Introductory Comments

I am very honored to be back in Jujuy at this important judicial conference and congratulate Dr. Campo, Dr. Cardero, Dr. Paera Gavina, Dr. Montes, Dr. Issa, Dr. Grisetti, and Dr. Kamada for planning such an excellent program.

I have been involved with the field of judicial administration in the U.S. through my position as a Research Professor in Judicial Administration at the School of Public Affairs at American University in Washington D.C. and my work for the past 25 years with a wide range of technical assistance, training and research activities with state and local courts and related agencies in the U.S., sponsored, for the most part, by the U.S. Department of Justice and other federal and state agencies.

I visited in Jujuy this past June and was very impressed with the many advances in judicial administration that have been instituted in the court system here – so you have a real laboratory in which you can observe a number of the initiatives I am going to reference in my presentation. Thank you for the honor of being with you today.

I. Interrelationship of Judicial Independency and Professional Court Administration

It is becoming increasingly recognized that a well managed judicial system is essential to preserving the independence of the judiciary. From the very early years of both the U.S. and Argentina, the importance of establishing -- and maintaining -- the independence of the judiciary in preserving the nation’s constitution and in assuring that the actions of both the federal and state governments comply with it have been of paramount significance.

1 One of the earliest pronouncements regarding the interrelationship between judicial independence and efficient court management in the U.S. was made by Roscoe Pound, Dean of the Harvard Law School in 1906 in what has now become his well known speech entitled The Causes of Popular Dissatisfaction with the Administration of Justice, delivered to the annual meeting of the American Bar Association in that year. The speech has been reprinted in various publications, including 20 J. Am. Jud. Society 178.

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But, also from the start, maintaining the independence of the judiciary has been a major challenge in the U.S. In addition to the practicalities of “politics” that are always present, the basic fact of life – that the budget for the courts comes from the Legislature – raises a host of issues relating to judicial independence. If the legislature reduces the court budget, is it because of unpopular decisions that were made? And could it be possible to reduce the judicial budget to a point where the courts couldn’t effectively act, thereby putting the citizens in a position to have to defer to legislative and/or executive actions – or state actions – that might otherwise be ruled unconstitutional or illegal? Even if it doesn’t reduce the budget as a whole, the legislature can take action that affects judges’ salaries and pay raises and their pensions.

It has therefore been a major premise in the U.S. that, while the judiciary must be separate and independent, free from political or other influence, the courts must be well managed in order to preserve their independence. While attention in this regard has focused initially on the importance of expeditious disposition of cases and the efficient maintenance and organization of court records, increasingly during the past several decades, court management improvement efforts have focused upon many other aspects of court operations – personnel recruitment, management and training; management and auditing of court financial activities, including budget preparation and expenditures; income and disbursement of payments of fines and fees; and procurement policies and practices; facility management, including space allocation and public safety measures; and services necessary to competently serve the various “users” of court services, including those who are non-English speaking and/or have physical disabilities. Within this context, the relationship between “judicial independence” and “court administration” becomes particularly important since, if the judiciary is to function as a separate branch of government, it must be able to manage its own affairs with integrity and effectiveness.

By way of background for my comments, we have two levels of courts in the U.S.: federal and state. The federal courts deal with issues relating to federal law, constitution, suits between states, etc. The state courts deal with the remaining matters which entail issues relevant to state and/or local law. There are some situations in which federal and state courts have concurrent jurisdiction and decisions have then to be made as to whether the matter will be handled at the state or federal level. Although the federal courts in the U.S. play an extremely important role in the administration of justice in the U.S. and can override a state court if a federal issue is involved, it is estimated that 95% of the court caseload in the U.S. is handled by state, rather than, federal courts. I am therefore going to focus most of my comments relating to developments in judicial administration in the U.S. based on the experiences at the state court level where the majority of the caseload is handled.

