Thank you for inviting me to participate in this important meeting and joining you in this exciting period of judicial system development in Buenos Aires. As I noted when I attended the meeting last year, listening to the discussions at this gathering brings me back to the period several decades ago in the US when we were creating many of the state court structures that took the place of localized court processes that varied from city to city within a state, had no systematic structure, policy or procedures, and raised many of the issues you are dealing with today.

However, I can think of no more important topic relating to the comprehensive judicial system planning that is underway than the topic being addressed by this panel: the independence of the Judiciary. It is fundamental to the rule of law and to a free society. This is an issue that is important to governments everywhere. Although our systems of justice may differ in terms of process and procedures in the US and Argentina, we share common problems and, of course, common goals for our justice systems, including:

- providing a fair and just forum and mechanism for resolving disputes
- preserving the rule of law; and
- promoting public confidence in and access to the judicial process

All of these goals are intertwined and fundamental to them is the establishment and preservation of the independence of the judicial system.
By way of background: I am a research professor at the School of Public Affairs at American University in Washington DC, and an attorney, having also practiced criminal and civil law, so I also bring the dual perspectives of both a practitioner and an researcher. I have been working in the field of judicial reform for many years, primarily through the technical assistance and training programs we conduct, many under contract with the US Department of Justice.

**Judicial Independence:** What do we mean when we think of that concept? Regardless of our culture or our nationality, I believe we all approach this concept from the perspective that Judicial Independence entails being able to have an independent arbiter of disputes – one that is free of political or other influence – cannot be “bought”, brings an open but informed mind to the issues, and is unafraid to take a stand even if it will be an unpopular one.

How do we create and sustain judicial systems in which the independence of the judiciary prevails? And how do we attract – and retain -- jurists to serve in the judicial system where judicial independence is key? These are critical issues those at this conference are addressing and there are no easy answers.

There are a number of dimensions that are relevant:

(1) Selection process: Some say jurists should serve for “life”. Others advocate for a selection process that entails relatively short terms that requires a judge to run” on their record? There doesn’t appear to be one best way. Judges who have a life term can
become distant from the public and may still be open to improper influences even if they are not subject to election.

(2) retention: some locales require a judge to run “on their record”? good? and bad? – don’t want their decisions to be the topic of campaigns.

(3) disciplinary processes: critical; in US, most states have an active board that handles grievances.

After we came to the conference last year and heard how much interest there was in judicial selection, we prepared a summary of the various provisions for judicial election in the states ins thus which I have brought.

We know that having access to an independent jurdiciarry also depends on a number of “infrastructure” factors;

- **Access to Justice**, reflected in the procedures, policies, facilities and operations of the court system
  - includes **public proceedings accessible** facilities, understandable proceedings, affordable costs, provision of legal assistance, tec. – Legal Aid, public defenders, pro se assistance centers

- **Expeditiousness and Timeliness**, reflected in case processing guidelines and timeframes; compliance with schedules; this standard has particularly required an interdisciplinary effort since the court cannot process a case “expeditiously’ if the prosecutor hasn’t interviewed the witnesses, the sheriff doesn’t have the
staff to transport the defendant, if detained in custody, from the jail to the court, or the defense counsel hasn't spoken with the defendant, investigated the case, and prepared the defense

- **Equality, fairness and integrity**, entails a fair and reliable judicial process, consistency in judicial decisions, and clarity in judicial decisions; production and preservation of records

- **Independence and accountability**, requiring the maintenance of the independence of the judicial branch, published reports of its activities and status of cases pending, transparency in budget expenditures, personnel practices, and mechanisms to ensure outside influence doesn’t pressure judicial decisions

- **Public trust and confidence**, requiring that the judicial process must APPEAR as well as be fair; appearance as well as fact of fairness, judicial independence and integrity, application of judicial and other relevant canons of ethics, disciplinary systems for judges and attorneys who fail to comply;

