EFFICIENCY IN JUSTICE

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"Creo que los retrasos injustificados pueden eliminarse de la justicia, si nos esforzamos en tener continuamente presente que los tribunales existen para servir al Estado y los litigantes, y no a los jueces y los abogados" (Vanderbilt, 1959: 138)

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I. INTRODUCTION

Judicial efficiency in daily judicial work has traditionally been approached using a technocratic perspective as a model for judicial management. The purpose of this essay is to provide a discussion of judicial efficiency that goes beyond the traditional outlook. Efficiency, as this essay will illustrate, is conditioned by substantial decisions related to the definition of judicial function and the roles of judges, employees, and litigants.

I argue that efficiency is contingent on the degree to which a judicial system is confined to a given sphere of action and equipped with the tools it needs to control the supply of justice and influence the demand. Efficiency also depends on systems that are equipped for strategic judicial management and decision-making. It is increased when judicial procedures separate administrative tasks from jurisdictional ones, thereby fostering professionalization and adequate judicial performance. Appropriate incentives for judges and other judicial employees will have the same effect.

The first section of this document analyzes the meaning of judicial efficiency. The second studies the traditional response to the main problem associated with efficiency, or the lack thereof, namely, judicial congestion. The third section analyzes the rise in judicial coverage, procedural changes, and modern management techniques in order to illustrate these measures' limited scope when they are implemented in isolation.

The fourth section will examine the incorporation of efficiency criteria to the definition of the judicial branch's jurisdiction, the role to be played by judges, and the relationships between the various levels of decision-making within the courts. This section also considers the most important changes that have been implemented in this area in the Americas over the past few years.

The document concludes with an analysis of the lessons that we have learned from the emergence of judicial management.

II. WHAT DO WE MEAN BY JUDICIAL EFFICIENCY?

Latin America's justice systems have undergone tremendous transformations over the last fifteen years. Clearly, these changes have been influenced by an extensive set of motivations, which, in turn, have led to a variety of reform strategies and contents. This text will focus on only one motivation, namely, the need for judicial efficiency, whose emergence is characterized by aspects that differ from the introduction of similar reforms in other government branches.

The search for efficiency, which is the foundation of public policy, is closely related to the idea of scarcity. When the resources we have fail to meet all our needs, we must prioritize those needs or preferences, which means that some needs will simply not be met. At the same time, we must be wise in making choices about our use of available resources so that we can cover as many needs as possible and avoid squandering limited resources. Efficiency is therefore directly related to decision-making, and stems from the need to choose from among different courses of action on the basis of certain premises.

While this may strike us as obvious, it clashes with the traditional idea of justice, which is conceived of as an issue of principles and transcendental values that must be satisfied regardless of external factors such as costs. Justice, in this view, must simply be carried out as an imperative.

This concept of justice represents a failure to accept that decisions -public policy decisions- must be made when necessary. Justice must be able to respond to all types of cases regardless of external factors, including costs. This explains the persistence of the criminal law principle of legality or the idea that the courts should not charge for access to justice.

According to the criminal law principle of legality, the system considers all cases and handles all crimes the same way. But this is clearly mere rhetoric. We are all well aware of the disparity in the way courts handle different cases. While some are meticulously investigated and tend to get resolved, others languish and are haphazardly investigated. But the truth is that the system must work this way. The system lacks the resources it would need to investigate all cases with the same vigor and must therefore pay more attention to some cases. No country in the world can solve all of the crimes that are committed in its territory. The failure to explicitly accept the selective nature of the judicial system leads to under-the-table selection of cases with no clear criteria or supervisory mechanisms. Rather than selecting cases on the basis of publicly recognized

criteria, decisions are made and cases "end up in the trash bin," as someone once said. The ensuing decisions may not only be socially inappropriate in their failure to prioritize the most important cases, but may also be inefficient and prioritize the cases that are least likely to be successfully resolved, while dismissing cases in which much time and resources have been needlessly invested. The later in the process these decisions are made, the less efficient they will be. This type of system is also conducive to corruption.

The idea of not charging for access to justice is touted as strategy for providing unrestricted access to the courts for all persons who need their services. However, governments are unable to cover all of the expenses associated with filing a case in court, which means, in practice, that gratuity has become a subsidy for persons who do not have financial limitations. The cost of processing a legal action includes both direct expenses such as court and lawyer fees and indirect costs for litigants, who must cover the costs of lost work time and transportation. In general, free court services only cover direct costs, or some direct costs, leaving each party to a case must pay indirect costs, which may be prohibitive for persons with limited incomes. As a result the courts are clogged with cases that are filed by persons or institutions of means (such as banks, businesses, etc.), while the poor cannot use the courts to resolve their disputes. This suggests that state-subsidized court proceedings are regressive, as they favor people who can well afford to pay for these services.[1]

When court services are not free, the costs can outweigh the benefits that a favorable sentence would offer the litigant. This discourages some from going forward, and may foster more efficient avenues for resolving disputes, such as mediation. This suggests that providing free access to all of the services provided by the justice system leads to inadequate results and inefficiency.

Approaching justice issues from a public policy perspective allows us to make rational and transparent decisions regarding which cases will enter the system and who will bear the costs. This requires building a scale of social preferences that defines justice as a service that prioritizes some over others when it comes to allocating the limited resources that are available at any given moment. In a democracy, preferences are incorporated in recognition of the fact that individuals are sovereign and their rights and interest take precedence over those of the state, whose purpose is to enforce those rights. When we pose the issue this way, we can rethink justice in terms of the public service mission that it

[1] Another thing that also tends to be overlooked, though obvious, is that the marginal cost of each additional case is greater than zero beginning the moment that a backlog is created.

must satisfy. If citizen preferences are most important, then citizens must be satisfied and the degree of their satisfaction must be used as the best indicator of whether or not the judiciary is functioning properly. Traditional approaches lose meaning in this context. Such is the case with the idea that the conflict created when an illegal act is committed breaks down the legal order by confronting offender and state, instead of being addressed as a problem between two individuals. From this point of view, the victim only serves to provide information. The "expropriation of the criminal conflict" that originates from this outlook is the most vivid expression of justice system de-personalization and its forgotten public service role. The same occurs with the abuse that people experience in the courts on a daily basis, expressed in the refusal to provide information and the prolongation of proceedings. These and many other situations suggest that the judicial system has a purpose of its own, independent of the needs of the people who turn to it for help in resolving conflicts.

Despite these factors, it is not likely that judicial efficiency would have become an issue of public concern today had it not undergone significant changes. In the past, justice systems were afflicted by the problems described above, but the impact of those problems, in relation to unsound investment of resources, was not significant for a very simple reason: very little money was spent on justice. This situation has changed gradually as a result of judicial reform. Today several countries in the region have significantly increased the percentage of fiscal funds that are allocated to judicial budgets. However, concrete improvements in the services provided to citizens and the quality of justice have not accompanied increased funding. It was easy to accept inefficiency when the system was under-funded and cheap, but it is difficult to accept inefficiency when the system becomes increasingly expensive.[2]

Years ago judicial budgets rarely represented more than one percent of fiscal budgets. At present,[3] Latin American fiscal budgets allocate a greater

[2] Linn Hammergren points out that: "*La cantidad de fondos nacionales e internacionales dedicados al sector continúa creciendo, mientras que se extiende también el número y tipo de problemas a los que se dirigen. En efecto, algunos observadores han sugerido que nos aproximamos a un punto de rendimiento decreciente – hay un exceso de fondos que persiguen demasiados objetivos, generando una agenda de reforma que ningún conjunto de instituciones nacionales estaría en capacidad de realizar*." He adds that: "*El acuerdo inicial sobre la necesidad de eliminar la "pobreza" judicial ha suscitado ahora problemas acerca de cuánto deben gastar las sociedades en la justicia y quién debe hacerse cargo de los gastos. La exigencia de mayores recursos ha conducido también a interrogantes acerca del rendimiento de esas inversiones y de cómo debe ser evaluado*." (Hammergren, 1999: 4)

[3] Figures compiled by JSCA, 2003.

percentage to judiciary, as the following figures indicate: Costa Rica 5.16%[4], El Salvador 4.51%, Guatemala 3.44%, Argentina 3.15%, Nicaragua 2.85%, and in Brazil the federal justice system budget alone is more than 2.22%.

Two examples suffice to illustrate the evolution in judicial spending in recent years. During the 1980s, the average portion of Colombia's fiscal budget that was spent on the justice system was 0.6%. Between 1993 and 1998 it rose to 1.16% (Fuentes and Perafan, 2003), and is currently at 1.22% (JSCA, 2003) of the national budget. In Chile judicial spending represented 0.36% of the net national budget in 1977. By 1990 it had climbed to 0.59% and in 1997 it was 0.83% (Vargas, 1999). In 2002, the judicial budget had increased to 0.93% of the Chilean national budget (JSCA, 2003).

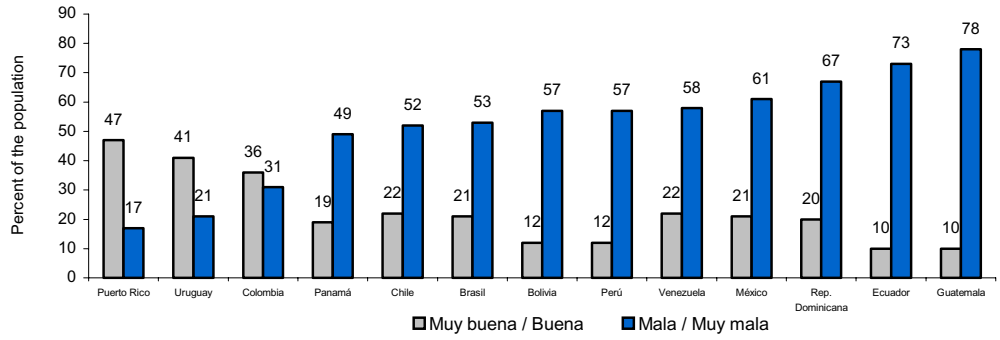
But even though it had a very low base line to begin with, public perception of justice has steadily declined in recent years. In 1996 the Latinobarometer survey, which is conducted in 17 Latin American countries, indicated that 33% of citizens had "much" or "some" confidence in their national justice system. In 2002 the same survey revealed that only 25% responded affirmatively to this question. Only national law-making bodies, public figures and political parties evoked more mistrust than the courts. But the area of trust is not the only one in which the judiciary received a poor evaluation. Citizens also give their respective judiciaries bad marks for favoring business interests and for lacking partiality, speed, and honesty.[5]

Regarding the quality of judiciary services, the Governance Barometer (*Barometro de Gobernabilidad* 2003, CIMA) reveals that most Latin Americans share a negative opinion, as the following chart shows us (JSCA, 2003). With the exception of Puerto Rico, Uruguay and Colombia, more people responded that the quality of the services that are provided by the courts was "bad" or "very bad" as compared to those who rated them as "good" or "very good."

[4] 6.4% of Costa Rica's 2001 national budget was allocated to the judicial branch, which includes the Public Prosecutor and the Public Defenders' Offices (JSCA, 2003).

[5] For an analysis of these indicators, see JSCA, 2003.

Graphic Nº 1
How do you evaluate the quality of judicial services in the country?



Source: Governance Barometer 2003, CIMA

Backlogs, which create delays, are closely related to the perception that courts provide bad service.[6] Judicial congestion is a direct result of the steady increase in cases, which the justice systems are ill prepared to handle.

In Colombia, for example, between 1993 and 2000, the number of cases filed per 100,000 inhabitants nearly doubled, going from 2,015 to 4,028.[7] During the same period, the number of cases filed in the Chilean system rose from 7,917 to 11,678,[8] a nearly 50% increase.[9] It is difficult to ascertain whether the explosive increase in cases exceeds the judicial system's ability to adequately handle cases. In fact, the only difference between these countries (in the

[6] "*La lentitud de los procesos es sin dudas uno de los aspectos críticos del funcionamiento de los tribunales en una buena parte de los países del continente. Este hecho se ve corroborado por la impresión de los empresarios. Apenas el 3,9% de los encuestados en los 22 países de las Américas opina que sus tribunales son siempre y casi siempre rápidos para resolver las controversias, en tanto el 73,6% opina que raras veces o nunca los tribunales actúan con rapidez*". Statistics from the World Business Environment Survey, 1999-2000 (JSCA, 2003: 21)

[7] At the beginning of the year 2001, the number of cases pending in Colombia's Provincial Courts (*justicia ordinaria*) reached 3,608,059. At the current pace of justice work, these straggling cases would take another three years to finish if no new cases were filed. (Fuentes and Perafan, 2003: 261).

[8] These do not include cases involving traffic violations and minor neighborhood disputes, which are heard in Chile's Local Police Courts.

