement has declined because it was, for the most part, a flawed attempt by persons without cultural awareness or a proper theory of the third world.³⁰

B. The Role of Law in Social Change — The Valdez Thesis

Another major analyst of the trends in law and development movement in the Caribbean has been Abelardo Valdez, a policy-maker in the Carter Administration and an activist in the development of the Caribbean for many years prior to his policy-making

26. Some scholars believe that not only is the law and development premature without a theory, but also that it is questionable because it has not been shown that law even matters in development. See Burg, *supra* note 4, at 529.

27. Indeed even in the late 1960s and early 1970s the law and development movement already was turning towards law and development inquiry. See J. GARDNER, *supra* note 5, at 12, 44. Gardner notes that in the 1960s some inquiry tried to understand the role of Western law in Asia and Africa. For discussion of the need for a better intellectual perspective based on a social theory to formulate the relationship between legal and social variables, see Trubek I, *supra* note 6, at 21-40.

28. Merryman, *supra* note 3, at 483. See also J. GARDNER, *supra* note 5, at 211-30. For similar criticism, see also Trubek I, *supra* note 6, at 16-21.

29. Merryman, *supra* note 3, at 483.

30. *Id.* J. GARDNER, *supra* note 5, at 28-29. See also Trubek & Galanter, *supra* note 2, at 1080-82 (discussion of misassumptions of social developments in the Third World).

role. His 1975 law review article provided an insight into the issues of past failures or inadequacies of U.S. foreign assistance to law reform projects in developing countries, and provided a more rational justification for such assistance.³¹

Valdez provides two principal rationales for assisting in the development of the role of law in social change in the Caribbean.³² The first is that there exists a lack of knowledge about the role of law in social change and such knowledge is required in order to develop the law as a positive force in social change.³³ According to Valdez, law or legal institutions are involved in the social change or development process. Hence, it is necessary to better comprehend the important relationship between law and development, and law and social change. In order to do so, Valdez believes that research is needed to determine the extent to which the law affects social change and how it can be developed to achieve positive, just, and humane progress.³⁴ Valdez wonders whether the types of legal systems and institutions in the Caribbean help or hinder these societies in their developmental process; whether these countries can successfully import laws from more developed countries; and whether they can accomplish "social engineering" through regulatory laws which effect social change.³⁵ Valdez complains that for the most part, U.S. development assistance organizations, both private and governmental, have not supported research and study of these important questions, but have instead focused almost exclusively on the reform of legal education. The emphasis, according to Valdez, has been unsuccessful.³⁶

31. Valdez, *Developing the Role of Law in Social Change: Past Endeavors and Future Opportunities in Latin America and the Caribbean*, 7 *LAW AM.* 1 (1975) (all references to Valdez' article refer to the Lawyer of the Americas article). See also Valdez, *Law and Socio-Economic Change in Latin America and the Caribbean*, 10 *J. INT'L L. & ECON.* 553 (1975).

32. For an additional discussion of the turn towards research on law and social change by the law and development movement in the 1970s, see J. GARDNER, *supra* note 5, at 12.

33. Valdez, *supra* note 31, at 2. For a discussion of the tendency towards the instrumentalist conception of law and development, that is, the tendency to regard law as an instrument of change, see Burg, *supra* note 4, at 505-11.

34. Valdez, *supra* note 31, at 2-3. See also, Friedman & Macaulay, *Preface to LAW AND THE BEHAVIORAL SCIENCES* (1969). Interestingly, some critics of the law and development movement point out the law is as much a reflection of social conditions as their cause. See Burg, *supra* note 4, at 517.

35. Valdez, *supra* note 31, at 3-4. For a discussion of the influence of law on development and development on law and its application to pragmatic problem-solving in the Third World, see Trubek & Galanter, *supra* note 2, at 517.

36. Valdez, *supra* note 31, at 4. For a similar criticism of misguided emphasis by U.S. development assistance organizations on reform of legal education and the need to develop the role of law in social change in a positive manner, see Trubek I, *supra* note 6, at 1-20.

The second rationale is that resolution of the problem of unequal access to representation within the legal system is necessary to achieve equal justice in Latin America and the Caribbean. Valdez explains that in the late 1960s, assistance to law and development projects in Latin America was focused almost exclusively on legal education reform.³⁷ The goal of these projects was for lawyers in less developed countries to alter their formalistic and traditional concepts of law since development requires institutionalization of social control. By achieving legal education reform, it was thought that reform of the entire legal system would occur. The U.S. organizations believed that attorneys who were trained as rigorous problem-solvers would ask penetrating questions about underlying social problems and find solutions which would be more developmental and more responsive to the needs of their societies.³⁸ Technical assistance was primarily in the form of visiting U.S. professors, training in U.S. schools, use of U.S. teaching materials, and fellowship experience.³⁹ Valdez points out that, rather than focusing on the legal problems of the poor, the law schools receiving U.S. assistance made no effort to restructure their curriculum to offer courses relating to these problems.⁴⁰ Furthermore, Valdez criticizes the U.S. law and development program for not offering substantive courses on law reform (e.g., credit, housing, land reform, civil liberties, access to courts, and the legislative process or employment rights). Rather, they introduced the Socratic method of teaching, improved library facilities, developed teaching materials, and provided scholarships for law studies in the United States.⁴¹ In the end, Valdez explains, the programs were discontinued because, rather than achieving social reform, they only solidified existing power structures and worked against the poor.⁴² Valdez comments that one problem was the misguided at-

37. Valdez, *supra* note 31, at 6. See also J. GARDNER, *supra* note 5, at 40-44 (discussion of the emphasis of American legal assistance to legal education).

38. Valdez, *supra* note 31, at 7. For the view that the Latin American lawyer could not participate actively in social change and development due to his inferior education which focused on the traditional, formalistic idea of law, see Trubek I, *supra* note 6, at 48-50. See also BROWN, *Recent Significant Trends in Legal Education in the Americas*, 3 U. MIAMI INTER-AM. L. REV. 55 (1961).

39. J. GARDNER, *supra* note 5, at 10; Valdez, *supra* note 31, at 8.

40. Valdez, *supra* note 31, at 8. Other commentators have also criticized the law and development models as lacking in ethical and value content or informed social theory, being too closely identified with policy and power, and vulnerable to executive or authoritarian ordering and abuse; See, e.g., J. GARDNER, *supra* note 5, at 11.

41. Valdez, *supra* note 31, at 8.

42. *Id.* at 9. For similar criticism that law and development projects actually increased

tempt to reform teaching methodology without reforming the content. Another difficulty was that those providing technical assistance did not understand the significance of the socio-economic background, values, and goals of the law students, nor did they believe in the teachings underlying this reformed legal education.⁴³

An interesting feature of Valdez' article is his discussion of how the assistance had been redirected in the 1970s. Curriculum reform, rather than being value-neutral, emphasized substantive reform in the content of the curricula.⁴⁴ Emphasis was also placed on adequate and effective delivery of legal services to the poor in order to ensure the operation and integrity of the legal system.⁴⁵ Legal service programs, Valdez explained, attempt to improve access to legal services by the poor. Such programs can also assist in achieving social change or development: they educate the poor and make them aware of their legal rights and potential services by a legal aid program; they stimulate participation by members of the poor community in community organization; and they facilitate implementation of legal and non-legal solutions to social problems.⁴⁶ In particular, one of the initiatives of the law and development program in the 1970s was the establishment of the Kingston Legal Aid Clinic in 1972.

An additional reason for law-reform-oriented law and development projects is the absolute need to achieve effective enforcement of existing legislation which was intended to benefit lower-income and other disadvantaged groups. Although developing countries have impressive bodies of social welfare, antidiscrimination, and regulatory legislation, much of it is not effective because of fatal defects within the legislation itself, ineffective enforcement, or unrealistic assumptions about the resources available to private parties to facilitate effective enforcement.⁴⁷ For instance, the unavailability of class action, limited interpretations of standing to sue, and the lack of the concept of precedent can make wholesale national

social inequality and diminished participation in decision-making by increasing the formalization of legal decision-making, see J. GARDNER, *supra* note 5, at 11; Trubek & Galanter, *supra* note 2, at 1076.

43. J. GARDNER, *supra* note 5, at 11; Valdez, *supra* note 31, at 10.

44. J. GARDNER, *supra* note 5, at 12, 216-20; Valdez, *supra* note 31, at 12-13.

45. For a discussion of law reform in the context of law and development, see Friedman, *supra* note 8, at 41-49.

46. Valdez, *supra* note 31, at 12-13. For a discussion of the role of lawyers in assisting the effective penetration of national law to the indigenous population, see Metzger, *supra* note 17, at 10-11.

47. Metzger, *supra* note 17, at 12.

enforcement of previously ineffective social welfare and regulatory legislation difficult to achieve through litigation.⁴⁸

Valdez criticizes the use of grants primarily for research by U.S. attorneys because attorneys from the region are more knowledgeable about local conditions, have more influence in their communities, and hence are more deserving of the grants.⁴⁹ Valdez cautions that the Caribbean had been an area dominated by a foreign sovereign which imposed its own laws, but now has entered an era of potentially dramatic change.⁵⁰ By considering the values, customs, and needs of society in producing that change and law reform, an important contribution can be made.⁵¹ Hence, Valdez reiterates Professor Merryman's concern about the need for inquiry and theory. Nevertheless, Valdez emphasizes action, and brings with him the tools of a crusading legal aid attorney of the 1970s intent on using his social engineering skills to produce social change.