The Role of Professional Court Administration in Maintaining the Independence of the Judicial Branch.
II Relevant Judicial Administration Developments in the U.S. to Strengthen the Independence of the Judicial Branch

Judges generally have little background in public administration and management and little credibility regarding management functions with the other branches of government. Most judges are also less than enthusiastic about assuming a management role and many feel such functions are inappropriate. One of the most significant developments of the past several decades has therefore been the evolution of the field of judicial administration and the position of professional court administrator who is not a judge and who is responsible for overseeing and implementing the various management initiatives that are being undertaken in the court systems in the U.S.

During the last three decades, major changes have occurred in the organization and administration of courts in the U.S. -- particularly the state court systems -- all of which have been designed to strengthen the judicial branch as an independent and well managed governmental entity. These have included:

- development of uniform court rules, statewide, for the processing of criminal and civil cases, including procedures, and timeframes
- state – rather than local – funding of the trial court system – to assure adequate funding rather than the inequities of having courts left to local resources for their funding;
- more centralized and more professional management of judicial resources: e.g., development of personnel systems with job descriptions, required position requirements, a formal application and selection process, training, etc.
- a regular, required program of judicial and staff training and education
- centralized case scheduling procedures and case management scheduling and tracking systems
- centralized management of court facilities – scheduling of court rooms, security screening, etc.
- compilation, analysis and dissemination of data and other information on the court’s workload; and
- development of comprehensive budgets to support court functions

All courts in the U.S. have Rules of Court that have been developed to govern their operation. These rules are generally very detailed and cover all stages of the criminal, civil, juvenile, and related processes -- what a pleading must state, who can file a pleading, timeframes for various stages of the litigation process, process and timeframe for appealing judgments, etc. The federal courts have one uniform set of rules (sometimes with additional provisions added by certain circuits); each state

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court, however, has a separate set of rules. While the rules are similar in many respects, they also differ so an attorney must be familiar with the rules of the particular court in which he or she is practicing.

At the federal level, the position of circuit executive has also been established which has brought strong managerial expertise to the federal circuits. All of the federal courts therefore have professional managers with strong managerial experience and expertise. At the state level, each state has established a statewide court administrator's office. The range of responsibilities of the statewide court administrator's office varies from state to state but frequently entails: developing the state budget for the courts; overseeing personnel matters; developing and overseeing the information and statistical reporting systems to which local courts report their activities. (numbers and types of cases filed, disposed of, etc.).

The heart of the day to day court administrative functions at the state level are, however, performed at the trial/local court level, generally under the bailiwick of the position of the trial court administrator -- a position somewhat analogous to the circuit executive position at the federal level. A high percentage of the local courts have trial court administrators and courts located in larger locales generally have additional staff working in the court administrator's office. The functions of the trial court administrator in state courts vary, depending upon the organization of the court system and the management policies established by the judges of the local court. Among the functions the trial court administrator performs may include: developing and managing the court budget; overseeing personnel issues (staff training, monitoring; hiring/firing; compliance with federal statutes); facility management (making sure the facility adequately meets the needs of the court and the public; developing various security measures; renovating and repairing the facility as needed, etc.); case management (methods for assigning cases to judges; monitoring their progress to assure that they are disposed of within required timeframes); jury management; overseeing the collection of fines and fees paid into the court; developing and maintaining an adequate information system to provide necessary management and other information regarding court caseloads, their status; developing and overseeing systems for recording case proceedings, etc.

III. Judicial Functions Contrasted with Non-Judicial Administrative/Management Functions

When the field of professional judicial administration was developing, the question was frequently posed: how does the judicial function differ from the functions envisioned for the court administrator? And how is it possible that a nonjudge can perform the court’s management functions?

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Judicial vs. judicial administrative functions

The responsibility of judges is to carry out the essential function of the court in society: e.g., the resolution of disputes among parties in a manner that is fair (e.g., consistent with due process) and in conformity with applicable constitutional and statutory provisions. This responsibility – which cannot be delegated to a nonjudicial officer -- can entail such tasks as:

- conducting hearings
- reviewing/acting on Motions
- holding various types of pretrial settlement conferences or other ADR (Alternative Dispute Resolution) functions; and, most significantly
- making a wide range of judicial determinations to resolve litigated issues that affect the liberty and property of the citizens

To promote the efficient and just disposition of the caseload, however, it is well recognized that, in order to perform their judicial function adequately and competently, judges need to be freed of administrative tasks that do not entail rendering judicial decisions. These nonjudicial tasks and relate primarily to the management of the court as an organization. As noted earlier, not only do judges generally lack adequate background in the field of management and public administration to manage the court but, most importantly, they generally do not have time to perform management functions, particularly in light of the increasing volume and complexity of most court caseloads.