[9] Data on Colombia's justice system is taken from Fuentes and Perafán, 2003: 258. The information on Chile come from Vargas, Correa and Peña, 2001 and Chile's Judicial Branch (www.poderjudicial.cl) and the National Statistics Institute of Chile (www.ine.cl) web sites.

examples we cite Chile's judicial system appears to be processing more than twice the number of cases as Colombia) could suggest that some countries are able to process more cases. Significant differences are noted within each country as well, as caseloads vary significantly from jurisdictions to jurisdiction.[10] We cannot, however, deny that there is a lack of adequate information. The countries have different methods of tabulating judicial data, and averages have not been developed that would allow us to accurately compare the relative importance of different types of cases.[11] Regardless of the objective truth in the perception of judicial congestion, in practice, it has become the most important motivation behind judicial reform.[12]

[10] Pastor states that many cases do not involve a great deal of work: "*...en España, al menos el 30% de los casos civiles se resuelven por auto, que habitualmente implica menor esfuerzo que la sentencia. En el mismo sentido, en el 45% de los casos no hay oposición del demandado....*" (Pastor, 2003: 18) In Chilean civil law, a study of a random sample of cases related to proceedings prior to administrative notifications of denial of duty to pay a debt, promissory notes, and checks (which represent more than 25% of all civil claims), showed that the defendant objected and turned the dispute into a case that had to be resolved by a judge in only 5% of the cases (Correa and Peña, 1996). Pastor also compares different jurisdictions in order to observe variations in workload. He states that in Spain the Higher Courts of Justice in civil and criminal cases issued 3 sentences per magistrate in 1999, while Provincial Court magistrates issued 155 each and the Supreme Court handed down 120 during the same period (Pastor, 2003: 19).

[11] In fact, judicial systems continue to use a unit that is unsatisfactory for tallying court production: the case file. In criminal law a case file may encompass one or many crimes, one or many defendants, and one or many victims. An alternative for calculating number of cases is employed by Chile's *Ministerio Público*, which counts "relations," each of which is composed of one victim, one crime and a defendant and a traditional case file may include many relations.

[12] Pastor adds: "*Con todo, conviene no dar por sentado este argumento de la congestión y sobrecarga de los órganos judiciales, puesto que en algunos casos la evidencia es más bien la contraria*." (Pastor, 2003: Cita 3).

III. STRATEGIES FOR INCREASING THE JUDICIAL SYSTEM'S ABILITY TO RESPOND

1. Increasing Judicial Coverage

The most well-known response to the demand for good justice is to increase judicial coverage by creating new court facilities. Along with salary raises for judicial employees,[13] increased judicial coverage is the primary reason for expanding judicial budgets. However, the connection between these measures and increased judicial productivity (which can solve the problem of congestion) has been scant.[14] There are various reasons for this.

First, creating new courts is expensive and requires considerable investments of human resources, infrastructure, and equipment. Furthermore, it does not relieve the major bottleneck blocking the system: the limited amount of time that each judge has to hear cases and tend to his or her duties. A much more rational solution would be incorporating new judges instead of expanding the entire administrative support apparatus. The cost of maintaining a judge is less than one-seventh the total cost of a uni-personal court. A 10% increase in judges can yield a nearly proportional increase in the number of sentences issued, while a 10% increase in court personnel has a limited effect on judicial coverage, and an even less significant effect on the number of sentences issued. (Pastor, 2003: 6)

On the other hand, the creation of new courts helps keep litigation costs down by increasing access. It also fosters a new demand for justice. In the end, the new courts are quickly saturated to the same degree as the courts that they were built to relieve. This may appear to be a positive effect in terms of access to justice, but it can also be an inefficient solution, as it may bring issues to court that could be resolved less expensively through other means (Hammergren, 1999). Between 1982 and 1992, Chile's increased the number of civil courts in Santiago fourfold, but the average length of time for proceedings also increased.

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[13] Depending on the country, between 80% and 90% of judicial budget is allocated to salaries.

[14] Colombia's Interior Ministry explained the reasoning for the constitutional reforms under discussion at this time in his country. "*Desde 1991, el sector justicia ha tenido dos planes sectoriales, los cuales han presentado fallas de consistencia entre el diagnóstico, que parte del atraso, la congestión y la impunidad; y las soluciones que se propone para su solución, que tienen como primera herramienta la inversión en infraestructura física y pretenden que la solución a los problemas del sector sea a través de la creación de despachos judiciales*." (Londoño, 2003)

A trial that previously lasted an average of 805.59 days now takes 1009 days, and in spite of the 34% increase in court coverage that was observed between 1980 and 1987, the caseload of each court did not decline. (Cerda, 1992)

In practice, higher judicial budgets do not increase productivity unless they are accompanied by significant changes in judicial work. In the case of Chile, the judicial budget increased 289% between 1977 and 1995, but cases that concluded with a sentence or mutual agreement[15] during the same period of time only increased by 152%. Nor was an improvement observed in terms of cost, as each sentence or agreement that cost $80,846 pesos of public funds in 1977, cost $124,872 pesos in 1995 (Vargas, 1999a: 21).[16]

Obviously, we do not mean to suggest that there is no need to build new courts or that there is no justification for the investments that have been made in many countries. The point is that, in light of the costs, the measures that have been taken have had a very limited effect on the endemic problem of judicial congestion.[17] These measures produce results that highlight the shortcomings of a policy that only proposes to do "more of the same."

The impact of strategies that focus on specific problems tends to decline over time. This is the case with measures such as assigning judges exclusively to the task of finishing cases that languish for years. Costa Rica initially had very good results when it implemented this policy, but the level of productivity eventually dropped (each new judge issues fewer sentences than the previous one), and other drawbacks emerged, such as a disconnection between judges and evidence.

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[15] One example of a response to conflict on the part of the judicial system are cases that are concluded through this mechanism. During the period analyzed here, the total number of cases that were concluded increased by 228%.

[16] These figures are expressed in currency of equal purchasing power. Pastor notes that Spain's judicial budget increased 61% between 1990 and 2000, while the number of sentences with objections increased 50% (Pastor, 2003: 6).

[17] Hammergren observes that: "*Añadir más jueces, fiscales o policías, sin aumentar su producción individual es una solución a corto plazo y, en última instancia, muy poco satisfactoria. Este sistema ha introducido, por lo demás, otros problemas –la proliferación de oficinas, organizaciones y funcionarios ha propiciado la duplicación de funciones, facultades y misiones superpuestas, y menos coordinación entre ellos*." (Hammergren, 1999: 24)

2. Adjusting Procedures

Another common response to judicial congestion and delay has been to introduce procedural modifications that eliminate unnecessary proceedings or reduce the duration of various phases of the legal process. A review of our countries' histories would invariably reveal a great number of changes in judicial procedures. Some modifications were inspired by technical zeal, but most were motivated by a desire to make judicial work more effective. However, the practical impact of these changes has been null or at least negligible. As the following chart suggests, judicial proceedings still take a very long time:

Chart N° 1
Duration of Civil Proceedings

Country	Average Duration	Average Duration
Argentina	> 2 years	
Bolivia		2 to 4 years – 6 months[18]
Chile	2 years and 9 months	1 year 5 months
Colombia	2 years 9 months	1 year and 10 months
Costa Rica	10 months 1 week	
Ecuador		1 year
Paraguay	> 2 years	
Peru	4 years 6 months	
Uruguay	8 months	

Sources: Column II: Hall and others, 2003: 4.[19] Column III: JSCA, 2003.

None of the justice systems in the countries observed even come close to finishing cases in the time period established by law.[20] Judicial time periods are often established with no concern for the system's true capacity to respond and without establishing incentives to at least consider these respecting the time periods as a goal.

[18] According to the Attorney General's Office, the duration is 2 to 4 years. The Judiciary Council indicates six months.

[19] This information was obtained from "Justice Delayed, Judicial Reform in Latin America," Eduardo Jarquin and Fernando Carrillo Editores, InterAmerican Development Bank, 1998, page 9. For Argentina, Costa Rica, Paraguay, Peru and Uruguay, IDB Legal Department, July 1994. Juan Enrique Vargas Viancos, "*Diagnostico del sistema judicial chileno*," 1995. Colombia Ministry of Justice and Law, "*Justicia Para la Gente*," 1995.

[20] According to data provided by Alfredo Fuentes, in Colombia, for example, civil trials that by law should last a maximum of 185 days, in reality last an average 1448 days.

Frequently, both the establishment and reduction of time periods originate from a certain blind belief that the law can construct reality on its own, an approach common throughout the region that is known as "regulatory fetishism." As a result, the judiciary is the most over-regulated area of governmental activity (even completely administrative aspects are rigidly set by law). In all likelihood, no other governmental area is less compliant with regulatory statutes. One of the most striking features of judicial work for an objective observer is its constant illegality.[21]

But the fact that this is a common occurrence does not imply that judges and lawyers are bad people who do not abide by the law; it simply indicates that conditions and incentives are not conducive or do not facilitate adherence to regulatory time periods. Judges generally receive no recognition or benefit for working faster. If fact, it is just the opposite. Errors, which are subject to harsh sanctions, are more likely to result when work is done faster. The judicial system tends to value reflection over immediacy, although the former does not necessarily ensure a higher quality product. The judge who makes a mistake for acting too rapidly will be sanctioned, while judges who work slowly will only receive...more work.

We must bear in mind that this occurs in systems in which judges have no control over their caseload.[22] The judge's caseload depends on the parties to the case, and particularly the lawyers hired to represent them, who may have incentives for prolonging the trial. There are three main factors that have a significant impact on the length of proceedings. The first is the lack of court fees in most countries or the relatively insignificant value attributed to them in other countries. The second is that legal fees are set in relation to the duration of trials, not the results achieved.[23] The third factor is the system of judicial costs. Some countries still apply the English rule by which the loser pays all of the expenses

[21] In Chile, one mechanism that judges use to pressure for their professional demands has been to carry out their functions "*con estricto apego a la ley*," to bring the system to the brink of chaos. For example, they have been known to personally conduct all of the proceedings in which judge's presence is required by law.

[22] In general judges possess certain tools that would allow them to control the duration of legal procedures, such as sanctioning litigants who cause delays. There are, however, no clear incentives to put them to use.

[23] The *cuota litis* system not only shortens trials, but also reduces frivolous or opportunistic litigation, as the lawyer's intervention is directly associated with the probability for success, not with the volume of work. Lawyers act as their clients' guarantors (Vargas, Correa and Peña, 2001: 167 and 168).

that are incurred by both parties to the case. For this reason, costs are commonly calculated quite lower than the actual values.[24]

There are several reasons why procedural reforms have failed to bring about noticeable reductions in judicial delay and congestion. On the one hand, most reform processes do not foster a radical break in the rationale behind the traditional written proceedings that are used in our countries, which is a major obstacle to achieving more efficient judicial systems. It takes time to write a brief, receive it, deliver it, and respond to it, and all of this must occur so that the judge can finally make a decision. A great deal of time is spent on matters that could be resolved quickly through a hearing. But that is not the only reason for the delays observed. One of the results of systems in which one has to write everything is a culture that is reluctant to make decisions. If you are given a time period, you take that full period, up to the last day. If you can postpone a decision, you do so. If you can delegate it, then you let someone else decide. Delegating tasks alters the rationale behind how the courts operate. As a result, judges no longer have control over case files; court employees do. These functionaries act as sieves that sift information before it reaches the judge, producing a disconnection between elements of proof in a trial and the decision a judge makes. The person who receives the evidence is not the same person who must rule on the basis of that evidence. In addition, a component related to time eliminates the major incentive for making decisions rapidly: public pressure that prevents the case from being overlooked, and the practice of joining facts of a case to other cases.

Many attempts have been made to conduct certain procedures orally, rather than on paper. Labor law has been notable in this regard, as well as simple civil cases.[25] However, such initiatives have had little effect, among other reasons, because they always leave broad areas for introducing evidence in writing and generally do not concentrate the presentation of the case, proof from the respective parties and the judicial ruling in the same hearing. The oral stages of trials tend to be nothing more than theatrical exercise. Generally they are public readings of notes or facts in the case file, but are not true exercises in litigation. Oral proceedings must recognize the basic rule that the foremost element of proof is testimony, and all other evidence is introduced in conjunction with testimony. Litigation has never been understood as a complex judicial work

[24] According to the American rule, each party must pay its own expenses. A variation on the British rule also exists, by which the losing party pays unless he had a plausible motive for litigating (Vargas, Correa and Peña, 2001: 168 and 169).

[25] The region's most extensive and significant initiative for introducing oral proceedings in civil trials is the General Trial Code enacted in Uruguay in 1998.

system that requires a set of rules and a great deal of preparation for persons who work within the judiciary.

More substantial progress has been made through the criminal procedural reform that led most Latin American countries to replace inquisitorial procedures with adversarial court systems.[26] These changes have had a significant impact on the development of procedures. Criminal procedural reform has brought oral trials in court hearings, with evidence presented (sometimes only) in these hearings. In many cases, a verdict is issued as soon as the hearing ends.[27] Nevertheless, the reform's effect on proceedings as a whole has been limited, mainly because judicial intervention during the investigative phase continues to be written in most countries, and few changes have been made in terms of the procedures that must be followed.[28] The quantitative component is significant as only a small percentage of criminal cases ever reach the trial phase.[29] During the earlier stages, important decisions are made related to the defendant's freedom, on whether to continue the investigation, on suspension of proceedings for lack of evidence, among others. All such decisions are made on the basis of written procedures, with the judge's duties delegated to court employees with other vices of the old system still intact. This explains to a great extent the failure of new procedures to expedite cases as they were expected to do. The following chart illustrates the length of time from the moment the crime is committed until the trial is conducted, with a sample derived from the total number of trials conducted, generally in the course of a month.

