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Professional Court Administration: The Key to Judicial Independence

En este artículo, los autores analizan la introducción de criterios profesionales de administración en el ámbito de los tribunales, entendida como requisito previo para el fortalecimiento de la independencia judicial. El trabajo se divide en cinco secciones. La primera pasa lectura a la experiencia de reforma judicial en América Latina. La segunda, analiza los modelos para incrementar la independencia judicial a través del mejoramiento en la gestión, a partir de las tendencias observadas en Europa y en los Estados Unidos. En la tercera sección se definen los roles y espacio propio de los jueces y de los administradores profesionales en la gestión de un tribunal. La cuarta parte examina el impacto que efectivamente ha logrado en los tribunales la introducción de criterios profesionales de gestión. Por último, el artículo revisa las principales tendencias para el fortalecimiento de la independencia judicial por la vía de mejorar la administración en América Latina. El National Center for State Courts es una organización estadounidense con amplia experiencia en estos temas, dentro y fuera de los Estados Unidos. Particularmente ha apoyado iniciativas de este tipo en varios países de América Latina y los autores dan cuenta en su trabajo de esa experiencia y las lecciones que arrojan.

I. Introduction - Experience with Judicial Reform in Latin America

The countries of Latin America have made significant strides towards establishing independent judiciaries. Critical motivating factors for judicial reform in the region are the need to provide citizens with access to impartial justice and predictable court systems, and the recognition that the judicial systems in these countries need to be strengthened in order to promote investment and growth. It is acknowledged throughout the literature of judicial reform in Latin America that improvements to the institutional framework are needed to assure judicial independence throughout the region[1].

Judicial reform efforts are alive and well. As of 1998, nineteen Latin American and Caribbean countries were moving from inquisitorial judicial systems to accusatory or mixed systems[2]. The most effective judicial reforms have occurred in the areas of (1) improving judicial administration, (2) strengthening judicial independence, (3) developing alternative forms of dispute resolution, (4) improving judicial education, and (5) improving access to justice[3]. However, there is not a single recipe that can be applied to all countries of the region. The various socio-economic and political contexts determine the content and strategy of each country's efforts at judicial reform.

1 Jarquin, Eduardo and Carrillo, Fernando Editors, "*Justice Delayed, Judicial Reform in Latin America*", Inter-American Development Bank, *1998*, page 11.
2 Ibid, page 12.
3 Ibid, page 17.

Experience with efforts to improve the judicial independence and accountability of Latin American judiciaries confirms that the key factor in determining how successful reform efforts have been is the degree of institutionalization. This concept encompasses making reforms in governance, transparency, and accountability as well as independence a permanent and accepted part of the working court system and administrative process. One recent analyst confirms, "at present, Latin American judiciaries fall short on all counts, but largely because of incomplete and imperfect institutionalization"[4]. Yet another critique asserts, "despite the clouds on the horizon, there is substantial consensus that, in many countries throughout the region, judiciaries now have a greater degree of external independence -most notably from the executive and the military- than ever before"[5].

Nevertheless, as has happened in many U.S. jurisdictions, reforms have often been isolated and limited in scope in many Latin American nations. Those kinds of reforms- and there have been many efforts- have almost uniformly failed. Discerning currents of reform in Latin American courts that may be considered useful thus becomes a complex endeavor. Judicial councils, for example, have been adapted in Latin American countries from European models in the hope of opening up the very closed processes of selecting and promoting judges. Clearly, expanding the selecting group beyond the top echelons of the executive and judiciary has been a positive step, certainly from the standpoint of accountability and transparency, although campaigners have frequently needed to remind the "reformers" who organized the councils of the need for open, public proceedings to raise public trust and confidence.

The councils have been seen as far less helpful in either improving judicial administration or bolstering the courts' capacity to be institutionally independent. Once the councils opened the selection process and, often, the judicial disciplinary process as well, their utility in administrative reform of the courts diminished rapidly[6]. Along with the executive and the military, supreme courts in Latin America have been regarded as obstacles to administrative change, so it has been difficult to improve court systems without confronting the need to revamp the way the highest court manages the judicial system. Latin America as a whole failed to benefit from various major legal reforms effected by Continental systems in the 19th century following the success of the revolutions for independence[7]. It is clear that the judicial council as a device has had limited success in Latin America because by itself it will not produce reform[8].