The day to day management of the court is therefore generally delegated to the court administrator. The chief judge of the court, however, and, in some cases, the chief judge of specific divisions within the court if the court is large (e.g., criminal, civil, etc.) will generally set policy regarding management issues and will make the ultimate policy decisions in key management areas of the court’s operation, more specifically described in the following section.

Areas of Court Management Policy Which Judges Generally Establish

Often the chief judge and other judges of the court provides the direction regarding the court’s policies on a number of issues relating to the management of the court’s caseload. Major areas of policy may include:

- management of the docket and, specifically how the caseload should be assigned
to the judges

• how much management will be imposed on attorneys? For example, should attorneys be able to reschedule case hearings by agreement without the court’s approval?

• what resources should be used to support the court’s judicial functions? (e.g., the use of court-appointed “masters”) and its management functions? (e.g., use of technology, facilities, etc.)

• what new initiatives will the court undertake to improve its operation and service to the community? (e.g., will the court develop a “public information office” to provide information to the public regarding court processes, case decisions, etc.? Will the court develop special dockets to address common underlying needs of defendants and/or victims (e.g., a “drug court” docket? a domestic violence docket? etc.)

• What role will the court play in reducing and/or avoiding delay in case processing? (e.g., how closely will the court monitor the timeframe with which cases are disposed? How strict a policy will the court follow in regard to granting continuance requests? etc.

• Areas of Court Operations Managed by the Court Administrator

Within the management policies established by the judiciary, professional court administrators or their staffs commonly perform the following functions on a daily basis in the U.S.:

1. organization and administration of court activities, services, and functions: organizing and administering effectively and economically all of the nonjudicial activities of the court, including: case scheduling, records maintenance, information system development

2. facility management: procuring, maintaining, and renovating all space and facilities necessary to perform the judicial function and to serve the public, including but not limited to:
– dealing with heating/air conditioning problems/maintenance;

There are two basic types of calendaring systems: (1) individual, in which the same judge manages the case and stays with it from the time of filing until it is competed); and (2) master, a case is assigned to whatever judge is available to handle the specific matter or hearing at issue, so that multiple judges may be making decisions at various points in the processing of a case. Within these two extremes, there are numerous hybrid approaches that have developed and are frequently used for specific types of cases.
– security procedures
– getting new space as facility grows; housing new functions
– posting signs to help users find their way

3. on-going assessment of court performance (time standards, case backlog, etc. court performance standards, etc.)

4. personnel administration: formulating and administering a system of personnel administration, including in service training program for nonjudicial personnel

5. employee hiring and termination: hiring, and terminating all nonjudicial personnel (except the personal staffs of the judges)

6. employee assignment and supervision: assigning, supervising, and directing the work of the nonjudicial officers an employees of the court

7. oversight of the court budget: preparing and administering the court’s budget, fiscal, accounting, and procurement

8. managing space utilization: administering the space available to the court and maintaining it, assisting in planning for new space or renovations

10. performing necessary research and evaluation: conducting studies of the business of the court and preparing appropriate recommendations and reports relating to the business and administration of the court

11. performing necessary statistical analysis: defining management information requirements and collecting, compiling and analyzing statistical data with a view to evaluation the performance of the court and preparing and presenting reports

12. jury system maintenance and reform, as needed: establishing procedures for the cost-effective management of the jury system and jury pool and assuring an adequate pool of jurors available to meet trial needs (although only an estimated 1-2% of the total caseload in the U.S. is disposed of through jury trials, jury trial cases can often involve matters which require significant court resources as a result of the length of the trial, media coverage, or security or other factors);

13. facilitating meetings of the judges: facilitating and attending administrative meetings of the judges of the court and serving as reporter in such meetings if desired

14. *serving as liaison with government and community*: maintaining liaison with governmental and other public and private groups having an interest in the administration of the courts such as the prosecuting attorney, sheriff, public defender, hospitals, and others.