- Professional court administration

Development of professional administration of the courts in the US has been a major component of the capacity to maintain he independence of the judiciary and respect for its functioning. In addition to the practicalities of POLITICS, that are always present,
the basic fact of life in the US is that the budget for the courts comes from the Legislature which, in itself, can potentially create a serious challenge to the independency of the court system. “The power of the purse is the power to control”. If the legislature reduces the court budget, is it because of an unpopular decision that was made? And could it be possible for the legislature to reduce the judicial budget to a point where the court couldn’t effectively function, thereby putting the court in a position to have to defer to legislative policies even if they conflict with judicial ones?

From the very beginning of our country, a major premise in the US has been that the judiciary must be separate and independent and free from political or other influence. In exercising the judicial function, one of our early federal chief justices, John Marshall, established the principle that our constitution was the supreme law of the land, that all laws passed by the legislature or the states and all actions taken by the President and the executive branch at both the federal and state level had to comply with the provisions of the constitution, that the judicial branch had been entrusted to review legislative and executive actions to ensure that they did, in fact, comply with the constitution and that the independence of the judiciary was essential to preserve our constitution and assure that the actions of the other branches of both the federal and state governments complied with the constitution.

To sustain a judicial system that is separate and independent from political or other influence, however, the system has to be functioning efficiently in accordance with the “best practices”
applicable to comparable organizations that conduct public functions, manage personnel and budgets, account for fees and fines collected, and perform other functions that require professional skills and expertise. While federal judges in the US are appointed for life, most state judges are elected, generally for 4-6 year terms, so special provisions also need to be in place to promote the integrity and independence of the judicial function in the context of the selection process, and disciplinary mechanisms to handle allegations of noncompliance is vital and established, in various forms, in every state and at the federal level, for judges who are both elected as well as appointed.

The relationship between JUDICIAL INDEPENDENCE and COURT ADMINISTRATION is therefore particularly important since, if the judiciary is to function as a separate branch of government, it must be able to manage its own affairs. Judges generally have little background in public administration and management as well as very little credibility in specialized management functions, such as budgeting, technology, procurement, etc., with the other branches of government. Judges are also generally less than enthusiastic about assuming a management role and many feel such functions are inappropriate. During the past several decades, major developments have occurred to professionalize the management of our court functions, almost all of which have been developed by nonjudges – and often, nonlawyers -- working to support the management functions of the court system which the judge have delegated to the court administrator, or CEO. All of these management initiatives have been designed to strengthen the judicial branch as an independent entity, enable it to fulfill its constitutional mandates and to enable
the judges to focus on their primary role – adjudicating disputes – and not be distracted by the myriad of administrative tasks running the court organization requires – supervision personnel, developing the court’s budget, procuring technology, scheduling case, renovating the facility, etc.

These developments have included:

- development of uniform court rules, statewide, for the processing of criminal and civil cases, including procedures, timeframes and forms;
- more centralized and more professional management of judicial system resources: e.g., development of personnel systems with job descriptions, articulate job position requirements, formal hiring and performance evaluation and promotion practices, etc.;
- a regular, required program of judicial and staff training and education; and
- management of court facilities, including scheduling of the use of courtrooms, security screening, etc.
- compiling, analyzing and disseminating data and other information on the court’s workload; and
- developing comprehensive budgets to support court functions.

One Final Thought

You are in the process of developing a long range plan for the justice system and, in particular, the judicial function, This is a
magnificent opportunity to assess both the strengths and the weakness of the present justice system and to build the consensus that will be essential for sustaining the improvements you will be introducing over the longer term.

Instituting -- and sustaining -- judicial system reform is an ongoing process. It requires a clear path of action, definable goals and performance measures to ensure that planning is proceeding as intended. Everything can’t be done at once. So establishing -- operationalizing -- the concept of judicial independence will require an action plan that can be implemented steps or phases at a time, each laying the foundation for the ext.