In Latin America, not only have many supreme courts been inbred and backward in their processes of selecting judges -especially judges of trial courts- but they have also not managed the administration of the courts to meet the needs of the trial courts. After reporting that both judicial budgets and salaries have risen significantly in recent years, a study of Latin American judicial independence concluded, "[r]estructuring the judiciary may be more important than budget increases for improving productivity"[9]. In Argentina, for example, the total budget for all courts "increased more than 50 percent in the past six years, without any visible positive results". Nor did a similar rise in the Chilean judicial budget produce better performance[10]. Several Latin American judiciaries have been successful in increasing the percent of the national budget allocated to the courts: Costa Rica and El Salvador were able to achieve a 6 percent fixed amount, "seen as a key measure that has contributed to guaranteeing the judiciary's independence from the other branches of government"[11], and Guatemala,

4 Hammergren, Linn, *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*, Carnegie Endowment for International Peace, Rule of Law Series, Number 28, June 2002 at 36.
5 Popkin, Margaret. "Efforts to Enhance Judicial Independence in Latin America: A Comparative Perspective". In *U.S. Agency for International Development, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and Accountability (2001)* [hereinafter *Guidance*] at 100. This recent study drew on experts from 26 countries.
6 In Venezuela, for example, the judicial leadership rather than the council was responsible for recent successful implementation of a delay reduction project. See Davis, William. «The Role of Court Administration in Strengthening Judicial Independence and Impartiality». In *Guidance*, cited in note 6, at 154.
7 One reason why the Philippines, for example, was ahead of Latin America in adopting greater orality in civil proceedings, for example, was, in the words of a Cuban judge: "because we did not secure our independence from Spain until 1898", both Cuba and the Philippines were able to benefit from 19th century improvements in Spanish procedure.
8 Hammergren, Linn. *Op. Cit.*, page 35.
9 Popkin, Margaret, *Op. Cit.*, at 100. This recent study drew on experts from 26 countries, at 123.
10 Ibid at 121.
11 Ibid.

Panama, and Paraguay also have fixed percent amounts for their courts. Nevertheless, this study concluded that while increasing judicial budgets is seen as essential for judicial independence, that step alone will prove insufficient either to ensure independence or to produce a system that will satisfy both independence and accountability. To attain both these ends, expenditures must be made in a transparent and accountable manner.

The central problem that remains in the Latin American judiciaries after the fundamental issues of executive or military control, lack of transparency in judicial selection, and inadequate funding have been addressed, is that of overall system governance[12]. Sadly, supreme courts in Latin America that have obtained the authority to manage their court systems independently have arrogated resources for themselves and their courts to the detriment of the great mass of trial courts. While a salary increase for supreme court justices in Panama made them the country's highest-paid officials, "the trial court judges continue to labor with inadequate salaries that make them vulnerable to corruption"[13]. A World Bank paper found that "Latin American judiciaries face weaknesses in organization, problems of corruption, inability to meet service demands, and low public confidence"[14]. Studying attempts at judicial reform in El Salvador, Brazil, Ecuador, and Argentina, and setting forth independence, access, and efficiency as equally vital goals, one analyst asserts, "partial reform invariably fails, because the weakest components of a judiciary undermine its strengths"[15].

In addition to increased independence, broad-based improvements to the rule of law are also needed to assure the stability of democracy. Many obstacles to judicial reform exist. The courts of most Latin American countries courts suffer from mounting case delays, backlogs, and corruption. As a consequence there is a general distrust of the courts by the public[16]. While these delays may be due in part to procedural defects and lack of legal training it has also been noted that the lack of an active case management system and excessive administrative burdens on judges are significant contributing factors. As an example, nearly 70 percent of judges' time in Argentina is taken up by tasks not related to their judgeship. Similarly administrative tasks take up to 65 to 69 percent of available judicial time in Brazil and Peru, respectively [17].

Statistics show that judicial proceedings are burdensome and slow. For the most part, a regular civil trial in the appellate and trial court phases takes more than two years. This significantly increases the cost of resolving disputes.

