

Opening Remarks

Initial Meeting of Commission for Impartial Courts Justice Ming Chin, Chair San Francisco, California September 10, 2007

Good morning. As Chair of the newly-appointed Commission for Impartial Courts, I am pleased to welcome you to these inaugural meetings of the Commission, its Steering Committee, and its four Task Forces. I regret that a scheduling conflict prevents me from being with you. The Judicial Council can have no more important responsibility than preserving the right to fair and impartial courts that make decisions based on the evidence and the law, free of outside influence.

I am honored that the Chief Justice has asked me to serve as Commission Chair, and I pledge to do all I can to see that our deliberations are thorough and our recommendations sound. I am also very grateful that Justices Judith McConnell, Doug Miller, Ron Robie, and Judge William MacLaughlin have agreed to chair the Commission's Task Forces. The Chief Justice could not have selected a finer group.

The Commission's work will be supported by our distinguished Scholar-in-Residence, retired Judge Roger Warren, who previously headed up work in this field by the National Center for State Courts, and by outstanding staff of the AOC under the direction of Project Director, Christine Patton. Roger has also assisted in recruiting four national experts as Task Force consultants. I am pleased that Seth Anderson, Executive Vice President of the American Judicature Society, and Deborah Goldberg, Director, Democracy Program, Brennan Center for Justice, are with us today. I understand that the other two consultants, Charlie Geyh, Professor of Law at the Indiana University School of Law, and Bert Brandenburg, Executive Director of the Justice at Stake Campaign, will be joining their Task Force meetings tomorrow morning by telephone conference.

Of course, I also want to thank all of you for accepting the Chief Justice's invitation to join in this important work. In addition to distinguished appellate justices, trial court judges, and court executive officers, the Commission's membership includes prominent former members of the Legislature and officers of the Executive Branch, as well as leaders of the bar, media, law schools, business community, educational institutions, and civic groups. That so many extremely busy Californians from so many different walks of life have committed themselves to this endeavor reflects the many ways all Californians benefit each and every day from a court system dedicated to the impartial resolution of disputes based on the rule of law.

Our citizens have every reason to be very proud of their Judicial Branch. The California courts have long been recognized as among the finest in the country. Under the leadership of the Chief Justice, the California judiciary has implemented a number of far-reaching improvements over the past 10 years. During that time, there have been few threats to the impartiality of California's judiciary. The story elsewhere is different; in many states, courts are increasingly coming under attack from partisan and special interests seeking to influence judicial decisionmaking, and judicial elections are becoming more like elections for political office: expensive, nasty, and overly politicized.

Last November, at a two-day Summit convened by the Judicial Council, California's judicial leaders concluded that unless the Judicial Council took decisive action, the question was not "if" these trends would spread to California, but "when." They identified four basic approaches to preserving the impartiality of, and the public's confidence in, California's judiciary. Following up on that work, Chief Justice George has established this Commission with four Task Forces, one to study each of the four approaches the Summit identified. In eighteen months, the Task Forces are expected to submit recommendations to the Commission's Steering Committee, which, in

turn, is charged with submitting a final report and recommendations to the Judicial Council by July 2009.

As the Chief Justice said in announcing the Commission's creation:

"It is essential that we make every effort to avoid politicizing the judiciary so that public confidence in the quality, impartiality, and accountability of judges is protected and maintained." The Commission's creation reflects widespread concern that unless we exercise leadership in addressing the contemporary challenges to non-partisan and impartial judiciaries, the very legitimacy of California's court system may be in jeopardy. As the U.S. Supreme Court has noted, "[t]he legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship."¹ Justice Anthony Kennedy put it this way in explaining why "judicial independence is a foundation" of "the Rule of Law": "The law commands allegiance only if it commands respect. It commands respect only if the public thinks the judges are neutral."² "Judges must be independent not so they can do as they choose, [but] so they can do as they must."³

In our effort to safeguard the impartiality of California's courts and preserve the public's trust in California's judicial branch, we would do well to consider the concerns of America's founders when they first sought to ensure the independence and impartiality of our federal courts over 220 years ago. As Alexander Hamilton said, judges are officers of the "weakest" branch of government, yet they have the "arduous . . . duty" of serving as "the bulwarks of a limited constitution against legislative encroachments" and "safeguard[ing]" the Constitution and the rights of individuals from "the effects of occasional ill humors in . . . society." Judges must possess not only great knowledge and skill in the law, Hamilton said, but also integrity, moderation, and an "uncommon portion of fortitude."⁴ In seeking to maintain judicial impartiality in California, we too must promote the selection and retention of judges with these outstanding qualities.

The founders also recognized the importance of judicial accountability. For improper judicial behavior, they provided for removal from office through impeachment. The standard of judicial accountability in decisionmaking, however, was to be "inflexible and uniform adherence to" the law, which, Hamilton said, is "indispensable in the courts of justice."⁵ As Hamilton also said, committing judicial retention decisions to the executive, the Legislature, or the people creates an incentive "to consult popularity" in judicial decisionmaking. The challenge, then, is how to maintain judicial impartiality while providing for appropriate mechanisms of accountability.

Finally, as we approach our task, we would also do well to follow the lead of our founders by retaining a common and constant focus on achieving the *public* good. I submit that our goal should be to find solutions that serve the long term and common interests of *all* Californians.

Thank you all again for joining in this enterprise. I look forward to reviewing the video of today's proceedings, hearing reports from the Task Force chairs about the initial meetings, and working with each of you in the future. Thank you again for your willingness to serve.

¹ *Mistretta v. United States*, 488 U.S. 361, 407 (1989)

² "Justice for Sale," *Frontline*, Stephen Talbot, Sheila Kaplan, and Bill Moyers, November 23, 1999.

³ Remarks at the American Bar Association's November 11, 2005, International Rule of Law symposium.

⁴ Alexander Hamilton, Federalist No. 78 in Frederick Quinn, ed., *The Federalist Papers Reader* (Seven Locks Press, 1993), pp.163-167

⁵ *Ibid.*