C. The Process of Transferring Law and Development Models — The Gardner Thesis

According to John A. Gardner, a process for the transference of law and development can be used to provide a typology of transfer. The forms include: (1) direct transfer of legal institutions and instruments (e.g., constitution, code, statute, court); (2) indirect transfer of legal concepts and models (e.g., legal values or ideas, jurisprudential or professional models); (3) invited legal transfer process which comes from the recipient legal culture (e.g., the requested importation of specific legal instruments or legal models); and (4) imposed or uninvited legal transfer at the initiative of the exporting legal culture. An additional category is suggested, namely, one which distinguishes infused (premeditated or planned) processes of legal transfer, direct or indirect, where the initiative is from the exporting legal culture; from more occasional *ad hoc* borrowing, which is less systematic and culture or time specific, and

48. Valdez, *supra* note 31, at 5.

49. For a discussion of the lack of any effort for expansion of legal services to the poor to take cognizance of the distinctive conditions in which such programs function in the developing countries, see Metzger, *supra* note 17, at 5-7.

50. See generally F. ALEXIS, CHANGING CARIBBEAN CONSTITUTIONS 248-69 (1984) (discussion of the dramatic changes on the legal system in the Caribbean); F. PHILLIPS, WEST INDIAN CONSTITUTIONS: POST-INDEPENDENCE REFORM (1985).

51. Valdez, *supra* note 31, at 33-34.

more of an ongoing process of cultural and intellectual interchange generally.⁵²

According to Gardner, the American legal assistance experience generally can be categorized as indirect, infused, or planned legal export. Within the context of legal transfer generally the law and development movement encountered the difficult task of transferring abstract models and concepts that were neither invited nor imposed in the usual sense, but rather, infused through a particular transfer process. Gardner states that preconditions for the direct transfer of American legal institutions and instruments did not exist. Much of the legal infrastructure-building was achieved by the time the American law and development movement started and developing countries had neither strong interest in direct American financial and program strength, nor the mandate, to undertake direct legal export on a major scale. The real initiative and interest in law and development originated within the American legal culture. The movement did not involve an *ad hoc* nor an ongoing international legal transfer process. Hence, in the end the movement evolved into an attempt to indirectly transfer abstract American legal models and concepts that were neither invited nor imposed, but rather infused, through American legal assistance.⁵³

D. The Current U.S. Administration of Justice Improvement Projects

1. The Kissinger Report

The U.S. Agency for International Development (USAID)/University of the West Indies Justice Improvement Project for the Commonwealth Caribbean, like most of the foreign policy initiatives of the Reagan Administration, emanates from the preoccupation of the Administration with the national security of the United States in the region.⁵⁴ In particular, the Report of the National Bi-

52. J. GARDNER, *supra* note 5, at 21-22. The deviation of the basic structural elements of the legal systems of the developing countries from the West and the education of the legal profession within the Western legal tradition had contributed to a tendency to look toward the former colonial power for leadership in legal reform. Metzger, *supra* note 17, at 14.

53. J. GARDNER, *supra* note 5, at 33-34.

54. For the best concise presentation of the Reagan Administration's goals in the Caribbean and Central America, see Kirkpatrick, *U.S. Security and Latin America*, COMMENTARY 71 (1) 29-41 (Jan. 1981). See also Erisman, *Colossus Challenged: U.S. Caribbean Policy in*

partisan Commission on Central America, known as the Kissinger Report, comments that there was agreement among the region's leaders, both in government and in the private sector, that there must be greater equity in the distribution of economic benefits and greater justice in social relations.⁵⁵ The Report also recommends that the United States government should encourage the Central American countries to develop and nurture democratic cultures, institutions, and practices, including "strong judicial systems to enhance the capacity to redress grievances concerning personal security, property rights, and free speech."⁵⁶ The Report also recommends the use of U.S. economic assistance to:

- a. enhance the training and resources of judges, judicial staff, and public prosecutors' offices;
- b. support modern and professional means of criminal investigation; and
- c. promote availability of legal materials, assistance to law faculties, and support for local bar associations.⁵⁷

2. Legislative Framework

Congressional support of the Administration of Justice initiative is found in U.S. legislation. Section 534 of the Foreign Assistance Act of 1961, (FAA) as amended, authorized the use of up to \$20 million in Economic Support Funds in both fiscal year 1986 and 1987 for Administration of Justice activities in countries in Latin America and the Caribbean.⁵⁸ The activities authorized under Section 534 included: specialized professional training, scholarships and exchanges for continuing legal education; programs to enhance judicial and prosecutorial capabilities; programs to enhance investigative capabilities, conducted under judicial or prosecutorial control; strengthening organizations in order to promote both services to members and the role of the bar in judicial selection, enforcement of ethical standards, and legal reform; increasing the availability of legal materials and publications; semi-

the 1980s, in *COLOSSUS CHALLENGED: THE STRUGGLE FOR CARIBBEAN INFLUENCE* 1-46 (Erisman & Martz, eds. 1982).

55. Report of the National Bipartisan Commission on Central America 38 (Jan. 1984).

56. *Id.* at 51.

57. *Id.* at 74.

58. Pub. L. No. 87-195, pt. II, Ch. 4, § 534, as added Pub. L. No. 99-83, Title VII, § 712, 99 Stat. 244 (1985) (codified as 22 U.S.C. § 2346c (1985)).

nars, conferences, and training and educational programs to improve the administration of justice and strengthen the respect for the rule of law and internationally recognized human rights; and revision and modernization of codes and procedures.

In addition to the specific authorization which was provided by Section 534 of the FAA, Congress has enacted legislation that eases the restrictions barring USAID support for police activities.⁵⁹ Since the mid-1970s Section 660 of the FAA has barred USAID from providing training, advice or financial support to police. However, section 660(c) of the FAA makes a general exemption to the prohibitions contained in Sections 660(a) and (b) for any country with a longstanding democratic tradition, which does not have a standing army, and does not engage in a consistent pattern of gross human rights violations. A further exception to Section 660 was provided in Section 534 of the FAA for programs to enhance police investigative capabilities conducted under judicial or prosecutorial control. The authority of Section 534 expired on September 30, 1987.

3. Overview of Goals and Activities

To put the Justice Improvement Project for the Commonwealth Caribbean into proper perspective requires an understanding of the Reagan Administration's direction of the program for the Western Hemisphere. The Administration's own description of the program, as well as the background from which the program arose, emphasizes its political character.⁶⁰ The focus of the Justice Improvement Project is to enable the rule of law to build a cornerstone of democracy and be a positive force for just economic and social development.⁶¹ The program combines public and private resources. The Department of State, USAID, the United States Information Agency (USIA), the Department of Justice, and private

59. For a discussion of the enactment of the administration of justice provisions enacted in 1985, see *Administration of Justice Provisions Pass*, 1 INT'L ENFORCEMENT L. REP. 19 (1985).

60. See, e.g., U.S. DEP'T OF STATE, U.S. AND CENTRAL AMERICA: IMPLEMENTING THE NATIONAL BIPARTISAN COMMISSION REPORT 6-8 (Spec. Rep. No. 148, Aug., 1986). The political emphasis of the administration of justice project in Central America is indicated by the inclusion of electoral assistance and legislative training and support, USAID, Congressional Presentation Fiscal Year 434 (1986).

61. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, HEMISPHERIC COOPERATION IN THE ADMINISTRATION OF JUSTICE (Spec. Rep. No. 145, Apr. 1986) [hereinafter U.S. DEP'T OF STATE].

U.S. educational and professional organizations participate in activities with hemispheric counterparts. The cooperation involves international organizations, such as the United Nations Institute for the Prevention of Crime and Treatment of Offenders in Latin America (ILANUD), the Inter-American Institute for Human Rights (IIHR), and the Organization of American States (OAS).⁶² The program encourages the formation of national commissions representing various legal community sectors to determine the status of the administration of justice and develop a national plan for improving it. The United States is providing financial and technical assistance to such commissions. Regional organizations, such as ILANUD or the IIHR, have conducted courses to improve practical legal and functional skills and knowledge. These courses upgrade the quality of legal training and stimulate increased cooperation among legal professionals.⁶³ The program supports nonpartisan recruitment and the selection of judges on the basis of merit. Similarly, the program assists governments wanting to design and implement performance-based career structures for their magistrates, with appropriate training and evaluation of the judicial cadre. The program also supports the recruitment, training, and development of prosecutors and public defenders. To assure humane law enforcement, conviction of the guilty, and protection of the rights of the accused and the public, and thereby promote confidence in the judicial system, the program assists through specialized training that promotes effective coordination among investigative, prosecutorial and judicial authorities.⁶⁴ Court administrators and associated support personnel, normally not legal professionals, also are eligible for assistance. The program also provides for the diagnosis of the needs of the court system, particularly services such as docket management, financial planning, record keeping, and building maintenance.⁶⁵ This is a supplemental activity of the Commonwealth Caribbean Project as a result of a recent agreement with the National Center for State Courts in Williamsburg, Virginia. The program also supports information

62. *Id.*

63. *Id.* For a discussion of the potential for dynamic cooperation among international non-governmental organizations in international criminal law in the region, see Zagaris & Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 *REV. INT'L DROIT PENAL* 119, 128-33 (1986).

64. For background on the criminal investigative training program, see Zagaris, *Justice Starts Program on Criminal Investigative Training in Americas*, 2 *INT'L ENFORCEMENT L. REP.* 79 (1986).