Duration of Civil Proceedings

(*Average regular civil proceedings, trial and appellate stages)*

Country	Average
Argentina	>2 years
Chile	2 years 9 months
Colombia	2 years 9 months
Costa Rica	10 months 1 week
Paraguay	>2 years
Peru	4 years 6 months
Uruguay [a]	8 months

a Uruguay is an exception, due to the success of its procedural reforms in 1989. *Source: "Justice Delayed, Judicial Reform in Latin America"*, Jarquin, Edwardo and Carrillo, Fernando Editors, Inter-American Development Bank, *1998, page 9. For Argentina, Costa Rica, Paraguay, Peru, and Uruguay, IDB Legal Department, July 1994. Vargas Viancos, Juan Enrique, "Diagnóstico del sistema judicial chileno," 1995. Ministry of Justice and Law of Colombia, "Justica para la gente", 1995.*

Improving the capability of the courts to handle caseloads is a major challenge due in part to the excessive administrative burden on judges. Justice has suffered from outdated legal codes, lack of trained personnel, poor administration and record keeping, and inadequate financial resources[18].

12 "In most Latin American countries, administrative oversight has been transferred to either judicial councils or supreme courts". See Davis, William. «The Role of Court Administration In Strengthening Judicial Independence and Impartiality». In *U.S. Agency for International Development, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and Accountability (2001)*, at 157.
13 Popkin, Margaret. *Op. Cit.*, page 100. This recent study drew on experts from 26 countries, at 123. Erik Jensen observes that the many stories judicial leaders tell of lower courts lacking paper and paperclips merit sympathy only if those resources were not taken by superior judiciaries for their own creature comforts. Jensen, Erik. "The Context for Judicial Independence Programs: Improving Diagnostics, Enabling Environments, and Building Economic Constituencies". In *U.S. Agency for International Development, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and Accountability (2001)* [hereinafter *Guidance*], at 179.
14 *Latin America and the Caribbean, Issue Brief*, The World Bank Group, April 2002.
15 Barton, Brent, *Judicial Reform in Latin America*. Stanford University, located at http://www.ruf.rice.edu/~poli/NewsandEvents/UGRC2002/barton.pdf.
16 Ibid, page 16.
17 Ibid, page 19.
18 Ibid, page 137.

II. Models for Increasing Judicial Independence through Improved Administration

The solution to many of these obstacles lies in establishing professional court systems. In order to win public confidence there is a need to improve court administration and the day-to-day management of cases and enhance judicial independence by establishing procedural and budgetary autonomy. Both aspects depend upon strong judicial leadership and professional administrative support. The expectations of judicial reform are that the most efficient use of judges is to make time for their jurisdictional decision-making and not to manage. Sometimes this can be accomplished through the establishment of an administrative judge position who makes management decisions on behalf of the other judges. An administrative judge can be rendered even more efficient by a court administrator with a strong background in management. Under this model, management responsibility rests ultimately with the administrative judge who delegates authority to a professional and capable court administrator. The administrative judge and the court administrator need to operate as an effective team. Professional administration strengthens the independence of the judiciary.

The National Center for State Courts has conducted numerous rule of law projects in Latin America as well as other parts of the world. Two recurring themes are: on the one hand, the independence of the judicial branch must be established and, on the other, the work of the courts must be more effectively and efficiently administered.

At the outset of these projects, judicial systems have lacked elementary components: independence, accountability, integrity, management, and quality. The reasons for this are frequently that politics rather than merit pervade the systems and extend into court support divisions. Trial courts are deeply intertwined with the complex social and governmental structures where fiscal politics and intrusion by other government officials weaken the courts. In addition, in many countries, lawyers dominate the court process because judges have no real support staff, have jurisdictional responsibility for a wide geographic area, and lack general administrative authority. This is similar to the situation in the United States in the 1950's before reforms were undertaken[19]. Finally, there is a lack of management orientation among judges. Judges are not trained in management techniques and are not inclined to delegate management authority. Understanding and integrating the professional culture of judges and the management culture of court managers is the basis of creating an interdependent leadership model for the courts[20].

Reforms in the United States, Europe, Africa, and Latin America occurred in two areas: (1) unifying administrative functions; and (2) establishing effective management through professional court administrators. Key elements of administrative unification include:

- Establishing administrative rule making capability
- Creating uniform court procedures throughout the system
- Centralizing administrative policy in the highest court
- Strengthening the role of the trial court administrative judges
- Establishing budgetary reforms that increase the pool of resources available to courts, end funding disparities among courts, and remove trial courts from submersion in the local political scene
- Simplifying court structures

Two possible ways to improve the administrative component as a means to successful judicial reform in Latin America lie, first, in the trend seen in Europe toward independent professional court administration, and second, in what has developed in the U.S. as a judge-administrator team concept for managing the courts.

