

**20 YEARS IN THE MAKING:
Principles and Practical Strategies
for Justice Sector Reform**

by William E. Davis

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1. Introduction

There is by now a wealth of literature that synthesizes rule of law development experience in different contexts and the evolution of rule of law theory and interventions. Longstanding and emerging rule of law and justice sector indices map progress on a range of generally accepted foundations for governance by the rule of law. A host of donor-funded publications—from strategic frameworks to detailed handbooks on specific areas of intervention—offer recommendations rooted in international standards and individual nations’ foreign policy imperatives. A handful of thoughtful books² have generated rich discourse within the rule of law and justice sector development communities. Nevertheless, there is little written about rule of law reform from the practitioner’s point of view. With pressure on budgets at every level, our in-country team leaders, talented local staffs, and foreign government and civil society counterparts have few opportunities to share experiences in safe environments where they can learn from successes *and* failures or even just admit to not knowing what to do next.

This publication is designed to fill the gap. Through it, I hope to spark conversation about “what works” on the ground at a practical level. I know from experience that the individuals who have carried out domestic reforms and the development professionals who worked toward sustainable improvements at an international level have valuable stories to tell. They also have a great deal of insight about what is missing in the way we go about rule of law development and what would make our work more effective. My hope is that this paper will generate further interest in sharing experience and ideas about what works and where to focus future research and attention.

Rather than focusing on the minutiae of particular reforms, this paper connects the bigger picture of choices we make in rule of law reform to the on-the-ground realities of implementation. It also endeavors to show why our values, approaches, and techniques matter. As the world moves toward a partnership approach to development, I believe that it is particularly important to spark this conversation to ensure that donors, implementers, and reformers can truly take advantage of the promise of the 2002 New Delhi Declaration on the Principles of International Law Related to Sustainable Development, which embraced principles of equity, public participation, access to justice, and good governance. This paper is particularly important given the recent soul searching and criticisms of rule of law reform. I am not ashamed to admit that I believe wholeheartedly in the

¹ Co-founder, DPK Consulting; Senior Advisor Emeritus, Tetra Tech DPK (Tt DPK). The author would like to thank Razili Datta, Robert L. Dean, Melanie Peyser, and Jessica Vapnek for research or editing assistance on earlier versions of this paper.

² See, e.g., Thomas Carothers, ed. *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington: Carnegie Endowment for International Peace, 2006) and Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Washington: Carnegie Endowment for International Peace, 2012).

importance of donor-funded international development assistance to courts and justice sector institutions and I hope the reasons will become clear as you read this paper.

This paper is a collection of views, practices, and most importantly, values my colleagues and I have brought to bear over the past 20 years in our work to strengthen the rule of law. The observations are drawn from state, federal, and international experiences and are derived from countless practical efforts to bring about justice in a world that is desperately seeking it. The paper does not purport to have all the answers, although I hope it will initiate a dialogue and I look forward to further discussions.

As the examples in this paper are drawn from my own experience, most of them profile work with judiciaries and courts. This is because DPK Consulting – now Tetra Tech DPK (Tt DPK) – was launched as a niche firm with a focus on court systems. But as time has passed, Tt DPK has expanded to other areas of the rule of law by finding individuals with the appropriate expertise and the same passion for sharing knowledge with developing country partners. Our experience suggests that the principles and approaches described here work equally well with institutions other than the judiciary because they center on core values of trust, collegiality, and the application of subject matter expertise within the context of positive change. Our approach relies on building relationships with partners and jointly seeking the best answers in imperfect situations. This has worked equally well in projects dedicated to civil society advocacy, access to justice, violence prevention, anti-corruption, dispute resolution, prosecution reform and improvement programs, and a host of other aspects of the rule of law.

2. Phases of Judicial System Development

Over the years of working in justice reform and specifically with the judiciary, my colleagues and I developed a framework for understanding the level of development in particular court systems and identifying strategies to advance institutional change. The framework is based on the size and complexity of the particular courts. I first appreciated the issues of court size and capabilities working in California in the 1970s. One of the first tasks of the Office of Judicial Planning was to develop a planning manual for the courts of California's 58 counties, which range from Los Angeles with 12 million people to Alpine with fewer than 8,000. It was clear that any planning manual needed to be applicable across this spectrum. Subsequently, I went to Kentucky where I led the transition to an entirely new trial court system. Like California, Kentucky had some urban areas but most of the 120 counties were principally rural, so there too range of different conditions and capabilities in each locality had to be considered before proposing reforms and changes to the system. I next saw a similar situation in the Ninth Circuit of the U.S. federal court system, where the circuit's courts in Montana did not operate in the same manner as the circuit's courts in the other 14 western states and Pacific territories. As in both state court systems where I worked, it was the size and location of the federal courts that determined how they would be managed.

From these experiences and my early international work with the US Agency for International Development (USAID), Inter-American Development Bank (IDB), and World Bank, I began to see patterns and stages of institutional development. It was clear that any proposed interventions to improve the situation needed to be developed according to the characteristics of the particular court,

and what follows is a synthesis of my observations and recommendations. In my experience, most systems—whether national or subordinate, and whether in large or small countries or states—fall into four developmental phases.

Phase 1

Courts in the first group are judge-centered as opposed to systems-centered. They tend to be found principally in rural areas. They are concerned about the basic logistics (e.g., paper, office equipment, space, etc.) necessary to function. They rarely are sources of innovation and more frequently are observers of reform processes—not leaders. The judicial system for this group of courts tends not to have a unifying vision or clear set of policies. Inadequate funding is a common characteristic due to smallness of size or location. Staffing is frequently accomplished through nepotism or patronage, and few if any of the staff have access to training programs. There is little sense of belonging to a larger system because everything revolves around local judges. Corruption is common in these settings because of the lack of transparency in the day-to-day dealings of the system.

Useful interventions for these courts include training and on-site familiarization visits to nearby courts to observe reform efforts or witness courts functioning under an alternative reality. “Seeing is believing,” as the saying goes, which also tends to assist in overcoming natural resistance to change. In my experience, the ability to observe others who are similarly situated but doing things differently has proven to be a very effective method of facilitating change at this level. In addition, developing a standard budget for support costs and assigning support staff for each judge are effective strategies that over time enable the trial courts to evolve to higher levels of complexity. Other useful interventions for courts at this stage include developing standardized records management and record keeping systems, implementing systematic financial controls, introducing public opinion surveys to cultivate a culture of service among judges and court staff, and appointing court staff representatives to committees to develop strategies for improvement. These approaches stimulate a sense of ownership and participation among judges and staff, who begin to see themselves as part of a larger system which is able to improve.