[26] The following information is from the Latin American Criminal Procedural Reform Follow-up Study conducted by the JSCA since 2002 and that to date has covered the following countries or regions: Chile, Costa Rica, and the Argentine province of Cordoba, Ecuador, El Salvador, Guatemala, Paraguay and Venezuela. See www.cejamericas.org for the results of the study.

[27] Another great benefit derived from efficiency is that it suppresses the traditional appeals process, understood as a review of the facts and law by a higher court. The suppression of appeals can and should occur thanks to oral trials. It can occur, as a panel of judges rules on cases, offering sufficient security unlike rulings determined by individual judges. And it should occur because it is impossible to replicate the trial exactly the same way on first appeal. The appeal is replaced by other recourses in which debate is limited to issues of law (motion to vacate or appeal for annulment), thus respecting the right to first appeal. To a great extent, the present delay in the courts is due to the higher court's complete review of all aspects of the cases. In some cases a complete review is mandatory even if no one is in disagreement. In others, the review takes places several times during proceedings. Reviews do not augment judicial security, due to the limited creation of jurisprudence by our courts.

[28] Of the countries studied, the only significant processes of conversion to oral proceedings exist in Chile and El Salvador.

[29] Of the total cases concluded under the new Chilean system, only 10.2% ended in acquittal or a verdict of guilty. (Baytelman and Duce, 2003: 235)

CHART N° 2
Duration of Criminal Cases

	Average number of days
•Cordoba (only criminal court)	500
•Costa Rica[30]	900
•Chile	196
Ecuador	268
Guatemala	732
Paraguay	368
Venezuela	566

Source: Riego and Vargas, 2003

Although we lack comparable information for El Salvador,[31] the duration of criminal cases is substantially lower in Chile, the only country in the sample in which all judicial interventions are conducted through oral hearings, than that of the other countries.

Regardless of the specific content of the procedural reforms, a problem all countries shared was a complete lack of concern for implementation of these reforms.[32] Reforms failed to take into account organizational changes, personnel requirements, and the new infrastructure needed in order for the system to work properly. Above all they lacked an implementation strategy that could facilitate monitoring the process to make the needed adjustments. In the case of substantial changes such as criminal procedural reform, the lack of concern for the cultural change associated with these reforms cause is significant, given the fact that these are the most difficult to bring about. Once again we have the

[30] The average includes a considerable number of trials that originated under the former system. The report on Costa Rica considered this a problem that effects the average duration of cases.

[31] Information on El Salvador confirms that an estimated 69% of cases have been in progress between 6 and 18 months, and 24% between 15 and 18 months.

[32] Again, Chile is an exception in this regard, although this does not mean the implementation of these changes was free of problems. For more on this subject, see Baytelman and Duce, 2003.

phenomenon of the regulatory fetishism we mentioned previously: the belief that just passing a law can change reality. In truth, laws alone do not change anything. Laws are but another instrument that should comprise one facet of a complex strategy for change, with, for example, management and training[33] also vital to success.

In fact, management deficiency is at the root of many problems and impedes proper operation of the new oral hearing procedures. The following chart illustrates the great number of hearings that fail throughout the region.

CHART N° 3
Trials Scheduled and Trials Conducted

	Trials scheduled	Trials conducted	%
•Cordoba	117	97	83%
•Costa Rica	179	54	30%
• Chile[34]	65	64	98%
•Ecuador	222	59	27%
•El Salvador	170	69	41%
•Guatemala	50	38	76%
•Paraguay	17	13	76%
•Venezuela[35]	(867)	(144)	(17%)

Source: Riego and Vargas, 2003

The high rate of failures arises from the lack of an adequate judicial organization that would be able to handle the management challenges implied by an oral court system. As we previously described, procedural changes in most countries were not accompanied by management changes. A management system

[33] Throughout the region training is commonly viewed as an asset in itself, disassociated from justice sector transformation processes. Judicial School training programs have been designed isolated from the policies they should support. (Marensi, 2001)

[34] Figures correspond to the Antofagasta Oral Trial Court. Statistics from trial observations carried out for the First Report on Chile indicate that of total 35 trials scheduled, 28 or 80%, were actually held.

[35] Information on Venezuela consists of the total trials scheduled in the Caracas Criminal Circuit Court.

set up for the needs of written procedure (and that hardly met those needs) was supposed to be used to satisfy the needs of oral hearing procedures, when each system has a very different outcome.

In the written system judicial organization centers on the task of "completing" the court file and conducting tasks that the bureaucracy deems necessary for a given legal proceeding. Such tasks include furnishing briefs, issuing orders, and issuing court rulings. These routine tasks are usually assigned to employees who are not judges and who more on form than on the results. In general, more emphasis is placed on whether or not notifications conform to legal procedure than whether or not the person to which they are addressed is well informed.

In oral hearing procedures, however, the result takes precedence. The important thing is ensuring that the parties attend the hearing, not making sure that notifications are issued in conformance with rules. Managing these systems does not require people with legal knowledge and skills (like the clerks who act like small judges in written procedure systems), but individuals who can act like a producer and coordinate and organize all elements so that the event (the hearing) can take place. This work is much more informal, flexible and energetic, and the people who work in this capacity must be able to establish personal contact with the parties, secure commitments from them to ensure appearance in hearings, etc.

The disconnection between oral procedure as method and administrative support has implications beyond the failure of hearings. Frequently, it also causes a deterioration of activities in the courts' relation to the public. To cite an example, several of the countries in the study lack a public trial schedule, which makes it difficult for people who are not familiar with the system to figure out when and where a hearing will be conducted. Parties interested in finding out about trial schedules must go to the employee who handles the case in question and request the specific information because each court handles cases through written court records. Another problem that was observed in several countries is that the courts do not respect the schedules. In some places a party's failure to appear in court is confirmed only when hearing is about to begin, which leads to a true informal production effort to locate the person. Telephone calls are made, police are sent to arrest parties who failed to respond to summonses and other actions are taken. The practice is quite widespread in the region, and can lead to a long delay without formal notifications. This means that, in practice, the trial is not public, as it is difficult to attend.

Another common practice that is also the result of the failure to bring administration in step with reforms is the issuing of subpoenas for several people at the same time in the hope that at least one hearing can be held. The problem is that this can aggravate the lack of coordination. A greater demand is placed on defenders, prosecutors, and other individuals within the system, who must decide which hearing to attend, knowing full well that many of the hearings listed will not be held.

In conclusion, these changes have not had a substantial impact in reducing congestion and judicial delay whether because procedural reforms do not substantively alter characteristics of inefficient procedures or because they have not been accompanied by judicial management reform.

3. Incorporating Management Techniques

In recent years,[36] management has emerged as a solution to problems that plague the judiciary. This may be due in part to the fact that the limitations described above arise from traditional solutions to congestion and judicial delay. It may also reflect the experience reaped from other government reforms that point to management as vital in solving these problems.

The major drive behind management reforms has been multilateral loan banks that began to develop loan transactions with the judicial branches of various countries in the region in the mid-90s.

The banks focused on areas that were traditionally associated with a country's potential for development and for offering citizens greater social welfare. Decisions were made based on elements such as infrastructure, the development of production capacity, etc. Not until the late 1980s did banks begin to exercise strong influence in state change, in the context of structural reforms that followed the external debt crisis. These reforms sought to make states more efficient and to ease the heavy dose of regulations and interventions that effected finance. However, many initiatives came up against outdated judicial systems that could seriously obstruct the reforms' success. [37] This covert motivation was

[36] This has been recent in Latin America but been true for quite some time in the United States. See The Trial in the United States since 1940 in Vanderbilt, 1959

[37] InterAmerican Development Bank President Enrique Iglesias, at the inauguration of the seminar that launched the IDB's involvement in this area, stated: "*La Modernización o reforma del Estado incluye, pues, como un componente fundamental, la actualización de su ordenamiento jurídico. La viabilidad, fluidez y estabilidad de las transacciones*

cloaked in a theoretical base derived from what was known as the New Institutional Economy that was advanced by Douglas North. According to this concept, the market does not operate in a vacuum and a number of institutions are needed to produce these transactions and to efficiently assign resources. The institutions may be formal, as is the case with laws and agencies or informal such as a society's entire cultural spectrum (North, 1993). Institutions are the true "rules of the game" that are at the heart of financial operations. These institutions determine operational costs. In other words, they determine if it will be easy or difficult to compile data on potential contracting parties, reach an agreement with them, draft contracts and, most importantly, supervise implementation and, eventually, enforce compliance. The more complex the transactions are, the more impersonal and lasting they will be, and the more important the institutional role. Among these institutions, the judicial branch is notable for its role as independent third party, endowed with pre-established procedural rules and the ability to enforce contractual compliance (and respect for law). The parties that use the judicial branch in this way do not have to negotiate a set of rules, determine how the transaction will be conducted, or worry about the scope of rulings, all of which are on which it may be difficult to reach an agreement.

Finally, if we bring together the experience obtained by banks and governments in transferring private sector concepts of modern management to the public sector, we can understand the context in which banks have burst onto the sector and the content of that relationship.

The first premise with which banking institutions began to operate was that the enactment of new laws was not indispensable for the judiciary to operate well. Moreover, the main problem was said to be not bad laws but that laws were not enforced. Every country has regulations that allow judges stricter control of procedure and action of parties, but these are not employed. Every country also

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económicas, el proceso de inversión, la organización de las firmas, la solución de los problemas laborales, la regulación de muchas situaciones sociales o familiares que agravan la pobreza, y la regulación de los conflictos que puedan surgir entre los distintos agentes involucrados en estos procesos, se vería seriamente perjudicada por la vigencia de una institucionalidad y de una normativa jurídicas anticuadas. Su modernización es un ingrediente esencial del desarrollo." (Iglesias, 1993: 9). During that same seminar, World Bank Vice President and Legal Counsel Ibrahim Shihata stated that: "*El objetivo de mejorar la eficiencia del sistema de administración de justicia también puede lograrse mediante la introducción o la mejora de las funciones gerenciales y administrativas del personal no judicial que trabaja dentro del sistema judicial, dándole cada vez más responsabilidad en el "manejo de casos" y brindándoles capacitación en tecnologías de oficina que sirvan para ahorrar tiempo*." (Shihata, 1993: 298)

has many possibilities for oral procedure, which are never used. In every country trials could be much shorter. Banks most definitely pose a radical change in focus. This could be summarized as a disregard for law authorities' perspective of judicial problems and preference for a management expert perspective.[38]

This does not mean that banks' cooperation programs disregard the issue of legal reform. They do consider legal reform, but always envision it as a support element rather than as a primary strategy. Furthermore, banks' mandates prohibit them from meddling in the politics of beneficiary states, and it is difficult to assert that the most substantial legal reforms do not imply doing so, especially when they involve redistributing authority within governmental bodies.[39] Lastly, the process of passing laws is slow and risky, and making a cooperation agreement entirely subject to legislative approval would encumber planning and implementation.[40]

A review of Latin American programs undertaken with resources from the Inter American Development Bank (IDB) reveals the preponderance of management as a program component. Of the 59 cooperative programs approved between 1993 and 2001, 56 were intended to strengthen judicial management, infrastructure and computer services. In terms of resources, US$243,599,446 was channeled to these programs of a total US$326,637,374. In other words, more than two-thirds of IDB funding went to this type of program (Biebesheimer and Payne, 2001: 17).[41]

[38] The *Fores sobre Justicia y Desarrollo Económico* presents a good synthesis of this view: "*Ha existido un error de enfoque, por desconocimiento de la naturaleza de los problemas, que evidenciaba el PJ (Poder Judicial) atribuyendo las mismas deficiencias a las leyes procesales, cuando en realidad tenían su origen en falencias en la formación de los magistrados, en problemas estructurales reflejados en la utilización de sistemas ineficientes, y en graves errores en la administración de los recursos de la justicia*." (FORES, 1999: 26)

[39] This limiting factor prevented the World Bank from intervening in criminal justice reform processes, and restricted its activities to areas of justice that were closely related to business. The IDB only recently abandoned this policy.

[40] Bank programs are frequently criticized as overly rigid. Program implementation is planned as if building a bridge, when these reforms are much more uncertain and the most successful are those that can adapt to benefit from opportunities unforeseen at the outset.

[41] The funds are also awarded to programs involving institutional policy development (U$ 27,552,000, or 7.73%), training (U$44,837,995 or 12.58%) and civil society organizations to increase capability to provide legal services (U$ 10,647,933 or 2.99%).