65. U.S. DEP'T OF STATE, *supra* note 61.

system and record management. The goals are to help codify and disseminate new statutes and other legal materials, so that judges can determine applicable law in particular cases, increase court efficiency, and assure fair application of law. In particular, ensuring up-to-date records management, safeguarding of evidence, and classification of court documents are activities eligible for program assistance as a result of the same agreement.⁶⁶

The program encourages professional associations. It seeks to encourage professionalism and commitment to the principles of justice within the legal profession through exchanges among fraternal institutions, specialized orientation visits and training in the United States and other countries, invitational travel to professional conferences and association meetings, and assistance for professional groups such as bar associations.⁶⁷ For instance, USIA and USAID have given grants to the Inter-American Bar Foundation to host conferences, some in conjunction with the meetings of the Inter-American Bar Association. Similarly, the Inter-American Law Committee has held conferences in Central America funded by USAID.⁶⁸ USIA and USAID provided grants to the American Bar Association (ABA) to invite Latin Americans to the ABA annual convention and to organize a workshop for the visitors.⁶⁹ The Inter-American Bar Association received funds from the program to hold the First Inter-American Judicial Conference at the Association's November 1985 meeting in Mexico. The Conference included a series of workshops on practical problems of judicial structure and function. The participants discussed ways in which their bar associations had worked and could work to improve the administration of justice.⁷⁰

Finally, the program has a public information and education component. The rationale for this component is: equal protection under the law and equal justice within a social order which vigi-

66. *Id.*

67. For a discussion of technical assistance provided by the Inter-American Law Committee to certain Central American Bar Associations, see *Administration of Justice Programs Progress*, 1 INT'L ENFORCEMENT L. REP. 39 (1985); Memorandum, The Administration of Justice in Latin America and the Caribbean, presented by Faye Armstrong, Office of Legal Advisor, U.S. Dep't of State, at a mid-winter meeting of the A.B.A. Sec. of Int'l L. & Prac., reprinted in 3 INT'L ENFORCEMENT L. REP. 43 app. (1985). See also *USAID Regional Administration of Justice Grant to ILANUD*, 3 INT'L ENFORCEMENT L. REP. 12, 14 (1985) (discussion of grant agreements between USAID and U.S. institutions).

68. U.S. DEP'T OF STATE, *supra* note 61.

69. *Id.*

70. *Id.*

lantly safeguards the individual's basic human rights requires public knowledge of the operation of the judicial system and of the resolution of disputes and legitimate grievances through peaceful legal means. The program assists such efforts to inform and educate the public of their basic human rights.⁷¹

These professional exchanges and public information and education efforts combined with the bicentennial of the U.S. constitution to produce a number of programs. The USIA has supported exchanges to enable U.S. and Latin American jurists to come together to discuss issues on constitutional law and related legal issues. For instance, USIA funded the American Bar Association and its Brazilian counterpart to organize a seminar in Rio de Janeiro on the American constitutional experience and enabled a senior U.S. court administrator to spend a month working with the University of the Andes and with the Colombian Government. USIA and USAID also supported the American Enterprise Institute's Second International Conference on Constitutionalism.⁷² During January and February of 1986, USIA sponsored a month-long program in Spanish on the U.S. legal system. Latin American judges and practitioners traveled together and studied the administration of justice in the United States. Supreme Court Justice Sandra Day O'Connor traveled to Mexico in 1986 as the Lincoln Lecturer, delivering an address entitled, "Shield of Freedom: The United States Constitution and Its Courts."⁷³ Other programs in 1987 included a USIA-sponsored seminar on the U.S. constitution in Brasilia and a lecture at the State Department by Carlos Del Rio Rodriguez on the bicentennial of the U.S. constitution.

4. Central American Projects

At present, two major administration of justice projects under way in Central America are the Regional Administration of Justice Project (\$10 million) and the El Salvador Judicial Reform Project (over \$9 million).⁷⁴ The major component of the Regional Administration of Justice Project is a five-year grant to the United Nations-affiliated Latin American Institute for the Prevention of

71. *Id.*

72. *Id.*

73. *Id.*

74. For a more comprehensive summary of the Central American Administration of Justice projects, see *Office of Administration of Justice Created*, 1 INT'L ENFORCEMENT L. REP. 20 (1985).

Crime and Treatment of Offenders (ILANUD) to enhance its training and technical assistance capabilities with respect to El Salvador, Costa Rica, Honduras, Panama, the Dominican Republic and Guatemala. As a result of the grant, ILANUD has substantially expanded its operations and has responded to specific requests for assistance. Some background on the purpose and programs of the ILANUD project will provide insight into the purposes of the USAID program.

In February 1985, USAID proposed and implemented the ILANUD project for Central America. The project's short-term purpose is to strengthen regional and national institutions in order to provide services necessary for the improvement of administrative, technical, and legal performance of national justice systems, with major emphasis on criminal justice system improvement. The project is directed at supporting national initiatives underway as well as assisting the stimulation and development of new initiatives. The project has four components: training; advisory services; support services for ILANUD; and an extension facility to meet country-specific needs. Additionally, a grant fund is included to finance expected grant agreements with other regional, international, and U.S. public and private institutions.⁷⁵

The training component of the ILANUD project involves an expanding number of seminars and workshops, short courses, study tours, and longer-term training, as well as support for popular education efforts in human rights and legal rights and guarantees. Training in regional level is occurring in Costa Rica and in other host countries. Training efforts have focused on the practical aspects of the administration of justice and on bringing together key judges, administrators, bar representatives, and prosecutors to exchange views of technical, administrative and legal issues.⁷⁶

The advisory services component is providing technical expertise to national institutions, ILANUD and other projects of USAID, as well as to other donor groups. ILANUD is developing an in-house capacity to offer such assistance after the project ends. Major elements of the advisory services elements include justice sector assessments for each participating country, pilot projects to improve criminal justice statistics, bibliographic assistance, and as-

75. U.S. Int'l Dev. Cooperation Agency, U.S. Agency for Int'l Dev. (USAID), ROCAP Project Paper Regional Administration of Justice 15 (AID/LAC/P-219 Project No. 596-0133) [hereinafter USAID, Project Paper].

76. *Id.*

sistance to reform cataloging and reporting of legislation and jurisprudence.⁷⁷

The institutional development and support for ILANUD and other regional institutional components will provide support services consisting largely of facilities that will be added by ILANUD to support training and advisory services.⁷⁸ This is to strengthen ILANUD as an indigenous regional institution committed to project goals. Inputs include: design of project management to facilitate harmonious introduction into the ILANUD structure; advisors contracted by USAID to provide technical assistance; and material and equipment provided to ILANUD. In addition, some assistance will be provided to strengthen the Inter-American Institute for Human Rights.⁷⁹

Compared with the Administration of Justice Project for the Commonwealth Caribbean, the Central American and Salvadoran projects were conceived more hastily to deal with perceived security-related emergencies. As a result, the approval and implementation of the projects afforded less opportunity for theoretical discussions. The continuing violence and deterioration of law and order in Central America were also primary factors motivating those projects which did not exist in the proposal of the Commonwealth Caribbean Project. A detailed analysis of the Central American Project is beyond the scope of this article.

5. The Commonwealth Caribbean Project

On August 28, 1986, an agreement was signed by Mr. James S. Haltaway, Director, on behalf of the United States Agency for International Development, and Dr. F. R. Augier, the Acting Vice Chancellor, on behalf of the University of the West Indies,⁸⁰ establishing the Commonwealth Caribbean Project, known as the Caribbean Justice Improvement Project (CJIP). Ten million dollars, to be distributed over the next five years, has been appropriated for the Project. The Regional Development Office/Caribbean of

77. *Id.*

78. Because ILANUD at the beginning of the project did not have a large budget or substantial accounting or other related technical capabilities, USAID provided funds to Florida International University to assist ILANUD in developing such capabilities.

79. USAID, Project Paper, *supra* note 75.

80. Caribbean Justice Improvement Project (CJIP), University of the West Indies (UWI) Quarterly Activity Schedule (Sept.-Dec. 1986). For details on the project, see USAID, Project Paper, Caribbean Justice Improvement (AID/LAC/P-318 Project No. 598-0645).

USAID will receive \$7.8 million, with an additional \$2.2 million earmarked specifically for Jamaica. A grant agreement has been negotiated with the University of the West Indies (UWI) acting through the Faculty of Law situated at the Cave Hill Campus in Barbados. A project agreement between the Government of Jamaica and USAID/Jamaica obligates the \$2.2 million Jamaica component. Although the Project is designed to benefit the rule of law throughout the entire English-speaking Caribbean, the primary areas of focus are Belize and the six independent states in the Eastern Caribbean: Antigua and Barbuda; Dominica; Grenada; St. Christopher Nevis; St. Lucia; and St. Vincent and the Grenadines. Under the \$7.8 million grant, UWI will make subgrants to, and execute contracts with, regional, subregional and national institutions and entities. The Project contemplates that the more developed countries in the region, namely Trinidad and Tobago, Barbados, and Jamaica, will participate as donors, providing technical assistance by hosting training programs and making their existing activities and institutions available to professionals from the seven participating countries. By design, Guyana is not part of the Project.⁸¹

According to the project paper, the purpose of the effort is to use local and regional institutions in implementing the Project.⁸² The paper recognizes the important structural differences between the United States and the Commonwealth approaches to the common law and hence, the limitation on U.S. influence in the region. The Project's rationale is that if the United States government allows the legal system of the Commonwealth Caribbean to continue to deteriorate, the rule of law and democratic tradition in the Commonwealth Caribbean will be undermined. In this regard, the project report recalls that the Grenadian 1979 revolution was the only coup d'état in modern times in the English-speaking Caribbean.⁸³ Coincidentally, President Reagan announced the Project for the first time in public in an address in Grenada on February

81. The omission of Guyana from the Project is partly technical, due to Guyana's default on prior U.S. and International Monetary Fund loans; it is, however, political as well. See Zarr, *The Rule of Law in the Commonwealth Caribbean: How Long Can the Machinery of Justice Run on Empty?* 75 (Bureau of Latin America and the Caribbean, USAID, Nov. 1, 1985) ("in practically every state except possibly Guyana judicial independence exists"); USAID, Project Paper, *supra* note 75, at 12 ("[A]ll but Guyana are functioning democracies and inheritors of an abiding democratic tradition.")

82. USAID, Project Paper, *supra* note 75, at 7-8.

83. Zarr, *supra* note 81, at 78-79. For a discussion of the importance of the Grenada revolution of 1979 and military intervention of 1983, see F. PHILLIPS, *supra* note 50, at 3-51.