Phase 2

In the second stage of evolution we see court systems begin to establish institutions such as judicial councils, training institutes, disciplinary bodies, and the like. As these new institutions take shape, they begin to elaborate and emit policies and become more central to the administration of justice. A characteristic of these systems is that the energy of the leadership is devoted to establishing their personal credibility and strengthening the profile of the institutions they govern. This inward focus usually precludes their seeing the needs of “users” other than themselves.

Unfortunately, in far too many cases, these new judicial entities fail to deliver on the anticipated reform leadership. This is because due to their inward focus and insecurity, they are often consumed with political rivalries and institutional jealousies. Institutional problems are most noticeable in those countries where judicial councils were created to assume some of the roles previously held by Ministries of Justice. Interestingly, this pattern is not too dissimilar to the history of judicial administration in the United States where the U.S. Judicial Conference and the Administrative Office

of the Courts were carved out of the Department of Justice in the 1930s. Tensions over roles between the judiciary and the executive continue even today.

It takes a considerable period of time for these justice sector institutions to evolve a coherent sense of governance. Governance is about learning how to lead, how to use information, how to put into place methods of capturing reliable information, how to develop administrative systems to improve system performance, and how to establish patterns of organizational and personal integrity. In this stage one can see the emerging sense of independence from the executive branch. Battle lines are drawn around information systems, policy directions, and even training. Strategies that enable systems to move past this stage need to center on training and development of both ability and interest in planning for the future. The focus should be on engaging in small-scale reform or administrative changes. The capacity to undertake large-scale change is generally not present, but smaller steps can help build the competencies for more ambitious efforts in the future.

Phase 3

In the third phase one can readily see increased capacity to undertake administrative reforms and a sense of leadership that evolves to address systemic issues. Institutional identity emerges with fewer conflicts over institutional boundaries. The quality of the system becomes increasingly important as standards of performance are developed. It becomes clearer that for a mature and continuous effort to reform, there needs to be more deliberate development of new leaders. Training in leadership for judges is often viewed as a novel concept, yet it then becomes obvious and accepted as judges are responsible for not only overseeing the judicial process, but also for the performance of thousands of employees and countless millions of appropriated funds.

Phase 4

The fourth stage blends with the third as the governance apparatus gradually assumes a new role by virtue of the widespread recognition that the “users” are not the judges, but rather members of the public. A fundamental reorientation has to occur in this stage to create even greater levels of transparency for the benefit of public. New kinds of information for public consumption are generated. The concept of the right of the public to have a say in the governance process begins to crystallize for the traditionally cloistered judiciary. I remember when the press gained access to the meetings of the Judicial Council of California. A newspaper reporter in no uncertain terms stated that the Judicial Council was doing the public’s business so how could “they” (the public) be kept out? An important question indeed.

A dimension of the fourth stage’s gradual shift toward a conception of public service is a focus on *how* the judiciary defines its responsibilities to the public. We might begin to see studies on ethnic and gender biases, costs to litigants of the judicial process, long range planning, and attention to how children are treated in the justice system and to the needs of victims, jurors, and witnesses. Judges might organize themselves to meet “the public” in local settings where they can hear from the community about how the courts are performing.

It goes without saying that these phases are not clearly demarcated, and some aspects of courts—such as whether they are rural or urban—do not change. Nonetheless this schema should be useful in

considering different types of interventions to facilitate transitioning to the next phase of institutional capacity development. Advancing from one stage to another also requires application of some basic principles, which I outline in the next section.

3. Principles to Support Change

Underpinning the efforts to help institutions move from one phase to another—efforts outlined in detail in the next sections—are a few core beliefs that have guided our work. For me, the most important of these is that “the earth is one country and mankind its citizens.” Recognizing *the humanity of all* creates a framework for working with people everywhere as equals. The role of foreign assistance in the institutional reform process should be to facilitate and enable, rather than to direct. At the same time, development assistance can help prepare the environment for reform – and we do this by working with people and communities. It is imperative that we carry out our work consistent with this fundamental value, and this means that we stress integrity, trust, learning, and performance in all aspects of our projects and our relationships with our counterparts. Recognition of the inherent nobility of every person makes it possible to cultivate individual and institutional integrity as the foundation of any change. Regardless of how the public perceives the justice system or how individuals or institutions view themselves, it is almost always possible to support enhancement or reestablishment of personal and institutional integrity.

Trust is the foundation of every successful enduring activity. Too often, donor-funded rule of law projects do not deliver on promises made at the outset. We have found that it is better to promise inputs and results that we can feasibly deliver and to do what we say we will do—even if we make mistakes—than to paint an overly ambitious picture of what can be achieved. Over time, we are able thus to build trust with our justice system partners such that we can rely on one another throughout the reform process.

Continuous learning is important for judges as the justice system is at the center of a society and legal cases cover a variety of societal problems. This requires staying on top of the latest science, emerging trends, and research. Judges need to have knowledge that transcends the law. The California Judicial College created a specialized three-part course for judges who were interested in studying the classics and the newest developments in social and hard sciences. The U.S. federal judiciary runs a similar arts and sciences program at Princeton University for sitting judges, and has separately been investing heavily in training judges in science and technology so that they are better equipped to handle the complexities of litigation emerging in these fields. We need to understand what judges need to enhance their performance. We have to be open to their ideas for what will work best in their judiciary in their society. If we are not open to new ideas, we cannot expect colleagues in partner judiciaries to be open to them.

As DPK evolved, our main preoccupation became *achieving high performance*. From this, we decided to set a standard of performance for all our projects to achieve. The in-country project heads were informed and advised that they would be evaluated by the performance of their project. By setting the standard for performance high, we found that the goal of achieving excellence was incorporated into the thinking and activities throughout the organization. This permeates everything we do and confirms a corollary principle that every individual working in a court or justice institution

should intend to leave the organization in a position where it will perform better than it did when the individual arrived.

Below, I describe concrete examples of how these principles have played out in judicial reform work in countries at different stages of evolution and reform. I also articulate some of the lessons learned along the way.

A. The Rule of Thirds: Supporting the Reformers Is Always More Effective Than Trying to Change the Minds of Detractors

Many years ago while working with indigenous peoples in Latin America, I noticed a pattern of interaction and participation by the communities with which I was working. It became clear that when new ideas were being considered, a certain percentage of the community (around 30 percent) were naturally resistant to change. They would be quite vocal and sometimes disruptive. Another group (around 30 percent) would be noncommittal and remain largely quiet. A third group would be interested in making change.