19 Tobin, Robert W. *Creating the Judicial Branch: The Unfinished Reform*, National Center for State Courts, 1999.
20 Hoffman, Richard B. "Beyond the Team: Renegotiating the Judge-Administrator Partnership". *15 JUST.SYS.J.6,* (1991)

A. European trends.

In recent years, Europe's courts have moved beyond the two principal models of judicial administration- the Northern, or semi-independent, model that frequently interposed a judicial council between the judges and all administrators, both inside and outside the courts; and the Southern, which continued to cede virtually all administrative authority over the courts to Ministries of Justice. During the past decade, several nations have organized central court administrative offices, sometimes functioning nominally under the aegis of a judicial council, but mostly assuming independent authority apart from control by either the executive or judicial branch.

"At present there is a European trend to establish Court Administration Authorities in countries that hitherto relied on Ministerial management and budgeting of the Courts and the judiciary. This shift has lead [sic] to the establishment of Court Administration Authorities in Ireland (1998) and Denmark (1999). The Netherlands is also contemplating the establishment of such an authority, just like the Czech Republic is"[21]. This development began in the Scandinavian countries, Sweden as well as Denmark, and proceeded thus from civil-law to common-law jurisdictions, Ireland first, and then the United Kingdom, where the UK Court Service, an "executive agency of the Lord Chancellor's Department providing administrative support to a number of courts and tribunals, including the High Court, the Crown Court, and the county courts" followed the initiative of the Irish Court Services[22].

These trends in the structure of European court administration have made possible the emergence of a new group of professional court administrators in Europe. No matter how professional the staff of Ministries of Justice responsible for court operations might be, they are bringing the ethos and outlook, as well as interest, of another branch of government to the task of managing the courts[23]. Now, more of these nations will have courts staffed by administrators who are beholden to no one outside the judicial branch.

B. U.S. Professional Team/ Partnership Models

Although it has occasionally been suggested that U.S. court administrators have increasingly aggregated power in the court system to themselves, to the detriment of both the judges and those who seek justice from the system, the accusation is unfounded. If anything, it is perhaps more frequently the case that administrators tend to cater to the interests of judges above all else in the justice system, including litigants, witnesses, counsel, police, and the public. One proposed model advanced to explain this relationship and its impact is the concept of a chief justice or chief judge and court administrator operating as a team[24]. Most U.S. court administrators have accepted this concept as the standard:

The Guidelines assume a court executive leadership team that includes both court managers and judges. The relationship between court managers and judges in leadership positions that is presumed, and even advocated, throughout the Guidelines emerged after considerable reflection and discussion. The selected model assumes that judicial administration is a team sport played by professional peers[25].

It is important to emphasize two separate concepts as coming together to shape what is now the key trend in U.S. judicial administration. The first concept is *professionalism,* in which court administrators assume the role of knowledgeable professionals who are expert at their special responsibilities. This development was accelerated in the U.S. during the 1970s when in addition to the establishment within a five-year period of major judicial branch institutions such as the Federal Judicial Center, the National Center for State

21 Voermans, Wim. *Councils for the Judiciary in EU countries*. European Commission/TAIEX Tilburg University/Schoordijk Institute, June 1999.
22 Description of the UK Court Services is taken from its website. In view of the unique structure of the UK courts under the leadership of the Lord Chancellor, who combines aspects of executive, legislative, and judicial power, it is a testament to the ingenuity of the British authorities to have determined how to insinuate this model within their own ancient and complex structure.
23 France, an example of the Southern European group of countries in which the Ministry of Justice remains in charge of operating the courts, has a special school to train *greffiers*, or clerks of court, at Dijon.
24 This model was first proposed by Stott, E. Keith in "The Judicial Executive: Toward Greater Congruence in an Emerging Profession", *7 JUST. SYS. J. 1, 52* (1982). Some ramifications in terms of defining the respective roles were suggested in Hoffman, cited in note 21.
25 *Core Competency Curriculum Guidelines, History and Overview*, National Association for Court Management at http://www.nacmnet.org/CCCG/cccg_History.html.

Courts, and the National Judicial College, an educational organization dedicated to producing professional court administrators -the Institute for Court Management- was organized for that specific purpose. Graduates of the Institute, known as Fellows, are now highly represented in the echelons of U.S. court administrators, both state and federal.