Unfortunately, the impact that these programs and independent reforms have had on management has not been assessed.[42] The lack of information and systematic analysis is a chronic defect that has not been corrected in the framework of such programs. We can, however, state that the perception is that these programs have had less impact than expected and, as we indicated previously, judicial delay and public trust in justice have not improved in recent years, even though nearly all countries have developed a program designed to do so. The limited results can be attributed in part to the same factors described earlier and to the fact that the programs did not substantially modify judicial culture or incentives. The concern was only to influence the supply of the service but not the demand.

There are other specific reasons for critical opinions of these programs. The first originates from having made the judiciary hierarchy sole spokesperson in negotiations. This practice is based on the idea that management improvements will be viable and successful only if the individuals who the head the institution are committed to change. But there are two problems with this approach. First, judicial branch authority is shared, at least theoretically, among all judges, each of whom is vested with governmental authority. Unlike other areas of government that delegate authority in a top-down fashion, in the judicial branch authority is distributed among judges. A judge's authority, we repeat, does not originate from a delegation of power from high court members, but comes from popular sovereignty as expressed through the judge selection system. Supreme Court Justices are not the "bosses" of the rest of the judges. It is fundamental that this concept be understood in order to safeguard internal independence of judges. However, the banks' programs ignored this characteristic of the judiciary. The manner negotiations were conducted and the specific measures implemented made the judiciaries more vertical, when what was needed in the region was precisely the opposite, that is, horizontal and level judicial organizations.

Furthermore, it does not seem appropriate for judiciary policy decisions to rest exclusively on judicial officials. Undoubtedly, judges have motives for undermining reform processes given that their interests do not necessarily coincide with those of the general public. Judiciary reform, particularly in management issues, certainly requires the judges' participation, but it does not seem reasonable to transform that participation into an absolute right to decide the content of those reforms. It is important to understand that judges tend to

[42] The IDB External Evaluation Office is preparing an evaluation of bank involvement in justice programs that has not yet been published.

act in such matters not so much as an institution but as a professional guild. Their situation is analogous to that of teachers or doctors who work for the public sector. They must be consulted in public policy related to education and health, but the decision cannot be left entirely to them, especially if their professional rights, working conditions and salary are at stake. The role of a politically responsible third party (condition that judges do not have) is vital as counterbalance to the inevitable and legitimate professional guild interests.[43] In that respect, the judicial branch is not comparable to the legislative or executive branches (although at times the judiciary also acts as if it were a guild) given the transitory nature of their functions and the fact that they are subject to public scrutiny.

These issues often touch upon judicial independence. Although other branches of government are known to influence judicial work through public judicial policy in some countries, the answer is not to turn policy entirely over to the judicial corporations, as this would exclude important justice issues from public debate and democratic decision-making bodies. We would also have to accept, as we have said, decisions that are likely to be inefficient. The solution to the mediocre quality of our countries' public policy cannot be to eliminate policy, but rather, to try to improve it.

The fact that judicial officials alone have been allowed to decide on programs goes along way toward explaining that most resources are assigned to infrastructure (20.2% of IDB programs) or to computerization (18.66% of the same programs). These factors are more related to judges' working conditions than to interests of the accused.[44]

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[43] Much of the region has fallen in the "consensus trap" in regards to judicial reform. The idea that judicial reform should be a genuine state policy, that is, they elicit a great deal of support and are not viewed as a reform of one sector over another, has been misinterpreted as the need for unanimity behind these reforms. In the development of public policy there are winners and losers. The situation improves for some persons (who should be the majority) while the professional, authority, or economic interests of others are impaired. This certainly occurs with justice sector reforms. In all likelihood, community interests are different from those of lawyers and judges, to cite one example. A reform that fails to recognize this and seeks consensus surely will either be innocuous or will cause social losses.

[44] Pastor notes: "*Muchos se sorprenden al ver que la adición de medios presupuestarios no se traduce en menos dilación. No hay nada de sorprendente en ello. En primer lugar, la adición de medios presupuestarios puede destinarse a cometidos que no aumenten la oferta, tales como las inversiones en infraestructuras edilicias – actividad que suele absorber ingentes sumas, a la que son tan proclives algunos poderes judiciales - o retribuciones que no están vinculadas a la productividad. Destinar medios a esos*

The second reason is that the goals of management changes cannot be achieved without clearly defining institutional roles and functions, which does not occur in the courts. One example suffices. Presently, a significant amount of jurisdictional work is conducted by subordinate employees to whom functions are delegated, which is consubstantial to written proceedings. This practice is widespread despite the fact that it is completely contrary to law and the spirit that should inspire a good justice system. New management systems that are limited to introducing technological changes and fail to address this issue only augment the irrationality that characterizes judicial work. Computer systems require more time and effort, as well as resources to develop and train staff to do exactly what they should not be doing: issuing judicial resolutions (although it is posed as simply making "drafts for resolutions"). Such systems reinforce deficient practices, distance judges even more from elements of proof that form the basis for resolving cases, and most definitely, become one more obstacle that hinders the reforms our justice systems urgently need.

The image of Latin America's new "computerized" courts is in no way the image of modernity. Written court records have yet to be replaced by digital records, judges are still inaccessible to the parties, and the progress of cases continues to depend on subordinate court employees. As one Uruguayan Supreme Court Justice stated during a visit to one of these newly computerized courts, "… it's like putting a motor on a caravel (*un motor fuera de borda a una carabela*)."

We must also remember that these are expensive reforms and that the bank programs are loans, which means that the governments must eventually return the funds. This leads to a serious questioning of the efficiency allegedly introduced in judicial systems, especially considering that most are pilot programs[45] of limited use in the system. Given the limitations of state funds, pilot programs are unlikely to expand throughout the judiciary.

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cometidos mejora las condiciones de quienes trabajan en la justicia o sus instalaciones, pero no siempre se traducen en aumentos de producción." (Pastor, 2003: 20)

[45] Simple pilot programs must be distinguished from the gradual implementation of a reform, as has occurred with Chilean criminal procedural reform and has been planned for other countries. In the Dominican Republic the country is committed to a scheduled calendar for extending the reform, unlike pilot programs in which expansion hinges on the program's success.

V. INTEGRATION OF SUBSTANTIVE AND MANAGEMENT REFORMS

Many of the endeavors that integrate substantive and management reforms have already been carried out in other areas of the public sector. Management reforms are no longer envisioned as a technocratic arsenal that can be applied to any situation. Modern management integrates strategic planning as a central component that is considered prior to any definition or operative mechanism. Redefining strategies probably falls short of Latin American justice's need for sweeping reform processes. Some observers believe the serious distortions in the judiciary functions and roles described above call for fundamental changes. The point we wish to stress now is that management is not a neutral discipline. In order to decide how to manage an institution we must first determine what will be managed and for what purpose. The situation is comparable to that of a company that manufactures a product. It makes no sense to enhance the production line, marketing or distribution system if the product is not attractive to consumers because it will be a bad business regardless of whether or not the product is made using the most efficient method and at the lowest cost.

This is nothing new, and is common knowledge in governmental administration. In Latin America the introduction of costly computer systems has frequently had negative effects due to the absence of a thorough restructuring of internal processes.[46]

Therefore, an integral judicial reform program should begin by: (1) defining the judiciary's own space, (2) determining the manner judges and support staff function within that space, and (3) defining the specific administrative organizational models needed to carry out those functions and roles. This procedure should be used in the following situations: (a) adopting institutional strategic decisions, (b) establishing overall judicial administrative or managerial policies and (c) managing the judicial office.

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[46] In Chile, it was said that "*sólo un 15% de los tribunales cuenta con apoyo computacional. Esos tribunales ocupan el 31% del total del personal del Poder Judicial y conocen tan sólo el 25% de las causas ingresadas al sistema, de acuerdo a cifras del año 1992. En otras palabras, los tribunales con apoyo computacional ocupan, en promedio, más personal que aquellos que no lo tienen y conocen menos causas por empleado, cuando la lógica indicaría que debiera suceder a la inversa*." (Vargas and Correa, 1995: 102)

Before analyzing the different levels of intervention, we must point out this implies strategic consideration. Of course, it is not possible to undertake all facets of judicial management reform at the same time and with the same intensity. The magnitude of the reform and the area in which it is implemented depend on a set of factors that may vary depending on the situation, including institutional aptitude, leadership, political disposition, and access to resources. These factors may (and should) lead decision-makers to prioritize or to select one area as initial focus point. Regardless of the strategy that is chosen, initiatives must have a clear objective, even though this objective may need changes that cannot be undertaken yet. Initiatives must be coherently oriented to achieve a substantially more adequate justice system.[47]

The other strategic consideration that must be taken into account is that definitions of judicial space and judges' roles have a tremendous effect on the justice system as a whole, and the repercussions of those decisions are frequently much greater than in similar processes involving other judicial institutions such as prosecutor's or public defender's offices.[48] For this reason judicial reform is generally restricted to judicial branch reform. In any case, despite the extensive impacts of change, court reforms are different from reforms involving other

[47] The region has often fallen into the "trampa de la integralidad," most visible in the development of Integral Judicial Reform Plans that include long lists of all possible areas, components or initiatives in the judicial field. These are virtual "shopping lists" in which everyone adds their own interests are completely useless in guiding reform processes that demand a choice, at each step of the process, between different reform alternatives, choosing the most viable, adequate, and with the greatest capability for triggering other transformation processes. The integrality of reform must not be understood as the need to introduce all changes at the same time, which no one is able to handle. Integrality means that within a strategic concept, different actions will mesh in a rational way to achieve the objective sought.

[48] Strictly administrative areas such as how courts hear cases have a significant influence on the way in which public prosecutor's offices are organized and function. These organizations are often a clear reflection of judicial organization, even though their functions are different. We have seen how changes in court operation are much more effective than trying to change the prosecutor offices, in severing the new adversarial criminal systems from traditional organizational systems. This is because each prosecutor acts as an autonomous owner of a portfolio of cases and is endowed with personnel assigned exclusively to support him. Thus, when courts begin to consider cases in consecutive hearings according to the nature of the decision, practical reasons oblige the prosecutors to respond to this situation by creating work teams, in which each type of hearing can be divided to different team members. Once these work teams are formed, it is much easier to establish expertise and supervisory plans as should expect from a modern prosecutor's office.

institutions, which have a specific purpose and content that are not the subject of this article.

1. Defining the judiciary's jurisdiction and controlling caseload

As we indicated earlier, any policy that purports to improve the efficiency of judicial work must concern itself not only with the manner in which the service is provided but also with the ability to control the demand for that service. This requires recognizing that the judicial system is suitable for some purposes but not for others and that there are costs associated with providing justice, as there are with any other service. It is possible that one of the most serious weaknesses in the judicial reform programs undertaken in recent years, particularly in reforms that focus exclusively on management issues, has been that they were only concerned with providing a product and overlooked issues associated with the demand for that product.

The most fundamental definition that has to be put into practice is that the purpose of a justice system is to resolve conflicts. Acknowledging this characteristic, which may seem obvious if not prosaic, would tremendously relieve caseload, and make the courts' caseload manageable.[49] At present courts are inundated with administrative concerns that do not need to be handled by a judge, or matters in which the conflict between parties is only a possibility, as in debt collection.[50] It would be much more efficient to use private proceedings or governmental administrative bodies, if the preference is for the public arena, for these kinds of issues. The judicial organization, the type of employees that work in it, and procedures used are particularly complex and expensive because of the nature of the product, which is settling conflicts that arise between parties in keeping with due process and providing information to the whole community on the specific meaning of legal regulations that are general and abstract by definition. It is absurd to use this entire organizational apparatus for written transactions.

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[49] Pastor notes that one cause of judicial inefficiency: "*... tiene que ver con el uso indebido de los órganos judiciales; esto es, se utilizan para lo que no deben, y, en consecuencia, ocupados en ello no desempeñan el papel que debieran como órganos de adjudicación de aquellos conflictos para los que la vía judicial es indispensable (ineficiencia de demanda).*" (Pastor, 2003: 5)

[50] Among Latin American countries, between 70 and 80% of civil cases are related to debt payments. No conflict is produced unless the debtor has an objection. (See citiation no. 10). In Costa Rica, nearly 40% of civil litigation in traffic issues involves administrative matters, namely traffic fines that do not pertain to the courts. (Pastor, 2003: 6)

In cases that involve true conflicts, alternative dispute resolution mechanisms such as mediation or arbitration may be less costly and more appropriate. Policies that foster the employment of such mechanisms (such as publicity or governmental subsidies) can be implemented, and they may even be used as mandatory mechanisms, which would require the creation of mediation or conciliation bodies.[51] Another option is defining which issues should be subjected to compulsory arbitration and never enter the courts.[52] (Vargas, Correa and Peña, 2001)

The other way to regulate the workload and avoid the regressive practice of charging for judicial services is the introduction of so-called court fees. Justice behaves like a public service in some cases and as a private service in others, creating, at most, positive results for the community, although that rarely occurs in Latin America. It is common knowledge that users do not sustain public services, and it is impossible or very expensive to restrict them to a specific type of person. Such is the case, for example, of street lights or national defense, where the market is not an efficient mechanism for allocating resources. In these cases the private sector has no incentive for providing them in an efficient number, as everyone expects the other will cover the costs and benefit without charge, a situation that is called the "free rider" concept in the area of economics. Civil and business law studies clearly reveal that justice is not a public good in these areas. It is not true that incorporation of a new litigant has no costs or that rivalry for access to the justice system does not exist, or that it is not possible to exclude a new consumer. None of these features, which are characteristic of public goods, are to be found in civil and business law. On the contrary, this kind of justice is a private good and its primary beneficiaries are the litigants who no longer pay all of the costs that they incur. Providing this type of justice as if it were a public good has socially inefficient results. The value of the benefit of litigation rises because litigants do not pay all of the costs associated with this good, which then encourages people to litigate more frequently, more than is efficient from a social welfare perspective. Law suits are filed even though the costs associated with litigation are higher than the benefit derived from it. In technical terms, there is a disparity between the social benefit of litigation and the private costs associated with it, which may and should be compensated by

[51] This occurs in civil and family cases in several countries including Argentina, Uruguay, and Peru.