The basic rule for change management is that in every group or organization there are only a few people willing to take the risk of making change. Those interested in making change often are prepared to lead efforts at some personal and professional risk. As outsiders, we can never lose sight of these risks in pursuing the goals of project-led reform activities. I will never forget an interview I had with a trial judge in Antigua, Guatemala, in 1994. This judge was very enthusiastic about the pending criminal procedural reform. He was found murdered the next week. Maybe there was no connection to his support for the reform, but I will always believe that he put his life on the line to improve justice in his country.

It is critical to know where to devote energy and to focus efforts in attempting to introduce reforms. Frequently, time is lost listening and responding to the protesters who will resist every change effort even if it will benefit them. In my experience, one cannot ignore those who are less ready to engage, but the focus must be on those who are prepared to lead change. Therefore, in every project, rule of law practitioners should try to identify those individuals who will champion the reform effort. Special attention must be given to aiding them in acquiring the skills and information needed so that they can effectively assume the needed leadership role. In Jordan, our strategy involved working with an enlightened Minister of Justice who recognized that the justice system needed to cultivate new leaders. We supported the Minister to devise a combination of short-term and long-term strategies to address the leadership gap. In 2009 we developed a six-month program for six judges to come to the United States for court visits and specialized training.³ The plan was for these judges to return and begin teaching in the Judicial Institute of Jordan (JIJ) and introduce new ideas to their colleagues. They began doing just that with classes on judicial management and delay reduction, among other things. They also joined the ranks of the current and emerging leaders who are prepared to spearhead change.

³ Jordan Improved Rule of Law Program (USAID/Tt DPK, 2004–2008).

We have found that a targeted and action-oriented study trip can expose natural change makers to new ideas and options and can serve as a catalyst for the development of reform strategies and action plans. These types of “study tours” may be out of fashion but I continue to believe that as they did in Jordan, they can play a critical role in triggering reforms that might otherwise not be contemplated. Depending on the circumstances, such focused trips can include visits to other countries and projects, special seminars, and conferences designed specifically to help leaders conceive and conceptualize reform efforts and gather the information necessary to present a strong case for reform and a plan to carry out their proposed agenda upon their return home. The key is ensuring that the right individuals join the trip and that the trip is tailored to the goals and objectives that will benefit would-be reformers and their reform agendas.

After hosting 54 delegations in one year as the Administrative Director of Courts for California, I discovered that more than 70 percent of my time was spent trying to find topics of interest and relevance to our visitors. The visitors did not get much out of the visits, and as hosts, we never knew whether any of the activities we arranged were at all worthwhile. So we reoriented the visits to capture the needs of the visitors, and when I moved into international development work, I brought this approach with me. In organizing trips for reformers to other countries, we have created a schema that has proven effective in ensuring each visit has some lasting value. Each participant is required to have an area of focus for his or her attention and follow-up upon return home. The hosts are advised in advance what the issues of concern are to the delegation, and we work with the hosts to develop appropriate sessions and activities and to brief their own teams about the judicial system of the visiting delegation and the delegates’ particular interests. Further, each visitor must commit up front to writing a daily report of impressions and lessons that might be relevant to the situation at home. Even the most experienced and enthusiastic participants can only process so much new information each day; impressions tend to run together. By requiring a daily “data dump,” we facilitate the process of learning and reflection that is needed to gain tangible value from the study tour. Incremental written reflection also facilitates the delegation’s preparation of reports and plans upon return home.

Visitors to very large complex justice institutions rarely are able to grasp the totality of the setting. So, rather than focusing on flagship facilities in large urban areas, we arrange judicial visits to a smaller well-run trial court outside the urban area. We try to choose a court that is competently managed and is of a size such that it will be easier for visitors to follow the overall process inside the court and courtrooms as well as the actions of each individual who plays a role in the justice system.

When the Jordanian judges returned from their study tour, change was not immediate as the selection process for new judges was an inherently political one. Nepotism and tribal affiliations were the dominant pathways to matriculating at the Judicial Institute of Jordan (JIJ),⁴ the portal for all new judges. Reformers desperately wanted to improve the judiciary and break up some of these old patterns. The King had made numerous speeches about modernizing the public sector, but many of his proposals were met with resistance from entrenched interests. The first step in breaking the power of nepotism was to empower underrepresented groups to compete fairly for judgeships. Our project staff proposed the creation of a merit exam for all new judge applicants. They further proposed

⁴ Jordan Improved Rule of Law Program (USAID/Tt DPK, 2004–2008).

creating a scholarship program for qualified high school students who wanted to study law and become judges. The funds for the program would come from a percentage of the interest earned on funds held during appeals.

Before the introduction of the merit exam, it was extremely difficult for female applicants to be appointed as judges, and only 3 percent of all Jordanian judges at the time were women. Individuals of Palestinian descent also faced many barriers to judicial positions even though half of Jordan's population is of Palestinian descent. The merit exam shattered historic patterns. Nearly 65 percent of successful applicants were women, and nearly 50 percent were of Palestinian origin. There were family members of sitting Supreme Court justices who did not succeed on the exam. In light of these results, reform opponents made clandestine efforts to scuttle the exam, but the intervention of both the King and Queen stopped these dissenters from bringing down the reform. Today the makeup of the judiciary reflects a dramatic change. Nearly 18 percent of judges are female and nearly 20 percent of the current members of the judiciary are of Palestinian origin.

This “rule of thirds” plays out in other ways that are important. The entire mindset of rule of law practitioners and projects needs to shift toward finding and working with those who are motivated to change. This requires selecting staff for their own commitment to change and their ability to identify and work with change makers in the system. It is then the project's job to convince the donor or funder that partner courts or regions should be selected on the basis of their commitment to move forward with a reform agenda. For example, something as simple as using an application process to confirm courts for receipt of small packages of technical assistance is more likely to produce a long-term national reform result than cajoling courts to participate in refurbishment and automation or large “model court” efforts. The difference between partnering with leadership that requests assistance and working with leadership that has not put pen to paper to express interest is astonishing.

In another example, in El Salvador⁵ we were involved in building the capacity of local governments to address conflict at the neighborhood level. At the time, El Salvador had suffered a protracted and very bloody civil war. Vestiges of violence had continued in the form of criminal activity that was overwhelming local officials. Some mayors were quite eager to initiate alternative dispute resolution programs through their offices while many others were very hesitant to do so. In meetings with the mayors it became clear which leaders were eager to build up a local response to violent conflict. Working with those who were already committed rather than trying to convince everyone at once opened the door for the remaining mayors to later join in the same effort.