20, 1986.⁸⁴ The Project views as the solution to the problem of deteriorating legal systems due to lack of maintenance, the transference of successful, reproducible innovations from some of the region's larger, better endowed states to poorer territories.⁸⁵ Therefore, the Project plans to rely almost solely on Caribbean institutions as resources. Although U.S. bar groups, universities and other entities may be involved in specific project components as a particular need or opportunity arises for which a U.S. entity is an appropriate contractor or supplier, no U.S. entity will be involved in the full range of project activities.⁸⁶ In many substantive areas the UWI goal simply will be to raise the poorer states up to the regional standard. In other cases the regional standard itself may need improvement (such as in court registries, where even the wealthier states have antiquated systems). To classify the proper conceptual framework into which the Commonwealth Caribbean Project fits, the Project and its initial implementation must be reviewed in more detail.

III. THE COMPONENTS OF THE COMMONWEALTH CARIBBEAN PROJECT

The major Project components include: law revision and reform; case reports/textbook revolving fund; law library enhancement; country-specific activities; UWI operational support; and regional technical assistance/training.⁸⁷ The major components were selected as a pragmatic compromise. Already the Project is seeking to expand the components as well as the scope of existing components.

84. Remarks by President Reagan to the Citizens of Grenada, Queen's Park, St. George's Grenada (The White House, Office of the Press Secretary, Feb. 20, 1986). The text states as follows: "Finally, I would like to announce that the United States will be undertaking, in conjunction with Caribbean governments, a 5-year, \$5.5 million program to help support the free and independent judicial systems of the Caribbean islands — recognized around the world as a pillar of your democratic traditions."

85. USAID, Project Paper, *supra* note 75, at 8. For a discussion of the need to solve the problem of deteriorating legal systems generally, see Patchett, Legal Resource Needs in Small States: Report on Bermuda and the Caribbean 71 (Lond: Commonwealth Secretariat) [hereinafter Legal Resource Needs]; Patchett, Assistance to Small States to Meet Their Legal Needs, Papers of the Meeting of Commonwealth Law Ministers 23-28 (Feb. 1983) [hereinafter Assistance to Small States].

86. *Id.* For a discussion of the need for local or regional initiative for an administration of justice program and a discussion of the ineffectiveness of "made-in-the-U.S.A." solutions, see U.S. DEP'T OF STATE, *supra* note 61.

87. USAID, Project Paper, *supra* note 75, at 15-19.

A. *UWI Operational Support*

This component, for which \$900,000 is allocated, provides UWI with the operational support required to implement and manage the Project. The Project funds the UWI project director and staff for the life of the Project. Considering the Faculty of Law members' substantial experience, UWI can manage the multi-faceted regional project with a relatively small operational staff. One reason that the UWI was selected as the Project's grantee was its existing expertise in similar projects and existing professional and support staff.⁸⁸ During the first year, the Project employed a stenographer clerk and an administrative assistant.⁸⁹

B. *Law Library Development*

This component, for which \$600,000 is allocated, enables the UWI to provide technical assistance and training to participating countries to develop and maintain a law library. The goal is to develop a single adequate library serving the courts, government, and the practicing bar in a country, rather than the haphazard system of books scattered around both Government and private offices.⁹⁰ The absence of a centralized law library or collection of legal materials has precluded preparation of soundly-researched opinions or of forensic arguments. In addition, relevant precedents in case or statutory law or even commentaries on law are unavailable in the smaller participating countries of the Project.⁹¹ Existing government collections will be consolidated, except for essential items needed by prosecutors, legal draftsmen and others for immediate reference.

Prior to participation in a law library development activity for a country, UWI concludes a Memorandum of Understanding (MOU) with the government relating to the activity. The specific elements which the MOU addresses are:

1. Within thirty days of MOU signing, the government designates a suitable candidate for training as a paraprofessional in

88. CJIP, UWI Quarterly Activity Report 2 (Apr. - June 1987) (on file with the Project Administrator and the author).

89. *Id.* at 15.

90. For a useful survey of existing legal material in the Commonwealth Caribbean, see V. NEWTON, COMMONWEALTH CARIBBEAN LEGAL LITERATURE (1987) (a bibliography of all primary sources to date and secondary sources for 1971-85).

91. Assistance to Small States, *supra* note 85, at 37.

law librarianship, giving the assurance of a reasonably remunerated career.

2. The government provides adequate physical accommodations for the library in proximity to major users.

3. A user fee system for the practicing bar is established, with profits allocated for library purposes. Revenue derived from use of photocopy machinery likewise will be used for library purposes.

4. Suitable budgetary provision for library upkeep and maintenance is established.⁹²

C. *Case Reports/Textbook Revolving Fund*

Since the Commonwealth Caribbean legal system is a common law system, which relies heavily on court-made law,⁹³ a significant problem in the smaller territories of the Commonwealth Caribbean is the absence of adequate law reporting. No court reports have ever been published for Belize or any of the Leeward Islands (Anguilla, Antigua and Barbuda, British Virgin Islands, Montserrat, St. Christopher Nevis) and only one volume, covering cases between 1866 and 1907, has ever been published for the Windward Islands (Dominica, Grenada, St. Lucia, and St. Vincent and the Grenadines). The West Indies Reports, published commercially in Britain, covers cases from the most developed states, whose lawyers account for the bulk of the book sales (i.e., Jamaica, Trinidad, Barbados, and Guyana). Hence, the West Indies Reports does not meet the needs of the micro-states for reported judicial decisions.⁹⁴ In order to bridge this gap, to assist in providing teaching materials for the Faculty of Law, and to offer an incentive for much-needed legal scholarship, the Project will have a revolving fund in the amount of \$250,000. A committee will administer the fund under the chairmanship of the dean of the Faculty of Law, and the UWI finance officer, law librarian, and project director. The Project budgets funds to produce case reports and textbooks on topics of importance and interest to the participating countries.⁹⁵

92. *Id.* at 16.

93. *Id.* at 16-17. For a useful discussion of the problem caused by lack of sufficient case reports and information generally about judicial decisions, see F. ALEXIS & H. FRASER, *EMINENT CARIBBEAN JURIST* 173-74 (1985).

94. USAID Project Paper, *supra* note 75, at 15-16; Zarr, *supra* note 81, at 36-37. For a useful summary of existing law reports, current informal law reporting, and series no longer published, see V. NEWTON, *supra* note 1, at 319-39.

95. USAID Project Paper, *supra* note 75, at 15-16.

The goal is to select legal topics for publications with enough interest that sales will be sufficient to restore the fund. A compilation of regional constitutional and administrative law reports, which is now in preparation, should be successful commercially. As the Faculty of Law gains in reputation, it is anticipated that this will lead to additional sales in currently less-marketable areas.⁹⁶

The grant agreement does not provide formal maintenance of value undertakings. According to the plan, however, book sales will generate sufficient revenue to enable the fund to maintain principal. As an incentive for legal scholarship, income from proceeds of book sales will be restored to the fund with any excess divided between the author or compiler of the text and the fund. Additionally, the Project allows the negotiation of royalties from the sale of books, although USAID has the right under a royalty-free license to use such published material. The committee chairman will produce annual reports on the funds with a financial statement of account prepared by the UWI finance officer.⁹⁷

D. Law Revision and Reform

The \$1,750,000 allocated to this component will enable attorneys and lay persons to locate statutes. Although seven countries currently participate, only Belize has revised its laws in the past twenty years and those revisions did not extend to subsidiary legislation. Although law revision should occur every ten to fifteen years, the last revision for St. Vincent, St. Lucia and the Grenadines, and Grenada, occurred in 1926, 1957, and 1958, respectively.⁹⁸

The lack of publication of revised laws has been exacerbated by many substantive constitutional and post-independent changes which have occurred since the last revisions. The existing legislation, quite apart from antiquated language and formulation, reflects constitutional forms which have been replaced, sometimes several times.⁹⁹ Consequently, several shortcomings are obvious: some laws have been repealed more than once; others have been

96. *Id.*

97. *Id.*

98. *Id.* at 17-18. For a discussion of the problems caused by lack of law revision, see *Legal Resource Needs*, *supra* note 85; *Assistance to Small States*, *supra* note 85, at 36.

99. *Legal Resource Needs*, *supra* note 85. For a discussion of the changes occasioned by constitutional changes in the post-independence period, see F. ALEXIS, *supra* note 50; F. PHILLIPS, *supra* note 50.

amended after repeal; and officials designated in the statutes have been altered, with later amendments referring to the officer by the original designation. Thus, any legal professional has extreme difficulty understanding the applicable law.¹⁰⁰

The United Kingdom, the Commonwealth Fund for Technical Cooperation and the United Nations Development Program have financed technical experts in law revision in the past and will continue doing so under the Project. Therefore, USAID financing is projected only for the cost of preparation of materials, printing, and publishing. Since all seven states require law revision, and \$270,000 is an average printing cost per state, a total of \$1.75 million is estimated for this component.

Since the laws have not been updated in such a long period and are often the creature of a colonial master, a dire need exists for law reform. Law revision normally takes three years per state, while law reform is a longer process. However, without the deadline imposed by law revision, law reform may never occur.