[52] In Chile, for example, all conflicts between members of civil or business corporations must be settled by mediation.

charging court fees.[53] In order to ensure that court fees do not prevent low-income persons from accessing justice, a parallel system of direct subsidies should be created for persons who accredit inability to pay. This would channel public funds more precisely to where the justice system needs them (Vargas, Correa and Peña, 2001).[54]

Unlike civil law, criminal law is an area in which justice can be said to behave as a fairly pure public good. The benefits of punishing a criminal or acquitting an innocent person extend to all members of the society, whether or not they are parties to the litigation. From this point of view, it would seem reasonable for public funds to support this field of justice. However, as we stated at the beginning of this document, this cannot lead us to claim that all criminal cases should enter the system and should be handled with the same thoroughness. The principle of scarcity forces us to recognize that, unfortunately, the conditions do not exist to cover all our needs. As a result, we have to set priorities and make the most important and pressing choices. This is clear in matters such as housing where we know that state funds cannot build houses for everyone or offer houses beyond a certain minimal dimensions. The same occurs in education and even health, which are quite possibly the two most important social services. We know that public funds cannot finance free education for everyone, just as all the latest medical technology -and at times, not even the profession's minimum standards- cannot be made available to everyone. This holds both for a large state as well as a small state, and for both a highly efficient state and an inefficient state. Though the threshold may vary and there may be different approaches to defining acceptable standards, a threshold does exist, and it is important to be aware of those limits.

However, in law, and criminal law in particular, this most elementary concept is always ignored and even challenged. The principle known as legality clashes head on against it, as the region's criminal procedural system has traditionally been structured on that basis. The idea implies that the state has a commitment to investigate and sanction in the same manner all crimes that are committed in the country. This cannot be but mere discourse, with not the slightest possibility for putting into practice, given the scarcity of resources we referred to previously. The unreal quality of this discourse is evident when we

[53] Ecuador, Peru and Uruguay are countries that allow court fees. In Argentina, a 3% charge for all lawsuits finances 15% of the federal justice budget. In Colombia this issue was included in constitutional reform currently under discussion, as the text of the constitution allowed access to justice with no charges whatsoever.

[54] Establishment of court fees should be accompanied by reforms to the system of lawyer's honoraria and payment of legal costs, so to act as disincentives for frivolous litigation.

consider the multiple escape valves that operate informally within the system, that is, without precise regulation, and, most serious, without mechanisms for public monitoring their use.

Consistent with the impossibility and inconvenience of responding judicially to all crimes, the new regional criminal justice systems explicitly recognize a series of alternative outlets for ending trials sooner. The outlets are rigorously regulated in their requirements as well as effects. More important, even the measures available to raise objections are regulated. Some expressly state that the victim's opposition suffices to compel prosecutors to proceed with the investigation. (See Duce and Riego: 2002)

Some outlets, such as a temporary dismissal, derive from insufficient information to carry out the investigation. Others can end a case because the facts of the case are inconsequential, such as the principle of opportunity in the strict sense of the word or a defendant condition as first-offender, as well as a conditional suspension or suspension pending the procedure. Reparation agreements that can also end the trial early are justified by the preeminence of certain kinds of crimes such as property cases, or by the victim's interest as opposed to the state's interest to punish, when the defendant adequately satisfies that interest. Finally, it is also possible that the trial may end with a sentence that is not issued through the normal oral trial system by a panel of judges. Such abbreviated proceedings function with prior agreement from the defendant and recognition by the defendant of the validity of the facts of the accusation.

In order to obtain the greatest possible benefit from alternative outlets, these mechanisms should be adopted at the earliest possible stage of the trial in order to avoid unnecessary costs. This surmounts a problem common to the traditional system. In order to give the appearance that all cases were investigated, orders to investigate were automatically dispatched and employees pretended to investigate. The case would be dismissed much later on, once the discovery stage had concluded, which was the normal way for ending criminal proceedings. Acceptance of alternative outlets may also require considering another factor akin to economy: incentives designed to allow parties access to all alternative outlets. Thus, the prosecutor’s office would have an interest in temporary dismissal on the grounds of requirements and time periods to be met to satisfy the demand for his work. The victim would be predisposed to a reparation agreement if it adequately satisfied the damages caused by the crime. Finally, the defendant will want to relinquish the right to trial and go to abbreviated proceedings due to the certainty of an "award" in terms of

determination of the nature of the crime or magnitude of the conviction, rather than the risk a trial represents.

Finally, these alternative outlets not only seek to end proceedings quickly, but also attempt to respond in some way to the intimidating effects of crimes. For example, in cases of suspended proceedings, a series of conditions are imposed on the defendant to encourage social reinsertion. The defendant agrees that if he or she commits a second offense, the trial will include both the new crime and the one involving the suspended proceedings. The same occurs with reparation agreements and abbreviated proceedings. These kinds of measures are not feasible in the case of a temporary file and with the principle of opportunity, situations that often do not even have a defendant. But even in these cases, the new system looks to ensure that the victim is apprised of the outcome of the complaint which rarely, if ever, occurs at present. Furthermore, the information compiled, however scant it may be, in conjunction with information from similar cases, can aid the job of preventing crime and anti-criminal intelligence work.

2. The function of judges and officials. Performance, incentives, and human resource management.

If the main objective is to achieve judicial efficiency, there is a fundamental need to deal with judicial procedures, which are the main factor in determining the roles of judges and their support staff. Without a doubt procedures for oral hearings have a clear advantage over the written variety,[55] as responsibilities are clearly specified: judges deal with jurisdictional tasks and other officials handle administrative support. The combination of jurisdictional and administrative tasks that are presently carried out by so-called "court clerks or judicial notaries" is one of the most significant obstacles to the legitimate administration of judicial units. This combination of functions hinders the professional development of management (as it should be the judge who instructs officials to carry out tasks that in principle are the judge's own responsibility), complicating supervision by immediate superiors (due to the direct relationship created between officials and judges), and the work specialization of officials (it is rare, for example, that people can be found in courts carrying out purely secretarial functions, being probably the only organization where this situation occurs).[56] This combination

[55] Here we are not referring to the genuine advantages of oral hearings, which are the correct way to express the demands of the due process of law.

[56] In fact, one of the clearest effects of the adoption of oral procedures in the court personnel structure is the change in the relationship between judges and support officials. In the case of Chile, there were 11 members of staff for each judge before reforms were introduced in the criminal justice service, a figure that has dropped to 3.9 in the new

of functions, as we know, leads to corruption by creating interests that cause major obstacles for a modern management system that allows administrative work to be both standardized and transparent.

Oral procedures create incentives, or at least the necessary conditions for decisions to be effectively made. One of the major causes of delay and judicial congestion resides in the fact that cases and formalities can carry on indefinitely, because no one feels compelled to actually make a decision. There is always some notification and a possible deadline. There is always the chance to consult a colleague or read some written material. It is very different, however, when the judge, the parties and the evidence are all present at a hearing. The dynamics of the debate that is presented greatly facilitate the process and encourage decision-making. Objections, which would be the object of a formal presentation and a whole set of procedures in the written process, can be resolved through an oral hearing in a matter of seconds, sometimes with just a simple gesture by the judge, without the need to dictate any formal resolution.

The procedures used in these hearings tend to be simpler in structure (even though more skill is required of both judges and litigants). This is a major benefit regards administration. As has already been pointed out, the complexities inherent to the written system of "processing" case files, starting from a routine set of measures and stages that have to be meticulously followed is replaced by a much simpler approach to organizing hearings. This allows the entire judicial process to become less formalized in comparison to its present state in many countries, where it is common to find roles, routines, and ceremonies that are redundant and quite often incomprehensible.

These changes are no longer just wishful thinking in the region. In the area of criminal law, substituting written inquisitory procedures for those of an oral adversarial nature constitute some of the biggest changes to take place in justice systems in recent years. Most countries in Latin America have joined this transformation process over the last decade: alongside the timid and somewhat frustrated reform program introduced into the Argentinean federal system[57] in 1991, changes have been implemented in Guatemala in 1994; Costa Rica and El Salvador in 1998; Venezuela in 1999; Chile and Paraguay in 2000; Bolivia,

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"*juzgados de garantía*" (supervisory courts in preliminary proceedings) and 2.2 in the new oral procedural courts (Vargas, 2000: 345).

[57] In spite of the relative failure of the reform process at federal level in Argentina, reforms have been both more successful and more intense in the county's provinces.

Ecuador and Nicaragua in 2001, and Honduras in 2002.[58] Civil reform has been less intense, but appears to be taking shape.[59]

There is no doubt that the definition of the type of procedure to be used is one of the most decisive factors in outlining the role of those who work in the courts. However, other sets of institutional measures can have a considerable effect on establishing how officials should exercise their duties and, more specifically, the efficiency of their performance. These include systems for selection and promotion, performance evaluation, salary, and training.

In regard to the selection and promotion process, independently of the body charged with carrying out that function –which is generally where we concentrate all our attention in the region- the best way of ensuring a high standard is to make these systems open (without restrictions on admission), transparent (eliminating all suspicion that decisions are made according to factors other than those that have been stated, and with the full participation of civil society) and competitive (the only to identify the best candidate for a given post).

Performance evaluation mechanisms are another determining factor in rewarding those who make more of an effort and achieve more and better results, thus eliminating the perverse incentives that are currently characteristic of the judicial environment. In general, there is considerable resistance to judicial evaluation, with some arguing that such a process will only incorporate quantitative factors, and will therefore not be able to encompass the quality of judicial work, which is the most important aspect. Some are also of the opinion that there is a risk of judges being assessed by their superiors. However, judicial

[58] Those countries that have still not implemented such a system are preparing to do so. The Dominican Republic already has an approved legislative code which will enter into force in 2004. Colombia has approved a similar constitutional reform for a new judicial system, to take effect as from 2005. In spite of having approved two versions of an adversarial legal code, Peru continues to postpone implementation, although a strong movement supporting reform does exist. Mexico has a preliminary draft at federal level, and various states have made progress in the same direction.

[59] As already mentioned, significant reform was introduced into Uruguay in 1988. However, this appears to have had only a relative impact, as many elements of written procedures have lately been reintroduced. The imbalance between the strength of the reform process in the criminal justice area and weaknesses in the civil sector is due to two factors. On the one hand, because of the greater social importance of criminal justice, due to the basic rights involved and because of increasing public insecurity. On the other hand, because the issue of justice system finance has not been satisfactorily resolved, taking into account that oral procedures imply considerable investment; as we have said before, it is not clear exactly what should be the role of the State in civil matters.

evaluation is perfectly feasible when working with a sufficiently comprehensive set of indicators that combine both quantitative and qualitative factors. Any distortions that might crop up in the first instance are greatly reduced when working with large figures. In any case, the supposed opposition between quality and quantity has not been substantiated by studies carried out in this area, which have shown that those bodies which are more productive also offer a higher standard of decision (Pastor, 2003: 16). Lastly, the dangers of prejudicing judicial independence can be moderated by the incorporation of judges from different levels of authority and representatives of the legal community.

Another solution is creating payment systems graded at different levels, which would offer an enticing incentive for good officials to progress and carry on working within the judicial service.[60] Such systems should also include different levels of payment per grade, so that officials can identify the progress they are making without there being the need for formal promotion. Lastly, it is useful to offer economic incentives for good conduct via some sort of bonus system.[61] Such measures can at least partly solve the problem of agency inherent to the courts, aligning the interests of the agents –which is to say the judges - with those of the main protagonists –i.e. the public-.

Finally, in relation to the administration of human resources within the court infrastructure, the existence of appropriate training programs is extremely important. Although training has been one of the principal components of judicial reform initiatives throughout the region,[62] the results have not been particularly outstanding (Marensi, 2001). With few exceptions law schools have adopted a dense institutional approach, offering courses designed more to make up for failings within university systems than to support the justice sector reform process; teachers belong to the judicial sector and have no contact with

[60] Judicial salaries, which have generally improved throughout the region over the last few years, tend to be attractive at the beginning of a career; however, as officials advance in their professional development, the lack of significant scaled increases makes such an employment option loose its competitive edge.