B. The Golden Rule: Change Comes from Focusing on the Positive Rather Than the Negative

Typical project designs and assessments are built on deficit analysis and therefore they condition observers to look for negatives. In my view, deficit analysis leads to reductionist thinking, not to new possibilities. By contrast, lasting, effective change comes from looking for the positives and building on them. In my view, a key feature of a successful change process is to look for the most positive dimensions in existing systems and then use a common understanding of these positive points to

⁵ El Salvador Prosecutor Training Project (USAID/Tt DPK, 1998–2000).

build a bridge of understanding and an open communication channel. This approach inherently leads to favorable working relationships based on mutual trust and respect and creates a healthy collaborative atmosphere for project activities.

Honoring what works well requires the cultivation of discipline. It is not easy to focus on the positive by habit, and the level of personal effort necessary to shift gears from years of focusing on weaknesses and offering solutions cannot be underestimated. Nevertheless, I firmly believe that this attitude and behavioral habit must be established internally on project teams and brought into every encounter with partners. If you respect the basic human honor of everyone (the first principle above) and presume a level of equality with all others, you will feel less inclined to be a critic, you will hear them more clearly, and you will find a greater level of acceptance of your offer of collaboration. When people know that they and their work product are being respected, it opens the discourse. Imagine the impact when you begin a discussion with simple questions about what is working and how did that occur and what are the factors that have contributed to success versus what is wrong and how did the situation get that way and how can we change it?

To illustrate this point, when DPK won its first project in Guatemala,⁶ we were invited to meet with the Chief Justice of the Supreme Court. The Chief Justice began the meeting by telling us how much he did not want to have the project funded and furthermore he did not want us, DPK, to be involved. The meeting lasted nearly 3 hours with him doing most of the talking. When eventually I was able to break in, I asked what aspects of the system worked well, and his physical demeanor changed. He changed his discourse and after talking about what was working well, began to reflect on those aspects of the system that were struggling. By the fourth hour we began discussing how we might assist in improving those aspects of the system that most needed change. While the Chief Justice would never become a reform champion, he turned out to be an excellent long-term partner. Once he realized that receiving assistance did not mean enduring endless criticism, there was no longer an impediment to building the trust and positive working relationships necessary to launch the project.

In another example, when we worked with the Supreme Court of Costa Rica in the early 1990s,⁷ we were tasked to assist the newly created Constitutional Division of the Court which had become overwhelmed by filings. We observed that the Supreme Court was devoting a considerable amount of time to administrative matters ranging from managing court personnel requests for annual leave to building new buildings. I was invited to sit in session with the Court for an entire day and later, I was asked to share my observations with the entire Court. While I was speaking, a justice with whom I had been quite friendly took umbrage at one point and intervened. The Chief Justice quickly came to my defense and said, “we know that Bill has a high opinion of our Court. He has publicly made statements to that effect so his comments here are for us to consider as we seek to improve our operations.”

In another instance, we were contracted by the IDB to conduct an analysis of the operations of the Judicial Council of Colombia before the IDB would issue a loan. Working with the Council members and staff, we established an analytical approach of first identifying those aspects of the Council’s

⁶ Guatemala Transition to a New Criminal Justice System (USAID/Tt DPK, 1995–1998).

⁷ Modernization of Judicial Branch Administration, Organization, and Procedures ([Donor?]/Tt DPK, 1994–1995).

operations that appeared to be working in a satisfactory manner. The approach was totally participatory at every stage. Then, the analysis turned to those aspects that needed to be improved. This methodology led to a complete buy-in when the lines of action were identified.

The IDB staff person leading this effort returned to Colombia and became the Minister of Justice *ad interim* while the study was being conducted. But he had his own ideas about reforms he wanted to see – independent of those developed by the Council. He launched a complete attack against the Council, taking aspects of our study out of context and placing stories in the newspapers. The Council dropped pursuing the IDB loan, but it did not drop the action plan we had developed. Instead, on their own, they implemented the reforms. Both the Director of the Judicial Institute and the Director of Planning later told me that the methodology had given them the confidence to proceed on their own.

One might ask what would happen if in brainstorming with counterparts the participants only highlight the positives: if no one mentions that there is a problem how does anyone know that change is needed? In my experience this does not occur, as participants in a system are usually able to identify the weaker points when asked – and in fact often when not asked! If somehow the reluctance to criticize did occur because of a particular culture, it would then be incumbent on the rule of law practitioner to guide the discussion, raising problems observed in other countries and other systems and asking if these are also present. In fact this is one of the values added of the type of international development work that we do, i.e., that we can offer experiences and best practices and ideas from other places that can be useful in a new environment, of course with appropriate tailoring to the national legal system and culture.

C. The Value of Teamwork: Manage Resistance Through Collaboration

It is essential to recall that justice systems notoriously resist change. Among the numerous factors that cause this resistance are the delicate balances of power between and among the different entities of the justice system. Law enforcement, judges, and prosecutors all resist any encroachment on their real or perceived institutional prerogatives. But because we start from a position of respecting each individual, and we first identify strengths rather than weaknesses, we reach a level of trust which allows us to undertake efforts jointly with counterparts and overcome natural resistance to change.

Without trust the motives of the project may be questioned. Some counterparts have accused us of being part of a U.S. Government takeover; others have said “all these activities” are simply to increase opportunities for business; and still others have insinuated additional nefarious motives. The only way we have found to create a positive environment for reform is to fully engage everyone in the work plan process and follow that up with regular and frequent meetings to update on progress. This builds the trust needed to manage change.

In DPK’s early days, on all projects and as a start to the collaborative planning effort, we developed a process for creating a “name” for our projects. The name had to be reflective of the purpose of the project and capture a virtue or goal of the project. The naming process was carried out jointly with our counterparts, and the name itself served to symbolize the result of our first collaborative effort. Our further intent was to make sure that the project had a name that would sound appropriate in the

local context and become familiar to the local community. We used this strategy many times and continue to do so today. In some contexts USAID has decided that all projects should carry the U.S. Government name and the practice has ended in many locales, but it continues in others. I still believe that this simple but tangible endeavor creates something of a pact between an assistance provider and counterparts to accomplish the reform goals, and this pact typically stands the test of time.