15. *preparing annual and other reports of court activities*: preparing and submitting to the court periodically, at least annually, a report of the activities and the state of business of the court which the chief judge shall publish. This report should include meaningful and current data in a standard format on the ages and types of pending cases, method of disposition of cases, information of current operating problems and measures to indicate standards of performance Median ages and the age ranges of oldest to youngest cases at date of disposition should be specified for all matters requiring court action by trial or hearing. The report should also include a description of innovations and modifications introduced to improve the court.

16. *performing other necessary administrative duties*: performing such other duties as may be assigned by the chief judge and as may be necessary for the proper administration of the court.

IV. “Core Competencies” Required for Professional Court Administration

Although the backgrounds of court administrators in the U.S. vary widely, they generally bring certain “core competencies” that have been identified by the National Association for Court Management and the National Center for State Courts as critical for the effective administration of justice. These “core competencies” are the following:

**Caseflow Management**: the process by which courts carry out their primary function: moving cases from initial filing to final disposition. Managing the caseflow entails managing all phases of the litigation process, including the pre-trial phases, trial, final disposition, and events which follow disposition to ensure the proper execution of court orders and timely completion of post-disposition case activity. Effective caseflow management is also designed to ensure that every litigant receives procedural due process and equal protection during the caseflow process.

**Management of Judicial System Resources, Budget and Finance**: The acquisition, allocation, and management of the court’s resources effects all aspects of court operations and, ultimately, the court’s ability to carry out its judicial functions. Effective procurement and

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management of court resources is fundamental to preserving the independence of the court system, ensuring its integrity, and maintaining public trust and confidence in the judicial process.

**Visioning and Strategic Planning:** The concepts of “visioning” and “strategic planning” are tied to the court’s ability to ensure that its operations and services are designed to meet the current and emerging litigation needs in the community, both in terms of substantive legal issues and underlying socio-economic issues relevant to the court’s functioning. Effective visioning and strategic planning is designed to assure that the ends of justice continue to be served in a manner that addresses a wide array of changes in the community that may affect concepts of substantive and procedural due process, equal protection, open access, and the fair and efficient application of the law to the facts. Visioning and strategic planning entails a continuing process that frequently involves the larger community as well as judges and court staff.

**Leadership:** Effective leadership provides direction to judges, staff, and others in the justice system and larger community for working together to ensure that the administration of justice is fair, timely, efficient, and protective of the rights of all users of the court system, both current and prospective.

**Capacity to Carry Out the Purposes and Responsibilities of the Court:** The capacity to carry out the purposes and responsibilities of the Court is, essentially, the capacity to ensure that the basic function and purpose of the court is carried out in a manner that assures protection of constitutional and legal rights as well as the integrity of the judicial process.

**Human Resources Management:** Effective human resource management not only ensures effective performance of court personnel but also contributes to an atmosphere in which staff take pride in their work, in their role in the court process, and in their service to the community who utilize the court’s services.

**Information Technology Management:** Expertise in applying appropriate technology to the wide range of judicial and administrative functions courts must perform is essential for effective and efficient management of the court process. With the fast pace of changes developing in all aspects of justice system operations, services, and service delivery needs, the use of appropriate technology to support the wide range of operational functions and activities of most courts requires both relevant knowledge and continual education in this rapidly evolving area.

**Education, Training and Development:** Education, training and personal development are critical for both judges and court staff and must necessarily entail a wide range of topics and formats. Increasingly, the term “judicial branch education” -- rather than simply “judicial education” is being used to address this key competency area. The effective court administrator needs to be skilled in working with professionals to design a wide range of education and training programs geared to the varying levels of experience and expertise of both judges and staff and which address both

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substantive areas as well as other necessary skills necessary to competent performance of judicial and court functions.