[61] In Chile, judicial officials have access to a management bonus that combines the evaluation of collective output –so recognizing that it is very difficult to discriminate against the contribution of each official within the context of the overall achievements of a judicial unit-, with individual factors –so as to avoid the conduct of so-called "free riders." Thus the bonus is awarded to court officials who have achieved the annual goals set by the Supreme Court, and are among the 75% of the best qualified staff in their respective wage scale (Vargas, 1999b: 191). In Spain a system of economic bonuses has also just been introduced so as to encourage judicial productivity (Dorrego, 2003).

[62] 12.58% of all IDB project funds in this area have been destined for training (Biebesheimer and Payne, 2001: 17).

mainstream academia and the new trends and ideas that it presents. There is also very little if any follow-up of reform programs. All of this should change with the establishment of much more open and modern training systems, which are closely linked to institutional policies and the demand for more professional efficiency.

3. Models and levels of management decision-making

There is a long-standing debate about who is responsible for making management and administrative decisions within justice systems. In order to understand this debate one must recognize that courts differ from other institutions in relation to the authority of those who actually supply the service. Court "production" –at least in theory- is not supplied by lowly qualified staff subject to the control of some executive or management department, but rather by highly trained professionals. Precisely for this characteristic, these institutions are described as "professional organizations." The judicial branch shares this characteristic with other similar organizations that offer a high quality public service, such as hospitals or universities.

Given the characteristics of the institutions that we have just described, it is common for the professionals who work in them (i.e., judges, doctors or academics) to have favor the technical aspects of the service that they should provide (quality of sentences, surgical operations, or educational or research activities, respectively), with much less emphasis placed on the administrative aspects involved. They do not place a great deal of attention on administrative tasks, although on many occasions it is their duty to carry out such tasks; these tasks are thus seen as an undesired burden, for which neither do they feel well prepared. As institutions expand, this situation deteriorates even further.

But in spite of all of the negativity associated with administrative functions, judges identify this area as their most effective powerbase, something that they are highly reluctant to give up; but what is more, this is also the most important ambit for the overall efficiency of the justice branch.[63] This last aspect makes this issue particularly complex and has greatly hindered significant progress in this area.

[63] It is quite conspicuous that judges are willing to relinquish part of their jurisdictional powers to administrative personnel, but are much more reluctant to give up any of their administrative faculties.

In order to properly deal with this issue and identify who should be responsible for making decisions and how such steps should be adopted, on must distinguish between the levels of the decision-making process, even when it is difficult to discern the dividing lines.

a) Strategic level or judicial government

This area includes central decisions related to the design, organization, and operation of the justice institution. In the case of courts there are certain characteristics involved such as the type of procedure to be applied, the structure of courts, appointment of judges, and the setting of a budget for the whole sector. Given that these are some of the most important decisions that need to be taken, they are traditionally left up to the higher echelons of public authority: i.e., Congress and the executive branch.

This approach is still used in the United States and Europe, although a number of European countries including France (1946), Italy (1947), and Spain (1978) have created justice councils to deal with judges' career-related issues. The goal of these reforms is to increase judicial branch's levels of external independence and, specifically, to depoliticize the judges' profession. However, in all cases the remaining public authorities continued to participate a great deal, and it is quite doubtful that the objectives were ever attained.

This has been taken even further in Latin America; along with the creation of justice councils in most countries throughout the region,[64] strategic decision-making powers have either been transferred to these bodies, or directly to the judicial branch. The most important of such powers involve budgetary decisions, via the means to establish minimum constitutionally guaranteed budgets in benefit of said branch,[65] awarding such bodies the faculty to establish courts,[66] or carry out legislative initiatives in matters of their own interest.[67]

We shall not discuss this aspect further, because we would have to go into aspects that have very little to do with this document in order to be able to judge the benefits of one or other alternative. We will only comment on the practice of

[64] Venezuela set up its Council in 1961 (although it was abolished in 1999); Colombia in 1991; Ecuador, El Salvador and Paraguay in 1992; Peru 1993; and Argentina and Mexico in 1994.
[65] These can be found in Argentina, Costa Rica, Ecuador, Honduras, and Paraguay.
[66] One example is Uruguay.
[67] This is the case in Costa Rica.

setting guaranteed judicial budgets, for this does have a very direct link with judicial efficiency. This method does not create incentives for judicial institutions to use their resources efficiently and ignores the lost opportunities that occur.[68] Minimum budgetary requirements also present the problem that instead of working as a support for the justice branch they quickly become limits that are difficult to overcome, even when the tasks and competence of the courts have increased, as recently demonstrated in Costa Rica.[69]

b) Level of administrative policies and judicial management

This second level is related to the macro-administration of the system, such as the implementation of investments; resource assignment; maintenance of information and statistical systems; provision of regular services to the courts, and the establishment of administration policies in areas such as human resources and purchasing.

There are basically two models for making such decisions: the European model, by which such decisions are made independently of the judicial branch, and, the American model, by which bodies that form part of the judicial branch deal with such matters.

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[68] Commenting on the petition recently made in this respect by the Supreme Court of Chile, an editorial in the newspaper *El Mercurio* pointed out that: "*Se propone adoptar una regla de un "dos por ciento del presupuesto fiscal" para fijar el monto del presupuesto del Poder Judicial. Esto supondría abandonar la comparación racional del valor de los servicios judiciales producidos con el valor que podría obtenerse al invertirlo en educación o salud, y con el valor de reducir los impuestos a la ciudadanía. Semejante fórmula es inaceptable por su ineficiencia, que llevaría a absurdos. Por ejemplo: si se trasladara la realización de obras públicas desde el MOP (Ministerio de Obras Públicas) hacia concesionarias privadas, caería el presupuesto público y, con ello, también los fondos que recibiría el Poder Judicial para operar los tribunales, debilitando así el Estado de Derecho; al contrario, si una eventual amenaza externa se enfrentara aumentando el gasto público en defensa, también el Poder Judicial recibiría fondos adicionales, tal vez sin necesidad prioritaria. El que tales reglas abunden en entre los países de América Latina sólo ilustra la debilidad de las instituciones en estos últimos.*" (*El Mercurio*, July 18 2003, A3)

[69] In that country, with a charge of 6% envisaged in the Constitution, the Judicial Branch not only has to finance the operation of courts, but also the Public Prosecutor's Office, the Public Defender, all the offices of judicial investigations and, most significantly, the justice police. As a result of this situation, one representative of the Costa Rican Judicial Branch has stated that fixed budgets are not "*la solución mágica a las restricciones y a la escasez de recursos*." (Navarrese, 2003: 16)

Two models can be identified in Europe. In France and Spain, for example, macro-administration of the courts is the direct responsibility of the Ministries of Justice, which are run by officials who have worked in and have been confirmed by the judicial branch. Even when such personnel are politically dependent on the Ministry of Justice, they also have close ties with judicial officials.

The other European modal is the English version, where judicial administration has been placed in the hands of the United Kingdom Court Service, which, although dependent on the Lord Chancellor's Office, is independent of the government and of judges.

In the U.S. model administrative policies have been decided at federal level since 1922 by the U.S. Judicial Conference, which is directed by the Chief Justice and made up of the president of each federal circuit, a district judge from each regional circuit, and the president of the U.S. Court for International Trade. The Judicial Conference supervises the work of the Administrative Office, which in turn has the task of implementing policies set by the Judicial Conference, providing administrative support to the courts, preparing the budget to be submitted to Congress, generating judicial statistics and carrying out studies on judicial operation.

The U.S. model has been defended as the best way of safeguarding the independence of the judicial branch by placing administrative decisions within this last instance. However, this is not a very convincing argument, mainly because administrative functions have nothing whatsoever to do with judicial independence. Judicial independence is a safeguard that benefits the parties, and that protects judges' impartiality when the time comes to make a judgment. It is not the independence of the judicial branch as an institution that matters, but that of each judge within the organization. The fact that a body that is either outside or within the judicial branch makes administrative decisions is neither here nor there in regard to judges' independence. But perhaps a clear example can best illustrate this idea. The teaching independence conferred on each university teacher, which allows him or her to conduct classes as they deem fit, is similar to judicial independence. No one interferes in the way such teachers present their material, but neither is it considered necessary for them to administer their universities, establish schedules, or make decisions about the use of the academic infrastructure. These matters are addressed by a completely autonomous central administration, without any infringement on the freedom to teach.

Such systems can of course be abused, for example, by the abandonment of functions and cases of corruption; no institutional system is immune to such acts. But as much as the external independence of judges can be compromised when these functions lie outside the judicial branch, internal independence can also be compromised from within the judicial branch.[70] There are plenty of examples, but the point is that they do not appear to be an essential part of the chosen rule regarding this issue in many cases, for there are also good examples of both alternatives that have not introduced problems of judicial independence.

In the end, the most important factor in judging the chosen arrangement is the degree of professionalism that it is able to generate in the administration of the courts (Hall et al, 2003: 7). This is the deciding factor in establishing whether the powers bestowed on certain bodies are being used properly or not and determines the level of contribution that is made to judicial efficiency by the central administration system. In regard to the U.S. Administrative Office of the Courts and the UK Court Service, the characteristic that they share is that they are in the hands of highly trained professionals who make eminently technical decisions after having exhaustively and transparently processed all available information. In both instances, the professional trial is the final determinant, regardless of the fact that in the U.S. the case has to be processed alongside the judges who make up the Judicial Conference, while in England officials have greater independence from judges.

The question we should then ask ourselves in Latin America is which of these two models would make it easier to achieve the same degree of professionalism in judicial management? This is the great dilemma that we face today.

Judicial management has long since ceased to be the responsibility of governments in this region, having either been taken directly into the respective judicial branches[71] or handed over to Judiciary Councils.[72]

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[70] As Binder put it: "*Tal como están estructuradas hoy en día las organizaciones judiciales, ellas son el mayor peligro para la independencia judicial, ya que fueron pensadas históricamente para funcionar con jueces que no fueran independientes sino engranajes de una gran maquinaria al servicio del poder centralizado*." (Binder, 2000: 154)

[71] For example, such are the cases of Chile, Costa Rica and Uruguay, which probably have the strongest Judicial Branches at institutional level on the continent. To deal with these issues in Chile there is a Judicial Branch Administrative Corporation within the Supreme Court and in Costa Rica an Upper Council of the Judicial Branch.

In neither case have there been significant improvements to the professional performance of the judiciary. The common practice in our countries is still for judges to take the most relevant administrative decisions,[73] with extremely weak technical backup, taking place in collective bodies and affecting the way jurisdictional decisions are adopted. The end result could not be more negative for the justice system. As Pastor pointed out in this respect:

> "El modelo de Cortes Supremas que desempeñan funciones jurisdiccionales y de gobierno, o de Consejos Superiores del Poder Judicial, es, sin duda, algo de lo más extraño, desde el punto de vista de las organizaciones públicas (judiciales incluidas), y difícilmente puede pensarse en algo más desafortunado. Se trata de un órgano encargado de una parte importante de la política judicial y por tanto es irrazonable, por decir poco, que a su cabeza se coloque no un responsable ejecutivo sino veinte o más responsables en muchos casos, sin una relación jerárquica sustancial –o escasa en algunos países– entre ellos. De formación jurídica, sus miembros carecen de capacidad para la dirección y gestión, para definir y ejecutar la parte de la política judicial que le corresponde. Los métodos de trabajo y decisión de estos órganos siguen las pautas y ritos (en muchos casos pintorescos) de la labor de sentenciar. Una organización sin apenas responsabilidad política ni incentivos para el mejor funcionamiento de la justicia, donde es fácil que cada uno de sus miembros campe por sus respetos o se disputen pequeñas parcelas de poder. Generalmente se trata de puestos bien retribuidos, y por eso mismo es ineficiente que personas tan caras dediquen buena parte de su tiempo a cuestiones banales. En ocasiones se trata de órganos sin continuidad ni memoria histórica, al renovarse a la vez su totalidad." (Pastor, 2003: 17)

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[72] This was the situation in Venezuela before the Council was abolished, and is the present situation in Colombia (although there is a constitutional reform initiative to restrain the section in charge of such tasks). It is also the case of Argentina (although this function is held by the president of the Council who is also president of the Supreme Court) and Bolivia (Tedeschi et al, 2003: 305).