Another ongoing project is legal harmonization of the Organization of Eastern Caribbean States (OECS) through the OECS Secretariat in St. Lucia. An important step preparatory to law revision undertaken by the Secretariat is to standardize format, title, chapter headings and content for statute books of the OECS states.¹⁰¹

E. Country-Specific Activities

This component, allocated \$2 million, provides funds for activities which the individual countries have determined to be priority items. To ensure coordination, avoid duplication and effectively target activities, the UWI Faculty of Law has to be aware of the projects of the United Nations Development Program, the Commonwealth Fund for Technical Development, the Canadian International Development Agency, and the British Development Division in the Caribbean within the legal environment of the target countries. In dollar amount, court management activities and renovation/adaptation of existing structures are likely to be among the largest users of these funds. Pilot computer applications in records management, technical assistance in establishing a public defender

100. Legal Resource Needs, *supra* note 85.

101. USAID, Project Paper, *supra* note 75, at 17-18.

system, and essential commodity procurement (i.e., typewriters, file cabinets, disks, photocopiers) are other likely candidates for funding.¹⁰²

F. Regional Technical Assistance/Training

This project area, budgeted \$700,000, covers a variety of national and regional training and technical assistance activities not included in other project components. Essentially, this category covers other worthwhile activities in support of the rule of law and legal systems in the region whose financing under the USAID Grant might otherwise have been doubtful. The component may fund the following types of activities:

1. Regional training for police prosecutors conducted by the Regional Police Training Center in Barbados.¹⁰³

2. Regional training for paralegals offered, for example, by the Kingston Legal Aid Clinic and the Barbados Community College.¹⁰⁴

3. Teleconferencing under the University of the West Indies Distance Teaching Experiment (UWIDITE) Project as a training vehicle for prosecutors, magistrates, court registries, etc.¹⁰⁵

4. A UWI subgrant to the Organization of Commonwealth Caribbean Bar Association (OCCBA) to help local bar associations establish legal aid offices in participating states.¹⁰⁶

IV. INITIAL ACTIVITIES OF THE COMMONWEALTH CARIBBEAN PROJECT

During the first nine months, the Project's activities have produced tangible results. The Project has shown a surprising capacity to expand into related areas. By the end of December, 1986, the Project Director had visited all the main beneficiary countries under the agreement: Antigua, Belize, Dominica, Grenada, St.

102. *Id.* at 18.

103. Zarr, *supra* note 81, at 16-17.

104. *Id.* at 53-54.

105. Zarr, *supra* note 81, at 83. The UWIDITE Project enables transmission of programs among the UWI main campuses (in Cave Hill, St. Augustine, and Mona) and the Extramural Departments in the six OECS countries and Belize. Currently used for teaching courses, its additional potential uses are infinite.

106. USAID, Project Paper, *supra* note 75, at 18.

Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines. Project officials also visited the OECS Secretariat and the Bahamas.¹⁰⁷

Moreover, the Project concluded a Memorandum of Understanding for Quick Impact Activities, permitting each country to receive a \$50,000 disbursement for project activities. In response, five countries have already submitted illustrative lists for funding.

The Project has an office adjacent to the University of the West Indies campus at Cave Hill. In addition to the Project Director, the Project has employed two senior staff persons experienced at the University and the Law Faculty. The Project has approval to purchase four computers — one each for the project office, Law Faculty, OECS Secretariat, and Law Library.¹⁰⁸

The Implementation Unit has the additional temporary role of acting as a clearing house between the Organization of Commonwealth Caribbean Bar Associations (OCCBA) and its constituent members in the territories.¹⁰⁹ Because the OCCBA has no Secretariat nor facility to house its operations, its activities are very limited. However, with ABA assistance in the structure and organization of management staff, financing, and services, eventually the OCCBA can be self-supporting.

A. *Organizational Activities in the Member Territories*

Carl Joseph, formerly acting Attorney General in St. Vincent, received an appointment to the post of Deputy Director for three years from May 1, 1987, and will operate from the Legal Secretariat of the Organization of Western Caribbean States in St. Lucia.¹¹⁰

Except for Belize, all of the territories opted initially for the appointment of part-time country coordinators. Generally those chosen are persons who hold office in the judicial and legal service of their respective countries. In Grenada, for example, it is the Acting Chief Justice; in Dominica and St. Vincent and the Grenadines the Solicitor General; in St. Lucia the Director of Public Prosecu-

107. CJIP, *supra* note 80, at 1.

108. Minutes of Meeting of Project Committee 2 (Mar. 5, 1987) (on file with the Project Administrator and the author).

109. CJIP, UWI Quarterly Activity Report 1 (Jan. - Mar. 1987) (on file with the Project Administrator and the author).

110. Minutes of Meeting of Project Committee 4 (Mar. 5, 1987) (on file with the Project Administrator and the author).

tions; and in Antigua and St. Christopher-Nevis a Crown Counsel performs those duties.¹¹¹

B. International Organizational Activities

From the outset the Project was conceived as multilateral, able to involve as many donor organizations and governments as possible.¹¹² Hence, the Project established a Donors' Committee. At the second meeting representatives from the Organization of American States and the Commonwealth Fund for Technical Cooperation (CFTC) attended for the first time. At this gathering the Caribbean Development Bank (CDB) agreed to participate. This development is heartening because the CDB plays an important technical and leadership role in development projects and had initially declined to participate.

The current membership of the Committee includes: Principal of UWI, K. D. Hunte, Chairman; Pro-Vice Chancellor R. V. Goodridge; the Campus Registrar; the Finance Officer, the Dean of the Faculty of Law; the Senior Assistant Registrar (Planning); the Project Director; and representatives of the British Development Division; the Caribbean Development Bank; the Canadian International Development Agency; the Commonwealth Technical Development Fund; Organization of American States (OAS); Organization of East Caribbean States (OECS); and the USAID.¹¹³

The Project has been successful in multiplying the quality and the amount of its programs by inducing other governments and organizations to participate in the Project or related activities. For instance, the American Bar Association has participated in several of the Project's activities. Multilateral participation by non-U.S. organizations assists in insulating the Project from the anthropomorphism usually inherent in a law and development project.

The American Bar Association (ABA) has cooperated with the Project in proposing that the United States Information Agency (USIA) provide necessary funding to bring a group of approximately fifteen chief executive officers from selected bar associations in the Commonwealth Caribbean countries to the United

111. CJIP, *supra* note 109, at 1.

112. USAID, Project Paper, *supra* note 75, at 23-24. For a discussion of the urgent need for coordination of aid activities in the administration of justice in the Commonwealth Caribbean, see Assistance to Small States, *supra* note 85, at 37-38.

113. CJIP, *supra* note 109, at 1.

States in August 1988 to participate in a three week seminar on the United States constitutional system and to attend the ABA Annual Meeting in Toronto. The program has been developed to further Goal VIII of the ABA: "To Advance the Rule of Law in the World," as well as Summary Objective III under Goal VIII: "To maintain relations and further cooperation with other professional organizations, including foreign and international bar associations concerned with multinational and international legal matters." A major objective of the proposed program is development of a framework which will create the necessary links for inter-bar exchanges in the future. The primary theme of the program will be the "U.S. Constitutional System at work."¹¹⁴

A principal issue for the Donors' Committee since its inception has been a request by St. Kitts for a new Court House. This request has been approved, and the OAS has offered to provide the services of an expert on Archives, to advise the other territories on ways to solve space problems in their respective registries.¹¹⁵

Another proposed activity for the Donors' Committee is registry reorganization. As a result of a visit to the United States late in 1986, the Project invited two experts from the National Center for State Courts to join a former Chief Registrar of the OECS Supreme Court in an examination of the present operations of the court registries and to make recommendations for improvement where necessary. A recent meeting of the Attorneys General of the OECS lent enthusiastic support to this proposal.¹¹⁶

The University of the West Indies convened a meeting on UWIDITE in Mona, Jamaica on April 1-2, 1987. The Project Director outlined the nature of the contributions the Project could expect for the territories of St. Kitts, St. Vincent and Belize. According to reports received by the Project Office, Grenada will receive the UWIDITE system from another source.¹¹⁷

C. Law Library Development

The Project has identified central libraries in each territory. However, in each case the physical facilities were found to be

114. Draft Project Paper, ABA Annual Meeting Foreign Bar Executives Program, Concept Paper, 1-2 (undated) (on file with the author).

115. CJIP, *supra* note 109, at 1.

116. *Id.* at 5.

117. *Id.*

clearly inadequate. A need exists in all the territories to provide physical space in order to plan for and realize the full benefits of law library development. The Project has prepared and approved a training program for librarians which contemplates training one individual as law librarian. However, since insufficient work exists for one individual's time to be directed exclusively to the work of a law librarian, the Project's librarian consultants have recommended the consideration of the training of two persons in law librarianship as well as in other registrarial functions. The training for the OECS librarians will take place at the Cave Hill Faculty of Law Library while the trainees from Belize will attend the Supreme Court Library in Jamaica.¹¹⁸ The preliminary meeting of the regional law librarians selected to visit the territories and conduct on-the-spot needs assessments, occurred in Trinidad in January 1987.¹¹⁹ They visited the seven territories concerned, and met in Barbados in the middle of April 1986 to present their reports and make firm recommendations regarding the training of staff, the ordering of books and equipment, and the adequacy of existing or proposed physical space in those countries.¹²⁰ The Professional Law Librarians held their second meeting in Barbados on April 16, 1987. A training course for potential law librarians took place at the UWI Law Library in Barbados from September 15 to October 30, 1987.¹²¹ The Project has prepared written reports on the status and needs of law libraries for all of the territories. Velma Newton, UWI Law Library at Cave Hill, is coordinating the lists of books and equipment and is preparing a master list for use in responding to publishers of law books when the Project makes a procurement request.