**Court Community Communication:** An increasingly important area of court activity is developing and maintaining communication with the public – to both keep the public informed regarding the court’s functions and activities as well as to recognize issues of community concern regarding the court’s functioning. Effective court-community relationships are essential to enhancing the court’s understanding of the judicial process and the court’s work, improving court performance as may be appropriate, and enhancing public trust and confidence in the judiciary.

**Managing Other Essential Components:** In addition to deciding cases, courts are becoming increasingly involved in a wide range of other areas of management and services essential to sustaining the independence and integrity of the court system. These activities can range from assuring availability of courtrooms when needed; maintaining court security; assigning necessary courtroom clerks and reporters for court proceedings, to maintaining adequate capabilities to perform legal research; developing information materials for non-English speaking users of court services; and designing alternative dispute resolution programs.

V. **Fundamental Elements for Good Court Administration (Performance Measures)**

During the past several decades, a wide range of “performance standards” have been developed that set aspirations regarding the time frame and quality of services that should be provided by various agencies involved in the justice system process. Most of these standards have been developed by NGO’s – ABA (American Bar Association), NACM (National Association for Court Management), AJS (American Judicature Society), and other justice serving organizations. These standards provide a common frame of reference for both assessing current justice system operations as well as strategically planning the level of services needed. One of the most commonly referenced standards for trial courts are the *Trial Court Performance Standards* developed by the National Center for State Courts and a specially created Commission on Trial Court Performance Standards. These standards, summarized below, address various issues relating to the administration of the court and the degree to which it promotes both the appearance and the reality that “justice” is being dispensed. Taken in toto, these standards provide a useful gauge against which the management effectiveness of a trial court can be assessed. Similar standards have been developed for the appellate process.

**TRIAL COURT PERFORMANCE STANDARDS**

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Standard 1. Access to justice

In a democracy courts must be open and accessible. The concept of accessibility refers not only to physical structure but also to the procedures and the responsiveness of personnel to members of the public:

Standard 1.1 Public proceedings
The trial court conducts its proceedings and other public business openly.

Standard 1.2 Safety, accessibility, and convenience
The trial court facilities are safe, accessible, and convenient to use.

Standard 1.3 Effective participation
All who appear before the trial court are given the opportunity to participate effectively, without undue hardship or inconvenience.

Standard 1.4 Courtesy, responsiveness, and respect
Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come in contact.

Standard 1.5 Affordable costs of access
The costs of access to the trial court's proceedings and records—whether measured in terms of money, time, or procedures that must be followed—are reasonable, fair, and affordable.

Standard 2. Expeditiousness and timeliness

The trial court should meet its responsibilities to all persons and agencies affected by its actions and activities in an expeditious and timely manner. Unnecessary delay causes injustice and hardship, and in turn diminished public trust and confidence in the court.

Standard 2.1 Case processing
The trial court establishes and complies with recognized guidelines for timely case processing while at the same time keeping current with its incoming caseload.

Standard 2.2 Compliance with schedules
The trial court disburses funds promptly, provides reports and information according to schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Standard 2.3 Prompt implementation of law and procedure

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The trial court promptly implements changes in law and procedure.

**Standard 3. Equality, fairness, and integrity**
The trial court should provide due process and equal protection of the law to all who have business before it. Equality and fairness demand equal justice under law. Integrity should characterize the nature and substance of the trial court's procedures and decisions and the consequences of the decisions.

**Standard 3.1 Fair and reliable judicial process**
Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

**Standard 3.2 Juries**
Jury lists are representative of the jurisdiction from which they are drawn.

**Standard 3.3 Court decisions and actions**
The trial court gives individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.

**Standard 3.4 Clarity**
Decisions of the trial court unambiguously address the issues presented to it and make clear how compliance can be achieved.

**Standard 3.5 Responsibility for enforcement**
The trial court takes appropriate responsibility for the enforcement of its orders.

**Standard 3.6 Production and preservation of records**
Records of all relevant trial court decisions and actions are accurate and properly preserved.