Professionalism has been promoted by the increasing prominence of professional organizations such as the National Association for Court Management (NACM), which has most recently promulgated the guidelines for core competencies[26] in an effort to define what being a professional court administrator should mean in a U.S. court[27]. The emerging role of the chief justice of a jurisdiction's highest court as the administrative or executive head of the judiciary has been reflected in the increased involvement of the national organization, the Conference of Chief Justices (CCJ), in determining national-level policy recommendations. These have frequently been turned over for implementation to joint panels comprising members of the CCJ and the Conference of State Court Administrators (COSCA). Other judicial leadership organizations, in particular, the National Conference of Metropolitan Trial Judges, have become more professionalized and oriented toward confronting important issues of the field.

The second major concept is that of the *judicial administration team*, or, alternatively, partnership. This concept arose from a history in U.S. court administration of some successful working relationships between a few of the early generation of court administrators and the equally few chief judges or justices who recognized the need for both strong court administration and effective professional court administrators[28]. It took several more decades since the 1970s in the U.S. for these decidedly individual instances of successful teams to be replicated en masse -some might say it occurred over the carcasses of court administrators faced with antagonistic or uninvolved chief judges-. Nevertheless, it has been observed, with a good deal of experience now available, that "[t]he key to their success may lie in having judges retain control of administrative policy-making, but to exercise that control within a partnership arrangement with administrators. Such an arrangement can produce a better policy or administration than either could develop individually"[29]. The same observer avers that the simplistic structure oft cited and assertedly followed in U.S. judiciaries some years ago -"judges make policy and administrators execute it"- ignores "the reality of organizational behavior" because "policy is hidden in the interstices of administration"[30].

This approach appears far more likely to lead administrators and judges to work together, provides both a sense of responsibility for the system, and allows the interaction that true partnership demands to produce a better-functioning system. This is not to say that this concept, may not fail to preclude some disaffection between trial court administrative judges and the central administrative office.

In sum, it should be clear that successful administration in the U.S. courts stemmed from development of a professional cadre of court administrators who then achieved a sufficient level of respect, often arising from superlative performance in the limited areas of responsibility they had been assigned, to earn acceptance by many chief or administrative judges who came to view them as partners in the task of administering the judiciary.

III. Defining the Roles of Administrative Judges and Administrators

The dilemma facing judges is how do they establish a professional and effective administration yet at the same time effectively perform administrative duties. Key to this is the recognition and centralization of the role and function of the administrative judge vis-à-vis the role of the court administrator. This distinction can be characterized in three dimensions.

26 *Ibid.*
27 The ten competency areas are: Caseflow Management; Resources, Budget, and Finance; Visioning and Strategic Planning; Leadership; The Purposes and Responsibilities of Courts; Human Resources Management; Information Technology Management; Education, Training, and Development; Court Community Communication; and Essential Components.
28 Hoffman, Richard B., Op. Cit., at 52.
29 Wheeler, Russell. "Judicial Councils in Latin America -Commentary". In *Lessons Learned: Proceedings of the Second Judicial Reform Roundtable* held in Williamsburg, Virginia, May 19-22, 1996 (National Center for State Courts, 1996). Crohn and Davis, eds. at 17.
30 Ibid.

- **Governance:** The court administrator reports to the administrative judge.
- **Roles:** The administrative judge deals with other judges and the administrator deals with the administrative matters mentioned above. The administrative judge lets the administrator perform the daily administrative functions.
- **Oversight and Accountability:** The administrator is overseen and accountable to the administrative judge.

It is important to differentiate the roles of the administrative judge from those of the court administrator. The role of administrative judges usually revolves around budgeting and personnel management. Relations with local government officials and court related agencies are crucial to court operations and require the involvement of the administrative judge.

A principal responsibility of an administrative judge is caseflow management. Because caseflow management is integral to adjudication it requires the leadership not only of the administrative judge but all the judges in the court. For example, the literature suggests that perhaps the single most important factor in a successful caseflow management program is the leadership of the administrative judge.

Administrative judges grapple with how to define their administrative role in relation to the rest of the judges in the court and the court administrator. Given the socio-economic and political diversity in Latin America, achieving a definition of the role of the administrative judge is very difficult. However, there are six generic components:

- Goal setting and leadership.
- Formulation and implementation of management policy.
- Dealing with judges.
- Relationships with practicing attorneys.
- Relations with other governmental agencies and the public.
- Delegation and oversight of the detailed aspects of court administration.