D. Case Reports/Textbook Revolving Fund

At its meeting held on October 10, 1986, the Board of the Faculty of Law established a Committee to advise the Project Director on the operation of this fund. The Committee's initial meeting occurred on November 4, 1986, at which time it established certain guidelines. The Advisory Committee recommended that the fund help produce tests and reports likely to bring quick mon-

118. CJIP, *supra* note 80, at 2.

119. *Id.*

120. CJIP, *supra* note 109, at 2.

121. CJIP, UWI Quarterly Activity Report 3 (Apr.-June, 1987) (on file with the Project Administrator and the author).

etary returns to replenish the fund. Another priority goal was that the fund should add an impetus to the Faculty's outreach program by making the first year law course available to students in smaller territories who cannot afford to do the first year outside of their home territory. The Committee deemed the production of texts and other materials in the first year subjects a priority. Since a casebook on constitutional law and a collection of Grenada Law Reports were in their advance stages of preparation, they will be the first publications to be financed from the fund.¹²² A third text, hoped to comprise the first volume of the OECS Law Reports, has been compiled by retired Justice Cecil Hewlett of Antigua, and is being edited by the Project Director.¹²³ The Faculty of Law is planning to complement the activities of the fund by appointing a Research Fellow whose responsibility will be the coordination of research work necessary for these publications. Where additional assistance is required from law students, the fund will employ them. Concentration will be on the first year subjects Constitutional Law, Criminal Law, and Law and Legal Systems of the Caribbean.¹²⁴ The Project has employed students at the UWI law faculties in Barbados and Trinidad to classify unreported cases stored in both institutions under subject-matter headings. The classification work will assist future author of Case Reports and/or Textbooks in locating the relevant materials more easily than before.¹²⁵

E. Law Revision and Reform

The OECS Secretariat has submitted a proposal for Anguilla, Antigua, the British Virgin Islands, Montserrat and St. Kitts for joint revision of the laws including the prior harmonization of chapter headings.¹²⁶

Belize has succeeded in arranging for the Commonwealth Fund for Technical Cooperation (CFTC) to approve an application from its Government for the appointment of a suitable person to revise the subsidiary legislation of that country.¹²⁷ The Belize Government requested the Faculty of Law to submit proposals for the

122. CJIP, *supra* note 80, at 2; CJIP, *supra* note 109, at 2.

123. CJIP, *supra* note 109, at 2.

124. CJIP, *supra* note 80, at 3.

125. CJIP, *supra* note 121.

126. Minutes of Meeting of Project Committee 2 (Mar. 5, 1987) (on file with the Project Administrator and the author).

127. *Id.* at 3.

revision of its subsidiary legislation.¹²⁸ The CFTC representative indicated that due to a shortage of funds, it informed the Government of Belize that for the next two years it could fund only one of the projects for which that Government had applied.¹²⁹ The choice was between a compilation of a revised edition of the subsidiary laws of Belize or an expert review of the constitutionality of the statute laws of Belize. The Government of Belize chose the former.¹³⁰

Grenada approached the United Nations Development Program (UNDP) to obtain the services of a Law Revision Commissioner.¹³¹ Dominica's law revision project, which is being done with the assistance of the UNDP, is quite advanced and the Government of Dominica is expected to approach the Project soon for the printing costs.¹³² St. Vincent plans to appoint John Havers as its Law Revision Commissioner.¹³³

The Project Director noted the similarity of the Civil Code of St. Lucia to that of Quebec and suggested that the Canadian International Development Agency (CIDA) could undertake to revise the laws of St. Lucia.¹³⁴ The CIDA representative promised to look into the matter. St. Lucia is discussing obtaining assistance in its law revision from the Canadian Government with the participation of the Civil Law Section of the University of Ottawa, which will be the Canadian Institutional link.¹³⁵ The Deputy Project Director reported that the standardization of the headings of the laws of the OECS states is proceeding well.¹³⁶

F. Regional Technical Assistance/Training

At the Donors' meetings the priority for training needs of the

128. CJIP, *supra* note 80, at 3.

129. CJIP, *supra* note 109, at 3.

130. Minutes of Meeting of Project Committee 3 (Mar. 5, 1987) (on file with the Project Administrator and the author).

131. *Id.*

132. *Id.* at 2.

133. *Id.* at 3.

134. CJIP, *supra* note 80, at 3. For background on the St. Lucia legal system and its Quebec roots, see WHITE, SOME PROBLEMS OF A HYBRID LEGAL SYSTEM: A CASE STUDY OF SAINT LUCIA (1975); ANTHONY, VIABILITY OF THE CIVILEST TRADITION IN SAINT LUCIA: A TENTATIVE APPRAISAL (1984).

135. Minutes of Meeting of Project Committee 4 (Mar. 5, 1987) (on file with the Project Administrator and the author).

136. CJIP, *supra* note 121, at 3.

various territories focused largely on the provision of legal draftsmen personnel in the Registry Offices, police prosecutors and other court personnel.¹³⁷ A workshop for magistrates is proposed.¹³⁸ The Project Director wrote to the CFTC requesting to conduct a workshop similar to the workshop for Magistrates organized by the CFTC funded by the Commonwealth Foundation and the Nuffield Foundation, held in Zambia in August of 1986. The Project Director circulated the report to the Chief Justices, Attorneys General and Chairmen of the National Advisory Committees in order to discover any interest in such a workshop in the Caribbean.¹³⁹

Two training workshops were planned for 1987. The first was planned for the Regional Police Training Center and brought together magistrates and police prosecutors from the region to discuss methods of shortening the time devoted in the preliminary investigation stage of serious crimes. A second workshop utilized the resources of the European Community and the Project, the expertise of UWI, the University of Glasgow, and the International Development Law Institute (Rome) to teach young private and public sector lawyers the rudiments of negotiating international contracts.¹⁴⁰

The Project organized a Regional Workshop on Committals by Statement for the magistrates and police prosecutors in the region. Every territory in the region except Guyana participated. The workshop was extremely successful and the Project plans to conduct supplemental workshops in the territories. The Government of Antigua is already actively considering the introduction of similar legislation (for committals by statements) in that country.¹⁴¹

The seminar on the negotiation of International Contracts conducted by the Faculties of Law of UWI and the University of Glasgow occurred from September 21 to October 3, 1987. The European Community agreed to provide partial funding.¹⁴²

137. Minutes of Meeting of Project Committee 3 (Dec. 15, 1986) (on file with the Project Administrator and the author).

138. For a discussion of the problems with lack of training of magistrates, see Zarr, *supra* note 81, at 51.

139. Minutes of Meeting of Project Committee 4 (Mar. 5, 1987) (on file with the Project Administrator and the author).

140. CJIP, *supra* note 80, at 4.

141. CJIP, *supra* note 109, at 5; DeMerieux, Report on Workshop Committals by Written Statement, 5 (CJIP-USAID/UWI-Faculty of Law, Mar. 5, 1987) (on file with the Project Administrator and the author).

142. CJIP, *supra* note 109, at 5.

The Project's members have discussed the need for an annual meeting of OECS judges. The Attorneys General of the OECS pledged support for that meeting and for a meeting of the Court Registries.¹⁴³

The newly unified Lawyers Association of Trinidad and Tobago, and OCCBA have requested technical assistance to improve their structure and ability to deliver services.¹⁴⁴ Similarly, OCCBA, a regional bar organization which consists of the national bar associations in the Commonwealth Caribbean, has requested that the American Bar Association provide technical assistance on structure and organization so that it can improve its management staff services, financing, and other services.¹⁴⁵

On March 13, 1986 the OCCBA Subcommittee on Legal Aid met in Barbados. Discussion concerned a proposed seminar on legal aid which was scheduled to be held in Trinidad in September 1986. The subcommittee concluded that the funds (US \$48,000) for the proposed seminar should be conserved and used to render technical assistance to the territories for establishing viable legal aid programs. Hence, the subcommittee abandoned the seminar idea¹⁴⁶ and is concentrating on preparing a proposal to design a regional legal aid program for the Eastern Caribbean.¹⁴⁷ The subcommittee has sought the assistance of Michael Millemann, a legal expert, and the American Bar Association in preparing the proposal.¹⁴⁸

Technical assistance for court registries in the territories has begun. In November 1986, the Project Officer and the Project Director visited the offices of the National Center for State Courts in

143. *Id.* at 6.

144. *Id.*; Letter from Keith S. Sobion, Secretary, The Law Association of Trinidad and Tobago, to Dr. N.J.O. Liverpool (Apr. 27, 1987).

145. Memorandum, "Contribution of the ABA to the Caribbean Justice Improvement Project in 1987" (the Project Director, Apr. 26, 1987)[hereinafter Memorandum]; Draft Memorandum from the author, "Proposed Assistance from American Bar Association."

146. CJIP, *supra* note 121, at 6.

147. The background to the proposal is contained in a memorandum, by Nancy M. Anderson, Attorney-at-Law, Kingston Legal Aid Clinic in consultation with Lloyd Barnett, President, OCCBA, "OCCBA Memorandum on Legal Aid Services in the Commonwealth Caribbean" (Feb. 1987).

148. See Memorandum, *supra* note 145. For a discussion by a distinguished Caribbean jurist on the need for legal aid, see F. ALEXIS, *supra* note 93, at 160-61. A draft proposal has now been prepared and circulated. See letter from Millemann to Barnett, dated Nov. 24, 1987, and Appendix 1, Draft Proposal for a Civil Legal Aid Proposal (14 pp.)(on file with author).

Williamsburg, Virginia. As a result of the visit, an agreement will be concluded between UWI and the Center. Under the agreement the Center will provide court registry and management experts' visits to Barbados and the territories which are within the jurisdiction of the OECS Supreme Court, in order to make recommendations to improve the efficiency of the registries. Ernest Wilkinson, a former Chief Registrar of the OECS Supreme Court and a member of the team, visited the Washington office of the Center with the Project Director to assist in formulating questionnaires which are currently under preparation by the registrars and chief magistrates concerned.¹⁴⁹

Another technical assistance activity is para-legal training. The Barbados Community College has agreed to act as coordinator and external examiner for a para-legal course for the OECS territories. The Project has requested that the Kingston Legal Aid Clinic in Jamaica conduct similar training for Belize. The Institute of Accounting and Business Studies, Ltd. is planning to operate the course in Trinidad and Tobago.¹⁵⁰

G. Country Specific Activities

As required by the Project Agreement, national advisory committees have been established in six of the seven participating states: Antigua, Belize, Dominica, Grenada, St. Christopher Nevis, St. Vincent and the Grenadines. The committees will remain in existence during the life of the Project; all are functioning. At the end of December 1986, Quick Impact Activity funds had been approved for five territories and two had signed and returned their MOU's.¹⁵¹

H. Collateral Activities

Activities collateral to the actual USAID grant have contributed to the overall administration of justice for the Commonwealth Caribbean Project.