[73] According to Martínez: "*En el caso de los Consejos integrados por funcionarios de la Rama, la especialización se pierde porque en las últimas son los magistrados los que terminan ejerciendo labores de administración, no desde sus poltronas de jueces, sino desde las sillas ergonómicas de los administradores. Los Consejos no pueden servir de trampa para vestir de toga la gerencia de la justicia*." (Martínez, 1.997: 11)

Removing these functions from the Executive has done little to improve the performance of judicial administration, and in many cases has actually created additional problems.[74] The councils that were set up with the objective of introducing commercial criteria into the justice sector "*no se han traducido en un mejoramiento de la gestión de la Rama Judicial*" (Londoño, 2003: 20).[75] This has also been due to the large number of members of these Councils with no discernable person in charge;[76] in fact, most of them are actually lawyers (judges) and have scant knowledge of administrative matters.[77] Also, these councils, which are true masterpieces of "institutional engineering", have spent much more time building their own "powerbase" and taking part in endless conflicts with other sectorial institutions, particularly the Supreme Courts, rather than improving the situation of the justice system (Vargas, 2002: 439 and following).[78]

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[74] According to Hammergren: "*Tribunales y Consejos más independientes han generado con frecuencia una escalada de conflictos con las otras ramas del poder, llevando a algunos ciudadanos y a muchos políticos a poner en duda la sabiduría de conferirles mayor autonomía*." (Hammergren, 1999: 14)

[75] The Colombian Minister of the Interior and of Justice adds: "*Es posible encontrar algunos elementos que podrían explicar, al menos en parte, esta contradicción existente entre el incremento de los recursos asignados al sector, frente al estancamiento en sus niveles de gestión. Uno de ellos es la administración colegiada de los recursos, a cargo del Consejo Superior de la Judicatura, función que se ejerce a través de los Acuerdos de Sala. En esta forma, la ejecución de los recursos implica la aplicación de todo el procedimiento inherente al ejercicio de funciones judiciales, de manera que la Sala Administrativa se ve limitada por una serie de trámites incompatibles con la eficiencia en el desarrollo de las funciones gerenciales, los cuales se convierten en obstáculos para las mismas. Además, los encargados de estas tareas tienen una formación más jurídica y académica que gerencial*." (Londoño, 2003: 20)

[76] Even when Supreme Courts and Judicial Councils have a president, the person in question acts more as a "*primus inter pares,*" or rather, with more symbolic than real power. This might be sufficient for a jurisdictional court, but it is a very inefficient way to manage an organization. As Vanderbilt pointed out back in the fifties: "To believe that the Judicial Branch can work well without an executive head is as irrational as believing that a government can act efficiently with a cabinet but without a president or ruler, or that a great company can confront its competition with a board of directors but no chief executive." (Vanderbilt, 1959: 123)

[77] According to Hammergren: "*Presupuestos más elevados y un mayor control judicial de la administración y del manejo financiero han producido en ocasiones mayores oportunidades para el uso dudoso de los recursos, mientras que la introducción de los Consejos de la Judicatura ha transferido a menudo las prácticas indeseables a las nuevas entidades*." (Hammergren, 1999: 13)

[78] According to Hammergren: "*En Colombia, un problema reciente ha sido el deseo del Consejo de utilizar los fondos del sector para construir sus propias oficinas y capacidades, con lo cual podría decirse que se duplican innecesariamente aquellas que ya existen en otro lugar*." (Hammergren, 1998: 54)

In any event, whatever solution is finally adopted, within or outside of the judicial branch, with or without judicial councils, the most important measure to be taken is to create a highly professional body that decides administrative matters on the basis of technical criteria and qualified procedures. If a representative body made up of judges and/or other officials who carry out such functions is created, its role should be similar to that of a company board of directors: it should meet only sporadically to decide general policy issues and should not interfere with the daily management of the organization.

The main challenge for administration is that it should be aligned with the general population's interests and not with those of the government's or those who work within the organization. Along with the professional development that we have repeatedly stated, there is a need for appropriate control and transparency mechanisms. This is particularly important in relation to access to information regarding the operation of the whole system, which in general in our countries either does not exist or is of questionable quality, or is completely secret. This point is true as much for statistical information as for administration and budgets.

c) Level of judicial offices

The in way management is organized at this level depends much more on the degree of court efficiency as compared to other levels. Here we face some of the most basic decisions regarding the judicial organization, work routines, how the work load is assigned and its implementation controlled, procedural follow-up systems, and attention to the general public. The opportunity and, to a great extent, quality of judicial resolutions, the results par excellence of the work of the courts, along with user satisfaction, all depend very much on the administration standard of judicial offices.

The two central issues here are, on one hand, the way in which judicial offices are organized, and on the other, how daily routine administrative decisions are made. We will start by analyzing the latter.

There is a wide range of decision-making models. In the English system, the UK Court Service is responsible for the direct administration of the courts in their daily work. In this case judges do not have any authority over the administration of their offices, as that task is completely assumed by an external

service. The judges themselves are seen as just one more resource that must be efficiently administered. Their schedules are therefore drafted and controlled by the administration. Again, judges only deal with matters of a purely jurisdictional nature: hearing cases and dictating sentences. This model has produced some very good results in the English experience, leading to a justice service that is commonly deemed to be of high quality and efficient.

In the United States the central administration system is reproduced at court level. In this model a judge is in charge of all administrative issues for each court, working through an administrative office, which is run by an administration manager under whom work all non-judicial court personnel.[79] The underlying philosophy here is that both judge and manager constitute a responsible "team" for the good progress of the court (Hall et al, 2003: 7). Under this arrangement, the manager reports to the administrative judge who is the maximum authority. However, areas of responsibility are clearly defined: the administrative judge takes charge of establishing –with the administrator's advice- the general policies of court administration and the relationship with other court judges; the manager then undertakes the implementation of those policies. Administrative judges are not involved at this level and thus take no part in the concrete decisions of administration, unless a direct intervention regarding another judge is required. The responsibilities of the administrative office include the court's budget preparation, implementation and control; court personnel management which includes training; the administration of cases and maintenance of computer systems; carrying out the court's strategic planning and directing all its necessary research; and handling all public relations for the court, particularly those with other public bodies (Hall et al, 2003: 9)

There are two essential conditions for the proper operation of this system. First, the judges who take these positions must have the knowledge, ability and vocation to deal with administrative issues. The importance of designating judges with administrative skills that included these characteristics as court presidents was quite clear as early as the first half of the last century, when this structure was established as part of the judicial administration of the United States.[80] As Vanderbilt points out:

> "Al designar a los jueces de asignación y los jueces presidentes, el chief justice debe principalmente preocuparse de seleccionar aquellos jueces que

[79] These offices are located in larger sized courts and provide their services to other local courts.

[80] The organization began in the federal system in 1939 with the creation of the Administrative Office of the United States Courts (Vanderbilt, 1959: 102)

ofrezcan más garantías de encarar con decisión los problemas administrativos. Este sistema, a mi juicio, es muy superior al seguido en los juzgados federales y en otros Estados, en los que tal responsabilidad administrativa se confía automáticamente al juez decano de turno, sin tomar en cuenta la circunstancia de que su interés y habilidad en materia de administración, o incluso su capacidad física para ocuparse de este trabajo complementario, puedan ser, por razón de edad o salud, notoriamente inferiores a los de algún juez más nuevo en la carrera." (Vanderbilt, 1959: 104-105)

The second condition is a body of highly qualified and professional managers. The career of professional judicial administrator has existed in the United States for many years, and there is an organization dedicated to training people for that profession, the Institute for Court Management, as well as a professional umbrella organization (the National Association for Court Management, NACM) and a regular conference (the Conference of State Court Administrators, COSCA). Everything revolves around the administrators' ability to make their work compatible with that of the judges.

It is this last model which has been gradually introduced over the last few years into some European[81] and Latin American[82] countries. The previous model –which is still in force in many jurisdictions today-, places all administrative responsibilities on the judge, sometimes with the help of an assistant who also acts as legal advisor. It is this model which probably best highlights the modest evolution of courts throughout the region. There are many activities, for example, which remain practically unchanged since the days of the Spanish colonies, the best example being the way case files are still sown together using needle and thread.[83] Under such circumstances there is no proper management and at times only minimum levels of administration. Such a system is obviously leaves much to be desired.

[81] According to Pastor the introduction of administrators has "barely" begun in Germany, Italy, France and Spain (Pastor; 2003: 9)

[82] This is taking place in Chile, Costa Rica, Ecuador, Panama, Peru and Venezuela.

[83] An advertising campaign designed in Chile to promote criminal procedural reform showed images of how a medical operation was carried out in the 19th century, and then how the same operation is now carried out in a modern operating theatre; what telegraph communications were like and how they are now thanks to computer science; what transport was like in the age of the steam engine compared to modern aviation. Finally, the advertisement showed what courts were like in the nineteenth century, and the very same image served to demonstrate what courts are like today.

This system is closely linked to the way courts have been traditionally organized throughout the region, which is the first factor we mentioned in this section. The traditional structure consisted of a court that was headed by a judge with a secretary and a group of auxiliary personnel who had jurisdiction over a given area. As we have already observed, this type of organization is extremely rigid and inefficient. Any attempt to widen the judicial cover is very expensive because it does not just involve designating a new judge, but also officials and new installations, beginning right from the start. And neither is any advantage made of evident economies of scale.

The first step that was taken to rectify this situation was to set up common services for courts that shared the same physical space (generally in larger cities). Unique systems were designed in areas such as cleaning maintenance, reception desk and attention to the general public, messages and announcements, library, and computer back-up (Vargas, 1999c: 182 and following). One significant effort has been the criminal procedural reform carried out over the last few years in Chile, where unipersonal courts have given way to much more complex organizations endowed with a variable number of judges who cover a given territory and undertake their corresponding workload.[84]

The advantages of this type of organization are clear. Together with increased flexibility, they allow a more equitable distribution of the workload among judges via an objective system of distribution. In the previous system, it was very difficult to define geographical jurisdiction in such a way that litigiousness (not only in volume, but also in type of case) was fairly distributed among the different courts. The reality was that there were huge discrepancies leaving some courts on the verge of collapse while others were an oasis of peace.

Sharing human resources and materials without any restrictions also allows for better administration of these elements. For example, the court can have less court rooms than judges who form part of the service, for not all judges attend hearings at the same time. There may be big and small court rooms available as well that can be assigned according to the estimated number of people who might attend a given trial.

[84] The method used to determine the number of judges who make up the court is made via the use of a mathematical model that, among other variables, integrates those of distance, communications and litigiousness. Which is why, for reasons related to access to justice, unipersonal courts have been maintained. Conversely, and for any eventual non-economies of scale which might arise, a maximum limit of 27 was placed on the number of judges per court, although at present this measure is being reassessed.

This also allows the work of judges to be more focused and for hearings to be allocated according to complexity. This is vital for the efficient operation of courts that take part in criminal investigation. Using this method, smaller hearings are organized for custody control, precautionary measures or authorizations that should be carried out consecutively but that do not require continuity. If different judges were to take part in these hearings, slack time periods would be created which the justice system would not be able to cope with.

Lastly, these types of courts allow the judicial system to be more evenly leveled out, reinforcing the internal independence of judges. The existence of a large number of small atomized courts led to the demanded to centralize many administrative issues in the hands of the upper courts, as it was economically unviable and inconvenient, due to the lack of collective vision, to leave many administrative issues up to the judges of the smaller courts. These circumstances have now changed with the new bigger courts, where many important decisions can now be adopted, including the administration of their own budget. This is made possible to a great extent because the increased size has permitted the incorporation of professional administrators who can technically intervene in these issues.

It is for this reason that issues of new organizational structure and professional administration are intricately bound, as well as this last being linked to the change in procedures. As we have often said, it would be impossible to take the direct control of officials away from judges, leading to the professional administration of human resources, if these last continued exercising part of their jurisdictional functions, as they do today, in carrying out written procedures. The link between major justice reforms and administration reforms is thus undeniable.

In spite of the advantages of more professional administrative systems, and the renewed structure of courts, the reality is their correct operation is proving far from easy. A recent assessment study of Chilean criminal procedural reform highlights many of these problems (Baytelman and Duce, 2003: 46 and following.)

One of the most serious dilemmas is that administrators have had great difficulties in establishing their own autonomous powerbase. Judges always have the last word and assert themselves in event the most mundane of issues. In spite

of their professional qualifications[85] administrators often find themselves treated in the same way as any other court official. Neither is any help received from the central administration in this respect, which sees them more as a threat than a support, basically because the local administrators occupy a space that central administration would like to fill. Also, administrators' main weakness that they have been unable to control the heart of the court apparatus: the timetable of judges or, in other words, the way in which judges best occupy their time. At present it is the judges themselves who decide how many hearings they will attend and at what time, hindering a rational use of this fundamental resource. Courts are thus full of periods when nothing takes place and other inefficiencies, such as empty court rooms assigned to a particular judge, or which are not used in the afternoons because all or most of the hearings have been programmed for the mornings.

Judges are also resistant to the change of not having personnel under their direct control and that such staff are centrally coordinated, for they (the judges) tend to have their own preferences and working habits, and it is very difficult to standardize these, which is vital when establishing appropriate administrative procedures.