Professional administrators bring effective management to the courts. Specifically their roles focus on the following functions:

- **Budget and financial services:** Budget preparation, execution and control; and assisting and advising local courts with respect to their financial operations.
- **Personnel management and training:** Staff policy with regards to judges and court staff. This includes recruitment, appointment, retention, supervision, and training of court staff.
- **Court Services.** These include case management, facilities, and information systems.
- **Planning and Research:** Conducting policy research, strategic planning, and statistical analysis.
- **External affairs:** Communication with other governmental agencies, the legislature, the media, and the public. These functions help the transparency of court organizations.

In judicial systems where court administration is developing, it is difficult to determine where to find a professional administrator. Since there are rarely established pools of potential candidates, courts tend to hire persons who are simply familiar figures. As the profession becomes more established, courts will be able to seek professional administrators outside their small familiar circle. The experience in the United States and Europe suggests that, as the number of court administrative jobs increase, there will be more opportunities for court administrators and more professional recruitment processes. Administrative judges will be able to look more carefully at the pool of professional administrators.

Court administration must be organized to support judicial independence. This means that the court manages all things related to getting the work of the court done and has control of its budget. The administrative judge and the court administrator need to be an effective team that recognizes and fosters a partnership that has the following characteristics [31]:

31 The National Center for State Courts through its Institute for Court Management has develop the Trial Court Judicial Leadership Program to train judges and court administrators on how to operate effectively as a leadership team.

- A shared vision for the organization.
- Clear roles and responsibilities. This is important for both the management team and for those that deal with them.
- Maximum access to each other. Each must respect each other's time, tasks, priorities, but still know that access is there.
- Frequent communication.
- Mutual trust.

Most administrative functions can be delegated to the administrator, except for those decisions that directly affect judges. These must be done in the name of the administrative judge. Examples of such decisions include the assignment of cases, determination of vacation schedules, backup procedures, judicial discipline, and other matters where it would be awkward and inappropriate for a trial court administrator to be involved. The administrative judge needs to be the liaison with other judges on the court in administrative matters. In large courts, administrators may deal with committees of judges, or divisions of the court. However, the administrator generally must rely on the administrative judge as the intermediary. As an effective team, the administrator and the administrative judge need to gain and retain the goodwill and support of the other judges.

What should be the authority of the court administrator? Because the power of the administrator is derivative and because administrative judges differ in the types of authorities they are willing to delegate, there are substantial variations in an administrator's authority. In some courts there may be a legal basis for the administrator's authority either through statute or rule, which to varying degrees may spell out the functions and authority.

Regardless of this framework, the administrator's authority still depends heavily on the degree to which the judicial administrative authority enables the administrator to execute the court's policies or to suggest policy initiatives. Key indicators of the relationship between a court and an administrator are the frequency and depth of the meetings on administrative issues; the degree to which the administrator sets the courts administrative agenda and the latitude of the administrator to recommend courses of action; the degree to which the court empowers the administrator to implement the court's administrative decisions and serve as a spokesperson for the court; and the ability of the administrator to run the office without court micromanagement, particularly in personnel decisions.

The administrator's authority may change based on the management style of courts and administrative judges. An administrative judge may have an ambitious agenda for change, which usually enhances the authority of the administrator. In some courts, however, a more static mode is preferred, which can immobilize an administrator. An administrative judge can become so personally involved in administrative matters that the administrator may be eclipsed. Or conversely, the administrative judge may become so detached from administrative matters that the administrator has a hard time getting the attention of the administrative judge.

The roles and skills required of trial court administrators vary depending on the size and complexity of the court. A large urban court requires a different level of management expertise than that required of a very small court. There are three different professional levels: administrative assistants, middle-management professionals, and executives. Different skills are required at each level. Within these gradations there is wide diversity.

It is possible to have competent court administrators who have very marginal roles because of limited support from judges. Without a clear mandate, they often operate in ways that make them appear to be "intruders." They do not have strong ties to the administrative judges. There is another category that could be termed "technicians" due to the demands of technology. With the complex demands of technology some courts seek administrators with technical expertise as their primary qualification. However, these individuals may not have the necessary management skills to manage comprehensive administrative duties. In such structures the administrative judge may delegate other non-technology responsibilities, such as caseflow management, to other individuals.

The higher lever administrative assistant category has largely routine responsibilities in personnel administration, purchasing, space problems, and budgeting. These administrators have a small role in caseload management or other court programs. They tend to have a low profile in relations outside the court.