The International Criminal Investigative Training Assistance Program (ICITAP) of the United States Department of Justice co-sponsored a five-month course on "Instruction Development and

149. *Id.*

150. *Id.*

151. CJIP, *supra* note 80, at 4.

Basic Criminal Investigation" in the last half of 1986 at the Regional Police Training Center in Barbados.¹⁵² The course attracted students from Barbados and from six other Caribbean countries, including Dominica, Grenada, St. Lucia, and Antigua. Paul Russo, the U.S. Ambassador to Barbados, presented equipment during the course to Hewitt Rose, the Commandant of the Regional Police Training Center (RPTC). The equipment, which was valued at \$18,000, included a video cassette recorder and television, a photostat machine, and an overhead projector. The course is significant because it affords more sophisticated training for policemen in the Eastern Caribbean. It also promotes regional cooperation within the RPTC, which has existed since 1871, to ensure its continuation. Organizations outside of the Commonwealth Caribbean Project have supplemented the RPTC's activities.¹⁵³ The exclusion of ICITAP's activities from the Project will insulate USAID and UWI from potential human rights and political problems involved in training police.¹⁵⁴ To the extent the region can persuade international organizations, such as the United Nations, Interpol, and the Commonwealth, to provide such training, the more value-neutral and professional the training is likely to be and the less likely its adverse political consequences.¹⁵⁵

A program on the bicentennial of the United States constitution took place on September 26, 1987. The program included a presentation on the protection of human rights in the Caribbean as viewed from the judiciary, by Sir William Douglas, former Chief Justice of the Barbados Supreme Court and currently Barbados Ambassador to the United States and the O.A.S., and a presenta-

152. For more discussion of the course, see Zagaris, *U.S. Government Assists Caribbean Regional Police Training*, 3 INT'L ENFORCEMENT L. REP. 23 (1987).

153. For background on the history of the Regional Police Training Center and suggestions on improving regional cooperation, see Zagaris & Kamta, *Regionalism and Criminal Justice in the West Indies: The Regional Police Training Center Development*, 7 ABSTRACTS POLICE SCI. 283-96 (Netherlands, 1979); Zagaris, *The West Indies Regional Police Training Center: A Model of Intergovernmental Cooperation in Criminal Justice*, 8 J. POLICE SCI. & ADMIN. 460-63 (1980).

154. For a discussion of the role of external factors and regional and interregional cooperation in criminal justice planning and police training in the Commonwealth Caribbean, see Zagaris, *The Beginning of Criminal Justice Planning in the British West Indies*, 10 POLICE SCI. ABSTRACTS ii, xii, xv (No. 4 July/Aug. 1982).

155. For a discussion of the controversy surrounding assistance to police in El Salvador, see Zagaris, *U.S. Police Aid to El Salvador Opposed by Americas Watch on Human Rights Grounds*, 3 INT'L ENFORCEMENT L. REP. 311 (1987) and Cohen, *U.S. Aid to Security Forces of El Salvador Reduced Because of Human Rights Violations*, 3 INT'L ENFORCEMENT L. REP. 358 (1978).

tion on making a new constitution, a viewpoint from Belize by Edward A. Laing, former lecturer of law and comparative law and development scholar, currently Belize Ambassador to the United States and the O.A.S.¹⁵⁶

V. CLASSIFICATION AND ANALYSIS OF THE PROJECT

The USAID Administration of Justice Project for the Commonwealth Caribbean derives its intellectual origins from certain components of the law and development movement. The Project arises from law and politics, the notion of social engineering through law, and the residue of the post-World War II commitment by the United States to foreign assistance. Indeed, some of the architects of the Commonwealth Caribbean Project were active participants in the 1960s law and development movement and, hence, that movement itself influenced the existing Project. The intellectual style of the Commonwealth Caribbean Project is easy to discern: it is directed towards action rather than inquiry. The Project expresses the idea that the legal systems of the smaller and poorer countries in the Commonwealth Caribbean can be raised to those of the more developed countries, with funds to maintain the quality of the legal system in the Commonwealth Caribbean and technical assistance from the principal regional law school and most developed countries of the Commonwealth. In some cases the idea is to raise the regional goal. To that extent, the project administrators may look to extra-regional models. The chief models come from legal systems in the Commonwealth (i.e., Canada, Australia, the United Kingdom) and the United States. Although many differences exist between the legal systems of the Commonwealth Caribbean and the United States, even before the Project, important interactions between the two legal systems were evident. Judges and attorneys in the Commonwealth Caribbean referred to United States cases and statutes for models. The frequent meetings between members of the legal profession due to travel, commerce, education, and cultural contacts have influenced legal developments in the Commonwealth Caribbean significantly. To the extent UWI and OCCBA seek assistance in providing services and organizing bar association activities, U.S. models will inevitably

156. For a summary of the program, see Zagaris, "Comparative Constitutional Law Development—Bicentennial Constitutional Program," *THE WASHINGTON FOREIGN LAW SOCIETY NEWS LETTER* 6-7 (Winter, 1987).

appear as a major alternative.

One of the major, albeit subtle, theoretical models is the cultural model of the U.S. attorney as a social engineer. Such a model is becoming increasingly popular, especially with younger, idealistic attorneys in the Caribbean. However, many of the attorneys in the Commonwealth Caribbean have studied and worked in the United States and are friendly with individuals such as the late Averill Harriman, who had a home in Barbados. The lawyer who moves between careers and works for government, practices, teaches, participates actively in politics, and consults for governments is not unusual in the Caribbean. Without question the Justice Improvement Project for the Commonwealth Caribbean is not designed for inquiry. Almost necessarily, the USAID sponsorship and mandate towards action means that the emphasis in style is on action rather than inquiry.

The Project is based fundamentally on the idea of the attorney as a social engineer and the idea that law can lead social change. Although the initial architect of the project, Gerald Zarr, visited each of the countries in the region and carefully listened for more than one year to a multitude of lawyers, sociologists, policy-makers, economists, and others, the Project's goals nevertheless reflect many of the United States development goals in the Commonwealth Caribbean. Indeed, Professor Merryman would probably want more comparative law and social change. Hopefully, the fact that an academic institution is the recipient and distributor of funds and since its Donor's Committee encourages other personal organizations to participate, scholars such as Professor Merryman may want to undertake inquiry. Undoubtedly, such proposals would be welcome by the Faculty of Law and USAID. The initiation a few years ago of an LL.M. program at the Cave Hill Campus, the establishment of a summer law school program in cooperation with Florida State University, and the excellent law library at Cave Hill facilitate inquiry. At present, however, the Project is focusing more on development and less on inquiry.

The Project does have several activities, however, which are designed to facilitate inquiry. The law library development activities will accomplish this in the participating countries. The case reports/textbook revolving fund will enable practitioners, scholars, and policy-makers to review case decisions and textbooks written by persons in the region. Presently a shortage of both case reports and textbooks makes inquiry, especially by local professionals as

opposed to external experts, difficult.

Valdez and Ronny Thwaites, a pioneer of legal services in Jamaica and the region, would probably urge that the Project emphasize more social change and assistance to the poor and indigent. For instance, Valdez would probably lament that too much emphasis is placed on improving non-reform mechanisms such as law libraries, case reports, and textbooks, and implementing law revision as opposed to law reform — all activities which do not specifically focus on access to law by the poor. Unfortunately, due to lack of funding, initially the Project provided for law revision but not law reform. Similarly, the Project paper discussed the need for legal aid, but did not fund such activities. However, in response to a request of OCCBA and the Project for a review of the potential for starting legal aid in the Eastern Caribbean, the American Bar Association and other U.S. groups (i.e., Inter-American Foundation) have expressed interest. Clearly the Commonwealth Caribbean Project is not focused on the method of legal teaching. Rather, the Project addresses social soundness. It is designed to “help the poor and vulnerable groups in the Commonwealth Caribbean gain better access to the legal systems in the region.”¹⁵⁷ The Project is premised on the fact that the laws inherited from the British colonial system based on a plantation society are no longer relevant and the funding shortages, which have prevented participating countries from collecting and publishing the changes in law, hit hardest at the poor and vulnerable groups in society. The Project also discusses how its activities may result in the establishment of legal services if leaders of donee countries are provided bare-bone funding and an office. Trinidad and Jamaica are mentioned as the obvious sources of technical assistance in legal aid.¹⁵⁸ One of the open questions with respect to the social soundness and the ability of the Project to accomplish social change is the extent to which the Project and national committees have the foresight and ability to design and implement legal services programs, especially ones which have a developmental, as distinguished from a traditional orientation.

As a result of the Valdez thesis, the Commonwealth Caribbean Project has persons within the region perform and even design the work rather than use Americans, persons unfamiliar with the sys-

157. USAID, Project Paper, *supra* note 75, at Annex C (Social Soundness), at 1.

158. *Id.*

tem and culture of the Caribbean. The architects of the Project, heeding the writings of persons such as Valdez and sensing dissatisfaction with the diversion of project funds to Americans in the Central American administration of justice project, provided project funds exclusively to the University of the West Indies and persons it selects to perform the work.¹⁵⁹ Even the USAID attorney representative, Dennis Darby, is a Jamaican attorney who worked with the agency in Jamaica immediately before assuming his present position. The use solely of persons from the region should eliminate the problems of unfamiliarity with the local legal culture, artificial privileged access to power, and relative immunity to the consequences of the Project.

The Commonwealth Caribbean Project derives its intellectual origins and style from the law and development movement, but also learns from the mistakes and analyses of Professor Merryman and Mr. Valdez. History repeats itself. The architects are a product primarily of the U.S. legal system, social engineers of the 1960s law and development movement. The biggest potential deficit of the Project is that its funds and its approval were derived from a foreign policy goal emphasizing U.S. national security. Many experts believe that if the real motives behind United States government assistance are military security or preservation of economic interests, then government supported legal development assistance will be at best a tainted peripheral activity, and at worst, a program masquerading as humanitarian operation concealing the imposition of American foreign policy. In this context, to the extent that legal development assistance, whether supported by the government or privately funded, contributes to foreign policy goals, it becomes suspect.¹⁶⁰ The deficit, if not offset, may be fatal to the Project's success.