An example from California should illustrate how collaboration can overcome resistance to change. In 1987, needing to address endemic trial court delay, the California Legislature passed a bill requiring the Judicial Council to undertake a delay reduction effort in the nine counties with the slowest times for processing cases. No additional funds were appropriated for this task. We decided to take the approach that delay was a statewide problem and that what we learned in the nine counties would be valuable to other counties facing similar problems. Furthermore, to create a system wide recognition of the issue and to find solutions, we opened the program to additional counties to participate voluntarily. An additional 21 counties joined the initiative, so we had 30 of 58 counties participating in the effort from the outset. This robust coalition reduced the level of resistance to change down the line.⁸

We invited the courts to send delegates to a weekend seminar where they would be introduced to the current research on court delay. They were provided the data currently available on their own courts and comparative data from other states. They were then challenged to develop a vision for the future where delay was dramatically reduced. They were also challenged to develop a vision for service to the people of California. Each participant was then asked to make a “commitment” to each other and to themselves on the steps they would take to address delay in their own courtrooms and what they would do to transmit this commitment to their fellow judges.

The next step for each of them was to begin the process of inventorying their own backlog, addressing the delay in their courts, and talking to their colleagues about their efforts. As the judges began this process of cleaning up the pending cases and their backlog diminished, they became even more committed to the process. The leadership of the reform effort was in the hands of the trial judges who decided to make the changes while the Judicial Council became a reporting entity of their success. Quarterly meetings served to stimulate exchange of ideas and experiences and share excitement. Four years on, these courts were able to reduce time to trial by 23 months (from 60 months), change attitudes, and transform the system through their collaborative efforts.

D. The Information Highway: Leaders Need Information More Than They Need Answers From “Experts”

Development projects often contemplate activities on a scale and complexity that counterparts have never experienced and frequently are unprepared to undertake. In many developing countries there is a general unfamiliarity with how to make change and how to prepare for change. It is common to encounter counterparts who have been working in the justice system for years and who have labored

⁸ William E. Davis and Alexander B. Aikman, “Gridlock! California’s New Effort to Break the Legal Jam,” *Judges Journal* 30 (1991), 14.

with modest resources and have never been afforded the opportunity to organize a plan or a special project. They may be career employees who ascended through the ranks of the system and are familiar with and good at what they have seen and worked on but they have never had time to do more than routine tasks. It is possible that no one ever asked them to think seriously about how that routine or the situation in general could be different and what steps would be needed to make necessary changes. A major reform project or, for that matter, a modest reform effort, may call on them to think in new ways or make new decisions for which they feel unprepared. They may not even know what information could help them make better decisions.

For this reason, one of the first tasks we undertake in implementing rule of law projects is to collect relevant information and then reach agreement with justice system counterparts on how to interpret that information. In every project we begin by developing a statistical picture of the existing reality. It has been our experience in the United States as well as overseas that when judges are asked about pending caseloads, they cite general information. Most of them frequently and radically overstate their pending workloads; this response is due in part to the inadequate case management systems being utilized, and it is not uncommon for judges to believe that they each have, for example, 1,000 cases. After we implement a case sampling exercise, we often discover that of those 1,000 cases only half have any chance at all of moving through the system beyond filing because of innumerable factors outside the control of the judge. This means that each judge actually has 500 cases, and of those 500 pending cases only a small percentage will proceed to trial. But the judge does not know exactly which of the cases will actually make it through preliminary proceedings to a trial.

After collecting the data we can demonstrate in a completely neutral manner how cases can be categorized to determine a more realistic understanding of each judge's caseload. The case sampling method then becomes a statistical window onto reality, around which consultation can begin about reform strategies and the like. The data removes blame about case delays and judges' individual ways of working. The statistics also shift the discussion from how overworked judges are or how judges are not keeping up with their jobs to a depersonalized discussion about facts rather than perceptions.

Another type of information we gather is on how much time is being allocated to every step in the civil and criminal process. Developing a flow chart with timelines serves to illustrate how the process is working and how it is not working. It also allows one to answer questions such as: are judges doing things that others could do under judicial oversight? Can systems be redesigned with sufficient protections so that judges would consider delegating some duties to administrative staff?

In the late 1990s we were working with the Supreme Court of Venezuela to create processes for managing filings that consisted of creation of staff attorneys' offices to conduct a screening process for all files, categorize the cases, and develop possible dispositions without judicial supervision at the outset of the case then submitted to the judges for final disposition.⁹ This method significantly reduced delay and expanded the time available to justices to devote to more complex cases.

⁹ Venezuela Modernization of the Supreme Court (World Bank/Tt DPK, 1998–1999).

Similarly, over the years we found that trial judges in most countries where we operated were devoting as much as 50 to 60 percent of their time to administrative matters that could easily be delegated to staff. Since very few countries have subjected their systems to a statistical analysis of performance, it was not a surprise to encounter this reality. Some level of administrative duties is inescapable; however, the question is whether, if a greater amount of time could be found for judges to hold hearings and review case-related materials, would this increase dispositions? Our experience suggests that the answer is yes.

Once we have the statistical information, we work to arrive at a shared understanding of what the information means. Getting on the same page can at times be a challenge as “[c]ourts are fragmented and inefficient organizations [with] competing values and tendencies.”¹⁰ Professionals in the justice system are accustomed to their independence and autonomy. Since all those in key positions are professionals, they tend to have little tolerance to listen to each other’s opinions. Recognizing this essential characteristic of the organizational behavior of the justice system is something that eludes many of those who are critical of justice reform efforts. The clash of diverse views and values is inherent in a judicial reform process whereas it might not be in other systems.

We have found that the soundest method to begin advancing reforms is to build a common understanding of the empirical reality facing the system. With this empirical information and a shared understanding of what the information means, we work alongside counterparts in a highly collaborative process to develop the work plan and brainstorm the sequence of activities for the project. As counterparts engage processes and data and begin the process of identifying lines of action, they also acquire the skills to implement the activities. The speed of execution will accelerate thanks to the new skills and the fact that you and counterparts are “on the same page.” The participants in the early stages of the stock taking activity are intended to become the leaders of the coalition that advocates for change within the system. Using data collection efforts to introduce key individuals to the real state of affairs and then challenge them to take the leadership role in developing appropriate strategies to address the deficiencies has proven to be a highly successful approach.

E. Facts Are Not Enough: Vision Is Also Essential

Implicit in the analysis above is that once the facts are at hand, judges will see where delays are coming from and will make the changes to increase the speed of case disposition. But this assumes that judges accept that it is the role of the trial courts to control the pace of litigation, which is not a universally accepted concept. In fact, we have found the exact opposite point of view in most countries. This means that in addition to marshalling statistics and facts, we at times have to address the legal and cultural practices that are impeding change, even in the face of hard facts and statistics. Traditions, practices, and lethargy can contribute to this stasis. As John P. Kotter indicates in his seminal work on “Leading Change,” change can only be achieved if those who are involved see there is greater purpose to be attained.¹¹

¹⁰ Malcolm M. Feeley, *Court Reform on Trial: Why Simple Solutions Fail* (New York: Basic Books, 1983), 31.