There is also a "strong manager" type where the administrator has broad and clear definition of authority from the administrative judge. The administrator is invested with the authority to execute court policy in administrative matters. Such a position has the ability to handle public and inter-governmental relations. This type of administrator also plays an instrumental role in caseflow management and various programs to improve court operations. This role is characterized by at least a limited partnership with the administrative judge so that the position of trial court administrator is elevated above that of an administrative assistant.

Finally, there is a "fixture" type of administrator whose longevity lends him or her special respect and security. In countries with limited experience with professional court administration, few individuals will fit this category. In a court where there is a frequent shift in administrative judges, this type of administrator brings continuity and stability to the court.

A quintessential role for the professional trial court administrator is caseflow management. This is a mutual interest of judges and trial court administrators and provides the basis for joint efforts towards reform and an opportunity to win confidence when building professional court administration. Caseflow management concerns the scheduling of cases, the deployment of resources, and the development and implementation of procedures for processing cases from the point of filing until the case is disposed. The nature of caseflow management brings judges and court administrators into close working relationships in accomplishing the central mission of the court, the disposition of cases. Caseflow management makes the concept of an executive partnership between the administrative judge and the administrator a necessity and ultimately enhances the prestige of trial court administration.

The problems of delay in Latin American judicial systems offer the opportunity to develop strong executive partnerships between administrative judges and professional court administrators particularly in urban areas. Analysis of reasons for court delay is essential to developing and implementing solutions. Those causes often include haphazard scheduling, lenient continuance policies, lack of transparency and judicial accountability for case disposition, inadequate statistical information on the status of cases, and the attendant time to disposition, as well as a variety of other factors. However, more fundamental is the court's lack of control over its own processes of case adjudication. The analysis of the causes and the development of strategies to correct the problems, which often involve engaging the support of non-court agencies, require high-level executive management skills.

The relationship between the court administrators and administrative judges has various gradations, which are described below. The size and complexity of the court, in part, determines the relationship. The authority of the administrator advances from the mere statistical roles to an executive partnership.

- **Executive Partnership:** The administrative judge and the court administrator have a partnership where the administrator has broad executive authority and is involved in programmatic initiatives for the court. In these cases, the court administrator is generally regarded as the spokesperson in administrative matters.
- **Strong Delegated Authority:** The administrators have strong-delegated authority in a clearly defined but limited number of functional areas. They do not have a strong executive partnership with the administrative judge and tend to assume a relatively low profile.
- **Limited:** Some administrators have small administrative and managerial roles.
- **Minimal:** Administrators in this category have minimal responsibilities and fairly insignificant roles in court operations.

IV. The Impact of Professional Court Administration on the Courts

The increasing occurrence of professional court administrative offices in Europe, so far, mostly at the national-level, and the developing recognition in the U.S. of the judge-administrator relationship as a true partnership allows us to draw some tentative conclusions as to what effect these trends have had on actual court functioning and what messages they convey to judges, administrators, court employees, the bar, and litigants.

Enhanced capabilities. A glance at the multiplicity of functions that U.S. court administrative offices perform for their courts has led to ready acceptance of the proposition that professional court administration enhances the capabilities of the courts. Administrators who prepare and administer budgets, operate personnel systems, direct the provision, design and renovation of courthouse facilities, arrange for and supervise the introduction and development of automated information systems, engage in liaison with the executive and legislative branches of government as well as maintain relations with the bar, the media, and the public, are, first, ensuring that the independence of the judicial branch is not threatened or even placed in doubt by provision of these services by the executive branch. Second, these administrative functions are being designed and performed through offices with an orientation toward the particular needs and demands of the judiciary. Third, essential support services as well as full attention to administrative issues are being undertaken by administrators and staff directly responsible to the judiciary, as compared with shared support services provided to all branches, but in reality, that remain beholden to the one that signs the paycheck.

Increased judge time for case resolution. Professional court administration also gives to almost all judges the benefit of more time to devote to their primary function -considering and deciding cases- the single and critical defining function of a judge that may be performed by no one else. It has been said that the working hours of the judges are the judiciary's most precious resource. Of necessity, chief and administrative judges will have to devote significant amounts of this time to administrative leadership. That, too, is a role that cannot be performed by others.

Protection of judicial authority. For the most part, professional court administrators are responsible for classic administrative functions -budget, personnel, information, facilities, statistics- but one category sets them apart from other managers or administrators, public or private. Court administrators are expected to be knowledgeable about how to manage the court's business –cases- on both macro and micro levels. While the principles of effective caseflow management have now been accepted in most U.S. courts, constant involvement by judicial leaders and administrators is mandatory if performance levels are to be maintained.