Initially the administrative model in Chile envisaged the existence of two instances for the representation of the interests of judges in relation to administrative issues: a Judges' Committee which works like a board of directors and the figure of *Judicial President* in charge of the direct relationship with administrators. This formation has not really worked, due, among other aspects, to the dynamics acquired by such Committees, which operate as the plenary session of the courts taking decisions on a number of different matters. But also because the administrators, instead of having one direct superior, i.e., a *Judicial President*, have ended up having as many superiors as there are members of the Judges' Committee. Additionally, the position of *Judicial President* has been interpreted as more of an honorary position, designated by many courts to those who are not the most suitable candidates for such a post.[86]

[85] They are all either civil engineers or university administrators.

[86] In order to overcome many of these problems, the Chilean Ministry of Justice is presently studying a bill designed to upgrade the role of administrators within the courts, expressly giving them the power to control the working agenda of judges, as well as to simplify coordination with magistrates. Judges' Committees are to be eliminated and the function of the Judicial President to be redefined and renamed Coordinating Judge, which is a much better description of the work involved.

In any event, those who drafted this legislative reform point out that the courts differ greatly in this area and that improvements have been made since the first evaluation of the justice reform was carried out in 2001, underlining the whole vitality of the reform process. As such, some of the problems mentioned beforehand have already been dealt with in certain courts. The point now is how to make sure that these improved practices become general policies within the judicial branch.

Finally, we should not ignore the important contribution to good judicial administration and, as a result, overall institutional efficiency that has been made by the introduction of information technology into the courts. These institutions can be seen as places where information is gathered, processed and produced, a fact which underlines the huge contribution made by new technologies to the judiciary. Computer science thus has a very important role in supporting the day-to-day tasks of office management, in the follow-up of legal cases and in management control systems. All these developments can be seen taking place in practically every country throughout the region, but obviously at different degrees and levels of success.[87]

As mentioned before, the effectiveness of case follow-up systems mainly depends on the processes in which such systems are inserted. Additionally, it should be remembered that the implementation process in this aspect is a determining factor. Proper use can only be made of such systems when they are fully employed: this means that all information is entered and that all performance data is registered. However, this rarely happens due to the strong resistance that they generate (on the part of users) and the lack of commitment on the part of the authorities to insist on their employment. In Spain in 2002, it was calculated that between 5% and 30% of existing applications were effectively made use of throughout the country's different regions (Pastor, 2003: 13)

Computer systems designed to generate operational information for the justice sector are even less common.[88] In general, information continues to be a pending issue in judicial administration throughout Latin America. At most it is possible to find fairly unreliable and out-of-date Statistical Annuals. And even when such annuals were of some use, they were still no help in organizing

[87] 18.66% of all IDB funds invested in justice systems throughout the region between 1993 and 2001, were destined for information technology systems or strategies (Biebesheimer and Payne, 2001: 17)

[88] Curiously, case follow-up systems exist that do not automatically generate statistical data.

institutional administration; as the saying goes, they might be useful for studying a seven year old corpse, but not to influence the day to day running of an institution. For such a task administration reports are required, focused on issues of real use and directed at those who are expected to take decisions. While such information is unavailable, decisions related to the most important issues will continue to be taken in the dark, based more on personal experience or mere intuition, in circumstances where such experiences can rarely be applied in a general sense, and where reality takes charge of demonstrating that intuition can often be deceptive.

V. LESSONS LEARNED FROM MANAGEMENT REFORMS

We have pointed out throughout this document that changes to judicial management have not been integrated within a wider and more comprehensive strategy of judicial reform, so limiting and at times counteracting their effects. However, one positive result of these initiatives has been to introduce the concepts of efficiency and productivity into the justice sector, which up until now have been either ignored or rejected. These changes have also led to innovation processes that are certainly not insignificant. Thus, today it is possible to discuss issues with judges and justice ministers which before would have been completely unthinkable; it is also possible to explore operational changes that would have once been considered heretic.

These reforms have also helped motivate and draw professionals from areas that are quite unrelated to the judicial sector into the courts. Justice is no longer the exclusive domain of lawyers and judges. This is no doubt that the presence of administrators, engineers, economists, and technicians from a wide range of disciplines will trigger all types of dynamic changes that will be impossible to hold back, insofar as such personnel increase their areas of influence and acquire greater authority within the system.

New administration systems, however fledgling, have also helped reduce a number of long-established negative aspects within the courts, showing clear advances in certain areas.[89] For example, there is currently a demand for information technology which may well lead to a debate that will help guarantee the best use of such tools.

Additionally, the resources that are now available to the courts have created the conditions to embark on modernization programs in the most up-to-date organizational and technological developments; such measures would have been completely out of the question before.

If these trends continue, and it is possible to achieve the full integration of all the most important administrative changes that we have described, we truly believe that justice systems throughout the region will be able to take a qualitative leap forward. Only then will reforms begin to be felt by those being processed, who have so far benefited little from reforms that have taken place.

[89] One of the most significant of these is access to bibliographical and jurisprudential data.

Constant pressure must to be applied accordingly so as to demand results for each effort, project and investment. The public is increasingly more interested with events taking place in the world of justice, for today, as opposed to the past, some of society's most important issues regarding people's private lives, as well as public wellbeing, are resolved in the courts. The days of the judicial branch being a domain with no real power that is subject to institutional abandonment are coming to an end. This obviously places the branch in the foreground of public opinion, where before one would only find either the government or at most a country's parliament. Such a phenomenon is as much persistent as it is positive, although maybe judges themselves still do not see it this way: for greater levels of independence (which, at the end of the day means nothing less than increased power), create greater degrees of control and responsibility. And certainly when the general public is aware of what is taking place in the judicial branch, and is conscious also that it is thanks to people's taxes that such changes are being implemented, pressure for greater levels of efficiency is assured.

Experience would also indicate that the motivation factor is not just external, although those are obviously the most decisive factors, as most hard-working and productive judges are also interested in having their work evaluated and compared with that of their peers, and in having their efforts recognized and rewarded. Bench-marking effects that not only allow for the introduction of substitutes for cliques that dominate certain areas, but also facilitate greater levels of information that allow more appropriate and efficient practices to be understood and embraced are being generated.

In some jurisdictions it is already possible to observe that this virtuous cycle has been unleashed.

VI. Sources Cited

Baytelman, Andrés and Duce, Mauricio Evaluación de la Reforma Procesal Penal. Estado de una Reforma en Marcha. Justice Studies Center of the Americas and Universidad Diego Portales Law School, Santiago, 2003.

Biebesheimer, Christina y Payne J. Mark, IDB Experience in Justice Reform: Lessons learned and elements for policy formulation. Sustainable Development Department. Technical Papers Series. InterAmerican Development Bank, Washington, 2001.

Binder, Alberto, De las Repúblicas Aéreas al Estado de Derecho. Ideas Para un Debate sobre la Marcha de la Reforma Judicial en América Latina, 2000, (draft).

Buscaglia, Edgardo, *Los Principales Obstáculos de la Reforma Judicial en América Latina.* In La Economía Política de la Reforma Judicial. Edmundo Jarquín and Fernando Carrillo Editores, InterAmerican Development Bank, Washington, 1997.

Cerda, Carlos, Duración del Procedimiento Civil Ordinario en los Juzgados de Santiago. FONDECYT, Santiago, 1992.

Correa, Jorge and Peña, Carlos, Informe Sobre Desjudicialización de Gestiones Preparatorias, 1996 (unpublished).

Dorrego, Alberto, El Estado de la Reforma. Paper presented at the seminal "La Reforma a la Justicia: Un Requisito Para la Democracia, Una Exigencia Social". Cartagena de Indias, July 21-25 2003 (unpublished).

Duce, Mauricio and Riego, Cristián, Introducción al Nuevo Sistema Procesal Penal. Volume I, Universidad Diego Portales, Santiago, 2002.

FORES, Justicia y Desarrollo Económico. Consejo Empresarial Argentino, Buenos Aires, 1999.

Fuentes, Alfredo amd Perafán, Betsy, *Cambios al Sistema de Justicia de Justicia y Sociedad Civil en Colombia (1991-2002).* In Justicia y Sociedad Civil. JSCA, Buenos Aires, 2003.

Hall, Daniel J.; Stromsem, Jan M. and Hoffman, Richard B., *Professional Court Administration: The Key to Judicial Independence*. In Sistemas Judiciales N° 5, INECIP and JSCA, Buenos Aires, 2003.

Hammergren, Linn, *La Asesoría Técnica Internacional en las Reformas a la Rama Judicial en América Latina*. In Reforma Judicial en Latinoamérica: premisas para el Cambio. Justicia y Desarrollo. Serie Debates. Año II. Nº 4. Corporación Excelencia en la Justicia, Santa Fe de Bogotá, 1998.

Hammergren, Linn, *Quince Años de Reforma Judicial en América Latina: dónde estamos y por qué no hemos progresado más*. In Reforma Judicial en América Latina. Una Tarea Inconclusa. Santa Fe de Bogotá. Corporación Excelencia en la Justicia, 1999.

Iglesias, Enrique, *Derecho, justicia y desarrollo en América Latina en la década de los noventa.* In Justicia y Desarrollo en América Latina y el Caribe. InterAmerican Development Bank, Washington, 1993.

Justice Studies Center of the Americas, Report on the State of Justice in the Americas. Santiago, 2003 (Unpublished).

Londoño, Fernando, *Exposición de Motivos. Proyecto de Acto Legislativo Por Medio del Cual se Reforma la Constitución Política en Materia de Administración de Justicia*. Unpublished, 2003.

Marensi, Inés, *Un Nuevo Enfoque Pedagógico Para la Capacitación Judicial en América Latina*. In: Sistemas Judiciales N° 1. INECIP and JSCA, Buenos Aires, 2001.

Martínez, Néstor Humberto, Los Consejos de la Magistratura en Latinoamérica. 2da Mesa Redonda sobre Reforma Judicial. Williamsburg. USAID, IDB, NCSC,1996.

Navarro, Sonia, La gestión judicial: sus límites y posibilidades en la reforma judicial. Paper presented at the Seminario Justicia y

Gobernabilidad Democráticas. Santiago, Chile, June 4-6 2003 (unpublished).

North, Douglas, Instituciones, Cambio Institucional y Desempeño Económico. Fondo de Cultura Económica, México, 1993.

Pastor, Santos, Los Nuevos Sistemas de Organización y Gestión de la Justicia: ¿Mito o Realidad? Paper presented at the Tercera Conferencia sobre Justicia y Desarrollo en América Latina y el Caribe: Principales Tendencias de la Última Década y Hacia Dónde Vamos. Quito, Ecuador, July 24-26 2003 (unpublished).

Riego, Cristián and Vargas, Juan Enrique, Problemas de la Implementación de las Reformas Procesales Penales en América Latina. JSCA, 2003 (unpublished).

Shihata, Ibrahim, *La Reforma Judicial en los Países en Desarrollo y el Papel del Banco Mundial.* In Justicia y Desarrollo en América Latina y el Caribe. InterAmerican Development Bank, Washington, 1993.

Tedeschi, Sebastián; Pujó, Soledad; Zayat, Demián, and Torgovnick, Verónica, *Informe Comparativo: los Consejos de la Magistratura de Argentina, Bolivia, El Salvador, Paraguay y Perú.* En: Revista Pena y Estado. Número Especial Consejos de la Magistratura. Ediciones del Instituto, Buenos Aires, 2003.

Vanderbilt, Arthur T., La Justicia Emplazada a Reformarse. Depalma Editor, Buenos Aires, 1959.

Vargas, Juan Enrique, Gasto en Justicia. Informes de Investigación N°3. Centro de Investigaciones Jurídicas, Facultad de Derecho, Universidad Diego Portales, Santiago, 1999a.

Vargas, Juan Enrique, *Políticas de Modernización del Sistema de Personal en el Poder Judicial Chileno.* In: Reforma Judicial en América Latina. Una Tarea Inconclusa, Corporación Excelencia en la Justicia, Santa Fe de Bogotá, 1999b.

Vargas, Juan Enrique, *La Reforma Judicial en el País Vasco. Estudio de Caso.* In La Justicia Más Allá de Nuestras Fronteras. Christina Biebesheimer and Carlos Cordovez Editores. IDB, Washington, 1999c.

Vargas, Juan Enrique, *Organización y Funcionamiento de los Tribunales en el Nuevo Sistema Procesal Penal*. In Nuevo Proceso Penal. Editorial Jurídica Cono Sur, Santiago, 2000.

Vargas, Juan Enrique, *Las Reformas Judiciales en América Latina*. In Reforma y Modernización del Estado. Experiencias y desafío. Luciano Tomassini y Marianela Armijo Editores. Lom Ediciones, Santiago. 2002.

Vargas, Juan Enrique and Correa, Jorge, Diagnóstico del Sistema Judicial Chileno. Centro de Desarrollo Jurídico Judicial. Corporación de Promoción Universitaria, Santiago, 1995.

Vargas, Juan Enrique; Correa, Jorge and Peña, Carlos, *El Rol del Estado y el Mercado en la Justicia*, In: Cuaderno de Análisis Jurídico N° 42. Universidad Diego Portales, Santiago, 2001.