¹¹ John P. Kotter, *Leading Change: Why Transformation Efforts Fail* (Boston: Harvard Business Press, 1996), 62.

I have had direct experience with this need to foster a higher vision. In the California court system, we faced a legislative mandate to reduce civil delay in the trial courts. I served as the Administrative Director charged with overseeing this effort in the nine largest and slowest counties in the state. Our approach was to challenge the judges with the idea that they must demonstrate leadership or there would be loss of judicial independence. By appealing to a virtue of a higher order we generated more strategic energy in undertaking a rigorous effort to reduce delay. We organized specialized training for leaders from each of the participating courts. These leaders were invested with the responsibility to be advocates for change within their courts. There was constant messaging to all leaders and participating judges that reducing delay translated into judicial independence and excellence. We went a step further by inviting other courts to join in the effort on a voluntary basis to take the leadership mantle for judicial independence. After 4 years there was success in reducing delay.

Another way to develop a vision for a new reality is through the arts, which call to people's deeper selves. In the West Bank and Gaza,¹² we faced a populace that had little experience with the justice system but was at the same time highly skeptical of it. The challenge was to communicate to the widest possible audience what they could anticipate from the justice system. We chose to use a movie to portray the justice system as it was then functioning and what to expect from the reforms. We created a script based on a real legal case and then contracted a local team to produce and film the movie. It was seen on national television more than once and was then distributed through the schools in the West Bank and Gaza. It received high praise from the audiences and galvanized interest in change.

In the Dominican Republic (DR)¹³ the issue of corruption was the dominant public impression of the justice system. Our first step was to conduct a survey of public opinion on the topic and especially how the public saw the judiciary. A firm was contracted to do the survey and was then asked to convert the results into a culturally appropriate method of conveying the results. They developed a rap based on local music and used only the words and opinions they heard from the public opinion survey. This penetrated the natural defenses of the judiciary, as hearing the actual words of the public challenged even the most resistant person to deny the validity of the opinions. In turn, the justice system actors were charged with developing strategies to change these opinions. From this effort evolved the Institutional Integrity Model which transformed the justice sector institutions in the DR.

F. It's Not Yours: Remember Who Owns the Reform

Reform of justice systems is not a gift or a product of international development assistance; rather, it is a process that belongs to the people who are living and working in the system. The Chief Justice of the DR, Jorge Subero Isa, requested our assistance with a deeply troubling challenge he faced. He indicated that the level of support for the reform efforts he was leading was very thin throughout the system. He asked us to find out the reasons and design a response using a committee he appointed consisting of judges, court personnel, defenders, and prosecutors. The committee came to California and after several visits to trial courts they stated that they were most impressed by the high level of

¹² West Bank and Gaza Rule of Law Program – Justice and Enforcement (USAID/Tt DPK, 2005–2010).

¹³ Dominican Republic Strengthened Rule of Law and Respect for Human Rights, and Enhanced Public Sector Anti-Corruption Systems (USAID/Tt DPK, 2003–2008).

commitment exhibited by every level of staff in carrying out their duties, and the sense of moral purpose to serve the public that they observed among judges and court staff alike. During an evening reflecting on their experiences, the delegation formulated the idea to create a model for building accountability, trust, and public confidence in judicial institutions.

After the Institutional Integrity Model was successfully introduced in a number of judicial districts, the DR's Supreme Court embraced the approach, expanded it, and began to fund it from its own resources. The Government of the DR trained over 70 judicial officials to continue the activities, and more recently, the newly elected President of the DR has embraced the same approach for the executive branch and is expanding it throughout the government, having recruited former DPK staff to lead the implementation effort. The model has now been shared with other public sector institutions in the DR, and we continue to work with colleagues in the country and elsewhere to adapt the model to local contexts.

In our first Guatemala project,¹⁴ the focus was on implementing the new Criminal Procedure Code. There was widespread resistance and skepticism both within the legal community and the general public. One reason was the failure of the leaders to devote adequate attention to public outreach, which meant that the public could not understand what was new or how the new system would differ from the criminal justice system they knew. A tragic murder of a young woman from a modest family background by a young man from a wealthy and influential family served to join these concerns. The power of the influential family would have traditionally resulted in the young man being spirited away after the case lost its luster in the press. In the new system, an independent prosecutor made decisions about how the case would be handled and his decision was to go to trial.

For the first time in the history of Guatemala, a criminal trial was televised from beginning to end. The level of professionalism exhibited by the prosecutors, judges, and defenders was quite rudimentary as they were conducting an open and transparent trial with cross-examination for the first time. Nevertheless, the entire country was transfixed and watched the trial on television much as Americans watched the O.J. Simpson trial. This unforeseen and unplanned event did more to communicate to the public what the new Criminal Procedure Code was all about than any publicity effort.

Another aspect of the “you do not own it” principle for development professionals is that it is the counterparts that actually do the hard work of embracing change. In the highly competitive world of international development, donor entities and sometimes consulting firms vie to take credit for activities undertaken by counterparts. Donor representatives feel pressure to show success to those who fund their activities, and consultants feel the need to demonstrate their prowess in the technical area in which they are providing assistance or training. Ironically, the counterparts, who actually do most of the work, often receive little credit. We have found that the more selfless your approach is, the wider the support you will have among counterparts. It is they who are staking their careers and sometimes even risking their lives for reform.

¹⁴ Guatemala Transition to a New Criminal Justice System (USAID/Tt DPK, 1995–1998).

G. Rolling With the Punches: Change Does Not Happen in a Linear Fashion

I am always disappointed to read some “experts”—some of whom sadly have little direct and practical experience—opine as though everything proposed for justice sector reform in a given country should unfold like a new deck of cards. Even worse, when rule of law reforms do not play out as expected, these same experts want to throw in the towel rather than learn from mistakes and build on successes. Despite all of our best efforts to lay out project designs, develop proposals, and measure against work plans, these endeavors are premised on a fallacy: that change takes place along a straight line of sequential activities. Only in authoritarian regimes can such things occur. In a justice system where there is joining of interests of virtually every sector of society, change meets with resistance from forces that are not even visible and unrolls in fits and starts.

The pace and scope of change can often not be controlled. Early in the Justice Strengthening Project in Palestinian Territories in 1999-2000,¹⁵ our project was overcoming significant distrust and making real progress towards building a solid foundation for future progress when the second *Intifada* occurred. After we evacuated our consultants who were working with Palestinian counterparts, I met with our project staff to determine what actions we might take. The security situation was so tense that no USAID officials were permitted to travel to the West Bank and USAID had instructed us to suspend implementing the work plan. For the next 3 years, project activities had to be calibrated based on security risks to staff and limited mobility of all concerned. These developments in Palestine were beyond our control and led to radical changes in the work plan as the security and political setting changed profoundly.