Court administrators are skilled in recognizing how the mix of judges and courtrooms available can be most effectively applied to the pending docket. On the individual judge level, the court administrator can frequently suggest to judges how to increase their own productivity. The U.S. courts have introduced administrative constructs such as central staff attorney offices to which large numbers of motions or ancillary matters in cases are assigned for initial research and often recommendation of decision to judges. Judges retain the ultimate authority over all decisions, may choose to have cases assigned to summary calendars placed on schedules for full argument, and may choose to reject any and all of the draft opinions that the central staff may prepare in these matters. True, the system now expects judges to be diligent in their review of the work they are receiving from these new support sources. Yet that requirement has always served to distinguish the outstanding judge from the adequate or inadequate judge.

Improved resources. Court administrative offices at national, state, and local levels in the U.S. have gained increased resources for the courts because they have enabled the judicial branch to keep pace with the other institutions of government. As the courts have grown, it has become clear that they require management as any other large institution does, but that there are peculiar attributes of courts that require their administrators to possess different skills. Rarely may court administrators dictate policy to a judge or judges as a group. Nevertheless, the administrator may remind the judges that by their own rulings, they have applied provisions of law that mandate that the courts be treated as any other agency of government insofar as general operating

practices are concerned. In earlier times, public institutions were simpler. Almost 50 years ago, an early study of court administration of a large state and city court system was entitled "Bad Housekeeping" -as if these growing concerns about and the need for effective administration were relatively minor details of scant consequence-[32].

Today, professional court administration provides judges and courts with the solid support needed to comply with complex budget, personnel, and information requirements so that appropriations may be obtained equal to the clear needs of the judiciary.

V. Trends Toward Judicial Independence through Administration in Latin America

The trend toward judicial independence in Latin America has been difficult and bears little resemblance to the historical progression in the U.S. Many fears about increased administrative capability in the U.S. judiciaries have proven unfounded as most U.S. state and federal courts and court systems have exercised their newly-acquired administrative responsibilities capably. Those same fears, however, have been made manifest in some Latin American countries where Supreme Courts and judicial councils have not hesitated to betray the less-influential judges and court staff at the working levels, as well as those who use the courts.

There has been a tendency in the U.S. for the judiciary to call for increased judicial salaries and budgets as vital to ensure that the courts perform adequately. While legislators and executive-branch leaders feel free to disregard these requests, they rarely oppose the demands for increases on the merits. Instead, judicial requests are treated as non-essential expenditures and are infrequently approved when political conditions are unusually favorable. The picture is either entirely different in Latin America or has instead proceeded in a different direction. Judicial budgets have been increased and salaries raised but "larger budgets have not necessarily led to strengthening the independence or impartiality of individual judges"[33]. In another view: "Once they get higher budgets and salaries, judges may stop pressing for change, especially if it means a loss of additional revenue from bribes or the imposition of more stringent performance standards"[34].

Supreme courts in Latin America are also not noted for relinquishing the traditional administrative control they have exercised to the detriment of the lower courts who have often been starved for resources: "To ensure that resources are distributed equitably, it may be helpful to decentralize the judiciary's budget so that resources are appropriately assigned (...) it is also important to ensure that courts outside the major urban centers receive necessary resources"[35].

In the U.S., judiciaries have strived to gain control over their own administration as a means toward ensuring greater judicial independence. By contrast, in Latin America, judicial branches, and in particular, supreme courts, have long had a great deal of independent administrative authority but have lacked the cadre of professional court administrators that we can see by their absence constitute a *sine qua non* of effective management toward fair administration of justice.

The experience of the National Center for State Courts with administering rule of law projects throughout the world continually reinforces the need to develop professional court administrators as a pre-requisite for judicial independence and improved administration of justice. For example, case management systems developed for the Mexican judiciary are predicated on the availability of professional court administrators. The success that El Salvador and Puerto Rico have had in gaining budgetary independence through initiatives that dedicate a proportion of general appropriations to the judiciary are testimony to the benefits of professional and capable court administrators. The administration of justice has earned the public confidence to the point where broader independence is provided to the judiciary.

32 *Bad Housekeeping,* Association of the Bar of the City of New York, (1954).
33 Popkin, Margaret, *Op. Cit.*, at 121.
34 Hammergren, Linn. *Op. Cit.*, at 6-7.
35 Popkin, Margaret. *Op. Cit.*, at 123.