The extent to which the Project accomplishes the goals of multilateralization and value-neutrality will largely govern the success of the Project. A valid criticism of prior initiatives of the Reagan Administration in the Caribbean has been lack of multilateralism.¹⁶¹ The control of money and programs by UWI and the active

159. Actually John Dyrud is a U.S. attorney who, after teaching at the University of Maryland, has since the mid-1970's been head law librarian and law professor at Cave Hill.

160. Trubek & Galanter, *supra* note 2, at 1092; J. GARDNER, *supra* note 5, at 38.

161. See, e.g., Feinberg & Newfarmer, *The Caribbean Basin Initiative: Bold Plan or Empty Promise?*, in FROM GUNBOATS TO DIPLOMACY 210, 212-13 (Newfarmer ed. 1984) (criticism of the absence of multilateralism in the Caribbean Basin Initiative); Review of the Impact and Effectiveness of the Caribbean Basin Initiative: Hearings Before the Sub Comm.

participation of multilateral organizations and other governments, such as the British and Canadian, have the potential to provide dynamics of their own and to counterbalance the foreign policy/national security genesis of the Project. Active donors helping legal institutions in the Commonwealth Caribbean include the United Nations Development Program which has financed a law revision in Dominica, legal draftsmen for St. Kitts and Antigua, a legal advisor for Grenada, and grant for narcotics control in Jamaica.¹⁶² The Commonwealth Fund for Technical Cooperation has assisted in revising the laws of Belize, provided parliamentary draftsmen, stenotype training for Caribbean court reporters at the Jamaica Secretarial College, and acquired law books for various Supreme Court libraries and Attorney Generals' chambers.¹⁶³ The United Kingdom has provided salary supplements for expatriate judges and government lawyers through the Overseas Services Aid Scheme. The West Indies Legislation Indexing Project, financed by the British Development Division in Barbados, has assisted making statutory law accessible to the smaller states.¹⁶⁴ The Canadian International Development Agency has provided small legal aid grants in Belize and Jamaica and has supported archives and registration of documents activities.¹⁶⁵ Prior to the commencement of the Project, UWI and U.S. officials requested their active collaboration. Indeed, the project is still so new that the reader of this article may want to take the Florida State University (FSU) summer school course next summer at UWI¹⁶⁶ or arrange to undertake study and review at the law library of UWI on a study tour.¹⁶⁷ An-

on Oversight of the House of Representatives Comm. on Ways and Means, 99th Cong., 2d Sess., 474, 486-87 (1986) (testimony by Bruce Zagaris). The absence of multilateralism in the Caribbean was a reflection of the global unilateralist policy generally at the outset of the Reagan Administration. The U.S. pursued policies unilaterally, outside of policies of other governments and international organizations. See Keohane & Nye, *Two Cheers for Multilateralism*, 60 FOREIGN POL'Y 148 (1985).

162. USAID, Project Paper, *supra* note 75, at 23.

163. *Id.* at 24.

164. *Id.*

165. *Id.*

166. For background on the FSU-UWI summer law program on comparative law, see *University of the West Indies, Cave Hill Campus Summer Program*, 3 CARIBBEAN L. NEWSL. 10 (1987) (published by the Committee on Caribbean Law, ABA Section of International Law, on file with the author).

167. For background on the use of study tours as a means for U.S. persons to visit the Caribbean and as a trend in Caribbean tourism, and one worth technical assistance, see Zagaris & Emery, *Tourism: The Orphan of Caribbean Programs*, 27 J. TRAVEL RES. 24-28 (1988); Zagaris, "Tourism as an Export," Written Statement to Hearing, Foreign Commerce & Tourism Subcommittee, Senate Commerce, Science and Transportation Committee, May

other advantage is that private institutions from the United States and elsewhere are participating in the Project. For instance, FSU Law School has concluded an agreement with the UWI Law Faculty at Cave Hill to establish a Caribbean Law Institute to assist the Caribbean countries in unification of law and other comparative and international law projects. The Institute would concentrate first on a Caribbean commercial code in order to facilitate trade between the countries of the West Indies and the United States. Talbot "Sandy" D'Alemberte, Dean of the FSU Law Faculty, has worked with members of Congress for a \$1.5 million dollar appropriation in each of five years to support the Institute.¹⁶⁸ A key figure in the Institute proposal, Elwin Griffith, a Barbadian and member of the FSU Law Faculty, has close ties with and recently took his sabbatical teaching at UWI Law Faculty in Barbados. In the summer of 1987, UWI and FSU operated a Caribbean Legal Studies Program. Four courses on Caribbean legal institutions were taught during a five week period at Cave Hill.¹⁶⁹

An important application of the Gardner typology is whether the Project was the initiative of the Caribbean or the United States. On the one hand, several studies emanating from the Commonwealth Caribbean had called for the refurbishment of its legal institutions.¹⁷⁰ On the other hand, the actual initiation of the Administration of Justice program and of the Commonwealth Caribbean Project arose from the Reagan Administration's interest in the region's security and particularly from the Kissinger Report. The Gardner typology for transferring American legal models in a large sense does not apply at all because the Project is based on the proposition that the existing models, although largely sufficient, merely suffer from lack of management.¹⁷¹ The Project calls

21, 1988.

168. Memorandum, from Talbot D'Alemberte to Working Group List, Caribbean Law Institute, Inc. (Sept. 2, 1987). See also House Bill introduced by Congressman Obey, Committee on Appropriations, "making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1988, and for other purposes." The proposed Institute raises a series of the same issues about how it should be classified within the law and development movement. For instance, some Caribbean officials have questioned whether the establishment of an organization on Caribbean legal system should be in the U.S. rather than the Caribbean and whether U.S. officials will exercise control over it.

169. See *infra* note 166.

170. For a discussion on the need to refurbish the legal institutions in the Commonwealth Caribbean, see the two studies by Patchett, *supra* note 85.

171. Critics of the law and development movement predicted that the movement's ties to developments in American foreign policy and to the historical needs of law and develop-

for upkeep of the current legal infrastructure, and, to the extent the University or other Project participants can obtain more assistance, the extension of the Project into new areas, such as law reform, may encourage use of foreign models, including but certainly not limited to American models. To the extent U.S. concepts and models become involved, it will be largely a decision of the University or participants to adopt programs, for instance, of certain bar associations. An important question on which Gardner focuses and on which past movements have failed, is the lack of sufficient financial and program strength and/or mandate to undertake the project to its successful completion. Since the project originated under the Reagan Administration and was preoccupied with security concerns, the political and financial impetus, especially in a time when Congress is slashing the foreign assistance budget, is certainly a question.¹⁷² The issue of the desirability of the program and the commitment of U.S. legal institutions and the U.S. Government requires more inquiry. Hence, the project for the Commonwealth Caribbean fits well into the title of comparative law and social change.

To be successful, the Project must avoid close interaction with security assistance and counterterrorism programs.¹⁷³ These programs, which have been prominent in U.S. assistance to Central America, will doubly taint the Project. They will deprive the substance of the Project of value-neutrality and impose ethnocentric, *real politik* of the United States and will undermine the political credibility of donees in many parts of the Commonwealth Caribbean. Similarly, to the extent other organizations, such as governments, international governmental organizations and non-governmental organizations participate and complement the Project's activities, they will enhance the Project's substantive and political diversity and its prospects for diminishing ideological and foreign policy implications behind the Project. For instance, activities of

ment scholars for funding caused a naive, often fatal weakness. See Burg, *supra* note 4, at 515; Trubek & Galanter, *supra* note 2, at 1087.

172. For a discussion of the criticism of counterterrorism assistance in Central America, see Zagaris, *Crime and Social Justice Publication Examines Contragate for Counterterrorism Implications*, 3 INT'L ENFORCEMENT L. REP. 225 (1987). For background on the Central American Counterterrorism Act of 1985, see Weidinger, *Central American Counterterrorism Legislation*, 1.3 INT'L ENFORCEMENT L. REP. 25 (1985) and *Central American Counterterrorism Act of 1985*, 1.4 INT'L ENFORCEMENT L. REP. 4 (1985).

173. The realization by USAID and other law and development organizations of the need to multilateralize law and development projects can be traced at least to the 1970s. See J. GARDNER, *supra* note 5, at 221.

Interpol and the Inter-American Drug Abuse Commission (CI-CAD) can complement the Project, especially in the sensitive area of criminal justice and international criminal cooperation.¹⁷⁴ The inclusion of countries such as Guyana in the Project on the basis of non-political criteria is vital to the Project's credibility.¹⁷⁵ Most importantly, of course, the legal professionals in the Commonwealth Caribbean must rise to the challenge of active participation in the design and implementation of all activities. Otherwise, the Project, as it continues to unfold, will not achieve the maximum opportunity to reflect the goals and culture of the people of the Commonwealth Caribbean.

174. For a discussion of the programs of legal development of the Inter-American Drug Abuse Comm'n, see Zagaris, *Inter-American Drug Abuse Commission Holds First Session*, 3 INT'L ENFORCEMENT L. REP. 123 (1987). For a discussion of Interpol programs in the Caribbean, see Zagaris & Simmons, *Interpol Makes Progress on Economic Crime and Other Fronts*, 3 INT'L ENFORCEMENT L. REP. 273, 276 (1987).

175. Guyana is also one of the most unique and rich of the Commonwealth Caribbean's legal systems, partly due to its unusual Dutch-English legal background, and more recently due to experimentation with so-called cooperative and socialist models. See e.g., SHAHABUDDIN, *THE LEGAL SYSTEM OF GUYANA* (1973). See also, F. ALEXIS, *supra* note 50, at 75-116; F. PHILLIPS, *supra* note 50, at 53-72; Hazard, *Guyana's Alternative to Socialist and Capitalist Legal Models*, 16 AM. J. COMPAR. L. 507, 507-23 (1968).