Everyone who works in the international development field has experienced similar events. We understand that to be effective in these types of situations we need to be creative and responsible stewards of the funds at our disposal. We hope in these situations that the donor can rise above bureaucracy and accord us the flexibility we need to continue to make progress. Reforms proceed in accordance with capacities of colleagues to handle the change and the political setting in which events are occurring.

Sometimes we can assist to accelerate or improve the quality of reforms. Sometimes we must step back to wait out power struggles or breakdowns in key relationships within institutions or between institutions and civil society. In other instances, a particularly horrific crime or a public corruption scandal can rock the individuals and organizations with which we work to such an extent that we must halt or slow activities for a time, and remake priorities. The fact is that if we give up or if donor institutions pack up whenever the going gets rough or natural resistance to change slows things down, we will never be able to help justice systems to evolve so that they can overcome such setbacks once we are gone. Any inability on our part to adapt to emerging conditions can unfortunately model how a new, struggling, or reforming justice system should not behave when it too faces unexpected setbacks on the non-linear road to a stronger justice system and the rule of law.

It behooves development professionals to take the long view. An example from our own democracy shows that although political criticisms and institutional missteps can slow reforms, ultimately the

¹⁵ West Bank and Gaza Modernization of the Administration of Justice (USAID/Tt DPK, 1999–2004).

justice sector benefits and advances, even if not in a linear fashion. In 1968, US Congress authorized the Law Enforcement Assistance Administration (LEAA) to improve local law enforcement and justice systems. The program lasted into the 1980s when Congress cut the funding. The program was much criticized for wasteful spending especially on things like equipment for police and questionable training activities but the program also achieved groundbreaking work. LEAA developed new databases for tracking criminal activity, coordinated law enforcement practices, and helped judicial staff develop recommendations for modernizing courts' administrative functions which garnered support from law enforcement and prosecutors. LEAA also created numerous models for conflict resolution, and helped to establish important and lasting institutions such as National Center for State Courts, national prosecutors association, public defenders organizations, and pretrial services organizations.

Thanks to LEAA, state court systems benefited from substantial improvements. Tools for measuring performance were developed and national reporting on common indicators contributed to greater transparency and accountability at all levels of courts across the country. Today, annual justice statistics reports published by the Bureau of Justice Statistics are almost taken for granted in the United States, but the first reports for the federal justice system and national reports on state justice statistics were published thanks to the much-maligned LEAA. The extensive research and evaluation which U.S. justice practitioners today draw upon exists thanks in large part to the successes of LEAA at institutionalizing robust grant and contract funding for research from the National Institute of Justice (NIJ). LEAA also led to the establishment of resource centers for policymakers and practitioners on critical issues in criminal and civil justice.

Had the entire concept of providing assistance for justice system improvement been abandoned because of fair criticism of a portion of the effort, our justice system would be in a very different place today. The question that rule of law development policymakers and practitioners need to ask is whether we would have, under similar circumstances, had the foresight to continue our support, or whether we would have declared "a lack of political will" on the part of the various branches of government or justice institutions and terminated our support for this new institution or the justice system as a whole. It is imperative that we not ignore the way in which justice reforms are crafted and play out in functioning democracies or lull ourselves into thinking that we can socially engineer a linear reform process in another country. If anything, we must recognize that the change cycle in any country includes pushback and setbacks as well as the influx of new players and new ideas that might short circuit a planned reform but perhaps result in something more advantageous in the longer term.

H. Renewable Energy: Sustainability Means Focusing on Long-Term Resources for Change

In the rush to launch a project and report successes it is important to remember that our efforts are confined to a limited period of time and those persons and organizations that remain in country will need to carry on. At the outset of any project, attention needs to be given to identifying the local entities and people who will carry on the work after the project ends. From early on in the project

life, it is important to provide sustained attention in the form of training, extensive consultations, and travelling to relevant localities where successful activities have been realized.

Where feasible, we also try to include local organizations and individuals in proposals for projects in other countries where they increase their expertise and standing. No better example of this can be found than the Libra Foundation in Argentina,¹⁶ for which I was both a founding member and an advisor. Libra became the first organization in the entire hemisphere that focused on promoting and implementing alternative dispute resolution activities both within and outside of the justice system. As recognition of the advisability of alternate dispute resolution grew throughout Latin America, we were able to include Libra on numerous other projects in the region such as in Mexico, El Salvador, and Peru.¹⁷

In another example, we helped with the formation of Up2Date Consulting, a Palestinian firm comprised of former DPK project staff.¹⁸ The staff of DPK's project in Palestine became so expert in USAID contracting that USAID contracted them to train other entities. Up2Date currently provides administrative services to Tt DPK's project on prosecutors in the West Bank funded by the Bureau of International Narcotics and Law Enforcement (INL) has a growing roster of Palestinian and international clients including New York University, Bethlehem University, International Development Law Organization, the German Society for International Cooperation (GIZ), the Bank of Palestine, and several other non-governmental organizations (NGOs) and private sector firms.

One of the best ways to foster sustainability is to establish a think tank or research institution that will continually generate studies and research to challenge the received wisdom and keep momentum for change. A legacy of LEAA was its allocation through the Bureau of Justice Assistance (BJA) of funding for states to pilot new approaches and technical assistance. The funds allow scholars, policymakers, and practitioners to try new techniques and processes and learn from courts and justice sector institutions all over the United States. A vast number of BJA and NIJ-generated studies and evaluations questioned conventional wisdom, uncovered unexpected drivers of crime, and identified counterintuitive solutions to nagging issues. States as different from one another as California and Alabama have benefitted from the experience and knowledge of other states and other countries.

The creation of the Centro de Estudios de Justicia de las Américas (Center for Justice Studies for the Americas) is an excellent example of establishing a source of information on a regional basis – information which has been used by reformers throughout the hemisphere. Its establishment was critical since the major justice reform in the past 500 years has been the introduction of new criminal procedure codes in all of Latin America. The code redefines the relationship of the citizen to the state and creates a presumption of innocence. It further requires a greater level of accountability and transparency on behalf of the entire justice system. The reform began in Argentina with the leadership of Alberto Binder and Julio Mayer who recognized the disastrous consequences of the

¹⁶ "Fundacion Libra: History," accessed on January 12, 2014, <http://www.fundacionlibra.org.ar/>.