**Standard 4. Independence and accountability**
The judiciary must assert and maintain its distinctiveness as a separate branch of government. Within the organizational structure of the judicial branch, the trial court must establish its legal and organizational boundaries, monitor and control its operations, and account publicly for its performance.

**Standard 4.1 Independence and comity**
The trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

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Standard 4.2 Accountability for public resources
The trial court responsibly seeks, uses, and accounts for its public resources.

Standard 4.3 Personnel practices and decisions
The trial court uses fair employment practices.

Standard 4.4 Public education
The trial court informs the community of its programs.

Standard 4.5 Response to change
The trial court anticipates new conditions or emergent events and adjusts its operations as necessary.

Standard 5. Public trust and confidence
The public's compliance with the law is dependent to some degree upon its respect for the courts. Ideally, public trust and confidence in trial courts stem from the many contacts citizens have with the courts.

Standard 5.1 Accessibility
The trial court and the justice it delivers are perceived by the public as accessible.

Standard 5.2 Expeditious, fair, and reliable court functions
The public has trust and confidence that the basic trial court functions are conducted expeditiously and fairly and that its decisions have integrity.

Standard 5.3 Judicial independence and accountability
The trial court is perceived to be independent, not unduly influenced by other components of government, and accountable.

VI. Conclusion
The concept of judicial independence is fundamental to the judicial process. Courts -- and judges -- must be independent of outside influences and pressures of all types. At the same time, however, they must be accountable to other units of government and to the public at large. While courts house one of the most sacred elements of governmental process -- the judicial function -- they must also develop the capability to manage their affairs, just like any other large organization. In addition to resolving cases, courts must also have the capability for managing: large fiscal outlays annually for capital expenditures and operational expenses; inventories that must be disposed of expeditiously; personnel who must be recruited, assigned, and trained on an ongoing basis; and services to a clientele with a wide range of needs who must be served on an on-going basis.. In order
for the concept of judicial independence to be a reality, therefore, courts must operate in a manner that is above reproach from all dimensions. It is not enough to have renowned legal scholars as jurists or judicial decisions that are well formulated and reasoned. The courts must not only do justice; they must appear to do justice and manage the case disposition process efficiently, expeditiously, and fairly. To do this, courts must reflect the attributes of a well managed institution, geared to serving all segments of the community and engendering their confidence and trust. In so doing, they then establish the foundation for maintaining --and sustaining -- their independence.
I. General Background on the U.S.

Population: 286,196,812
No. of States: 50 plus District of Columbia, Puerto Rico and Guam

II. Judicial Systems:

A. Federal Court System

- **Number of Courts and Judges:**
  - Supreme Court: 1 (9 justices)
  - Circuit Court of Appeals: 13: Total number of Judges: 179
  - District Courts: 89 plus District of Columbia, Puerto Rico, Guam and Northern Mariana Islands: Total No. of Judges: 665
  - Bankruptcy Courts: one in each district: Total No. of Judges; 324
  - Other judges/magistrates: 540 (includes 486 full-time)

- **Staff:**
  - Circuit Executives [rough equivalent of state court system administrators- see below] 13 est.
  - District Court Executives [rough equivalent of state trial court administrators - see below]: n/a

- **Caseload (annual):**
  - Supreme Court: approx. 4,000 petitions; 200 cases heard
  - District Court: 341,841 total (82,614 criminal)
  - Circuit Court (appeals): 57,555 total (11,281 criminal)
  - Bankruptcy Cases: 1,547,669

B. State Court Systems in the U.S.

- **Number of Courts and Judges:**
  - State Supreme Courts: 50 courts (1 in each state) 326 justices
  - Intermediate Courts of Appeal: 39 courts 912 judges
  - Courts of General Jurisdiction: 2,040 courts 10,163 judges
  - Courts of Limited Jurisdiction: 13,515 courts 18,630 judges

  - **State Court Administrators** 50 (plus administrators in Puerto Rico, Guam, and D.C.)

  - **Trial Court Administrators:** 2,150 est. (plus many additional administrative staff)

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- **Trial Court Caseload (annual)**

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