¹⁷ William E. Davis, "Access to Justice: Lessons from the Field" (paper presented at symposium on Alternative Dispute Resolution and the Rule of Law: Making the Connection, Center for the Study of Dispute Resolution Symposium, University of Missouri School of Law, October 15, 2010)

¹⁸ "Up2date Consulting: About Us," accessed on January 12, 2014, <http://www.up2date.ps/new/>.

highly oppressive inquisitorial criminal procedure inherited from Europe. Boldly, they began a process of “educating” and creating cadres of supporters throughout Latin America. To this day, every country in the hemisphere, both North and South America, that previously had the inquisitorial system has changed or is in the process of changing to the German model of an adversarial system.

Rachel Kleinfeld, in her book *Advancing the Rule of Law Abroad*, cites USAID as the “promoter” of the new criminal justice code in South America, which is not wholly accurate.¹⁹ USAID has been a leading but not the exclusive supporter of local efforts to advance this reform. GIZ, the Spanish Agency for International Development Cooperation, and to a lesser extent Canada’s International Development Agency have been involved, to name a few. In reality, it is another regional institution which was founded to provide information and research – the Criminal Procedure Institute of Latin America – which has been and continues to be the intellectual leader for this effort. The Institute did all of the original research into the critical problems in the written inquisitorial criminal procedure, beginning with the extended pretrial detention of people throughout the region.

The Institute very wisely developed local chapters in each country, which became the local engines for advocating for reform. USAID projects supported this strategy, which ultimately led to the single largest justice reform effort in the history of Latin America. Curiously, this history of USAID project support is absent from Ms. Kleinfeld’s book. The nuance here is important. USAID was not wholly responsible for the reform movements nor was USAID simply an external assistance provider. Through USAID-funded projects on the ground that assisted country chapters, USAID supported an astute strategy developed by a regional organization. This combined project assistance and the regional knowledge and resources of the Institute to promote criminal procedure reforms in specific countries. I imagine that some of those projects did a better or worse job of supporting local initiatives and respecting local culture and politics. I am also certain that the project assistance provided to the country chapters and their counterparts in justice institutions was crucial to the success, by ensuring that reform agendas were supported by minimally adequate capacities to deliver on the promise of the new criminal procedure codes. Although none of this guaranteed sustainability, it has proved the test of time through the winning combination of partnering with local organizations, generating neutral studies and analyses, and providing targeted support.

4. Conclusion

I think we can all agree that the promotion of the rule of law and associated activities have not “changed” the world, but in my view the critics who focus solely on the “failures” completely miss the point. They neglect to analyze what did work and the sometimes unexpected or unanticipated outcomes of development assistance. These critics have violated several of the principles I outlined in the first section as well as many in the second section. In particular, they have failed to respect the inherent *humanity* of those involved in rule of law efforts – both development professionals and local counterparts – and they have lacked *trust* by focusing almost exclusively on what can be measured.

Recent developments have seen USAID retreat from its original leadership role by reorganizing out of existence the rule of law team and focusing more broadly on democracy support and rights

¹⁹ Kleinfeld, *Rule of Law*, p. 61

promotion. USAID contemplates a fairly intrusive role into internal affairs of countries by focusing on funding NGO advocacy groups to “make” governments more accountable. At the same time, USAID hopes to balance this demand-generating approach by shifting the responsibility for identifying and carrying out reforms to counterpart governments and other local entities through USAID Forward. I fear that this strategy will eventually lead to failure and the scrapping of either the rights agenda or USAID Forward by ignoring the original and continuing potential and promise of international development assistance: the provision of assistance necessary for lasting change but otherwise unavailable to citizens and governments.

There is no silver bullet for rule of law or justice sector reform. The rule of law is essentially about building institutions, procedures, and accountability to ensure the safety of citizens, equality before the law, and protection of their property. Any change effort directed at the heart of a society, such as a justice system, is invariably going to challenge all of the established political interests of a society. When theorists pejoratively characterize USAID’s efforts as “technocratic,” they demonstrate a fundamental misunderstanding of what justice is all about. In situations where courts cannot process cases for years or cannot find cases in Kafkaesque circumstances, then “increasing access to justice” is made a mockery. No combination of public demand, political will, or culture change will give overwhelmed judges or administrators the tools they need to improve effectiveness. USAID’s strength used to be providing the results-oriented assistance to address the stumbling blocks to improved governance. When those stumbling blocks are bureaucratic, technocratic responses may be the missing ingredient to shifting justice outcomes for citizens. Shifting away from concrete assistance to courts is wrong.

The implementation of the transition to a new model for adjudication of cases in Latin America, described above, represents a direct challenge to the idea that public demand and foreign funding are the only ingredients necessary to build democracies governed by the rule of law. The Latin American experience also calls into question the view of writers such as Acemoglu, Carothers, Fukuyama, Kleinfeld, and Robinson, who claim that rule of law development can only be done from within. The creation of new institutions and competencies for new prosecutorial entities, public defense, courts, and alternative dispute resolution programs resulted from demand, pressure, knowledge, action, and funding from a combination of international, regional, national, and local sources. If the process had depended solely on domestic knowledge and resources or only on the generation of political will through public demand, citizens all over the world would still be waiting for improved justice today.

It is my view, based on 20 years of practical work to advance the rule of law, that the solution is donor-funded support to champions of institutional reform, which is delivered by peers, informed by fundamental principles, and supported by deep knowledge of alternative ways forward and practical methodologies. There is a body of knowledge that can and should be shared to inform locally owned and generated change processes. The role that USAID and other international donors play in providing expertise is an important one, and we can and should continue to learn about how to support reform champions better. We must continue to focus on support for institutional change while always setting aside resources for building sustainable national, regional, and international resources to facilitate direct sharing of experience and successful approaches among justice systems

and the publics they serve. We should also not shy away from direct assistance to make institutions function better, based on facts and reality and drawing on a vision for change.

Both pressure to change and the capacity to change are necessary for justice systems to evolve toward optimal access, fairness, and effectiveness. There is no need to sideline “traditional” rule of law development assistance or replace it with support for the demand side of justice or human rights advocacy. In fact, both are necessary components of development assistance no matter how large or small the issue to be addressed. The more effort that we make to take advantage of existing knowledge and analysis from reform successes in developed and new democracies, the better situated we will be to target resources to both sides of the equation—the public desire for better justice and the government’s willingness and ability to provide better justice on a day-to-day basis. The best way for that to happen is for donors once again to invest in bringing together rule of law practitioners, funders, and partner countries’ justice system leaders to discuss how rule of law theory and programs play out on the ground and how we can work more effectively to achieve the goal of justice for all.