Mississippi College Law Review

Volume 25
Issue 2 *Vol. 25 Iss. 2*

Article 10

2006

The Constitution and Judicial Independence - The 2005 Judge William H. Keady Lecture

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Custom Citation
25 Miss. C. L. Rev. 283 (2005-2006)

THE CONSTITUTION AND JUDICIAL INDEPENDENCE THE 2005 JUDGE WILLIAM H. KEADY LECTURE[1]

Justice James E. Graves, Jr.[2]

I. D-DAY AT THE SUPREME COURT

This day was going to be a day to remember. But nothing—neither the weather, nor the headlines, nor the stars of the preceding night—foretold the magnitude of the changes the coming hours would bring. Before nightfall on this Monday, the Pandora's box of race was going to be forced open and terrifying vistas were going to assault the eyes of men and women. And in the wake of this event, some men were going to predict the imminent collapse of the Republic, while other men, viewing the same set of facts, were going to say that their eyes had seen the glory of the coming of the Lord.

This day, in short, was going to change everything, or almost everything, in the field of race relations. But—astoundingly—there was not one word of warning from the soothsayers or the headlines, which spoke of old and therefore reassuring crises: the Mau Mau uprising in Africa, the Dien Bien Phu struggle in Vietnam, the Army-McCarthy hearings in Washington, D.C.

This day was Monday, May 17, 1954. On this day, as on other days before and since, tens of thousands of good suburbanites left their lily-white compounds in the Maryland and Virginia suburbs and rode into the increasingly black

1. Delivered at Mississippi College School of Law, Jackson, Miss., on Oct. 24, 2005.

2. Justice James E. Graves, Jr. has served on the Mississippi Supreme Court since 2001. He previously served as a circuit court judge for ten years. A graduate of Sumner Hill High School in Clinton, Mississippi, where he was valedictorian, Justice Graves received a B.A. in Sociology from Millsaps College and a J.D. from Syracuse University College of Law. He also holds a Master of Public Administration degree from the Maxwell School of Citizenship and Public Affairs at Syracuse University.

He has served as a staff attorney at Central Mississippi Legal Services. As a special assistant attorney general, he was head of the Human Services Division of the Attorney General's Office. Just prior to his service as circuit judge, he was director of the Division of Child Support Enforcement of the Mississippi Department of Human Services. He was also engaged in the private practice of law for more than three years.

His teaching experience includes serving as a teaching team member at Harvard Law School and as a presenter at Stanford Law School as well as Jurist-in-Residence at Syracuse University School of Law. Justice Graves has also taught as an adjunct professor at Jackson State University, Tougaloo College, and Millsaps College.

Justice Graves has received numerous awards, including the National Bar Association's first Distinguished Jurist Award in 1996, the Judge of the Year Award in 1992 from the National Conference of Black Lawyers, and the 2004 NAACP Legal Award.

city of Washington to conduct the business of the U.S. government. It was a pleasant but cloudy day in Washington, with temperatures in the seventies, and phalanxes of tourists, armed with cameras, were mobilizing for assaults on the Lincoln and Washington monuments. The tourists, the monuments, the motorcades from Virginia and Maryland: all this was ordinary and reassuring. In fact, everything conspired on this day to suggest that this was just another ordinary Monday in the best of all possible worlds. The blacks were quarantined in their legally appointed Jim Crow schools, the benign and reassuring (to some) Dwight David Eisenhower was in the White House, spring flowers were in bloom, and there was no reason to believe that things would not go on this way forever. There was, to be sure, one possible source of trouble—and that was the U.S. Supreme Court, which met every Monday to announce decisions. And, as a matter of fact, a Supreme Court decision on school segregation was long overdue. But the decision had been delayed and postponed so many times that it had slipped out of focus in the public's mind.

If the public had forgotten, the press and the politicians had not. For almost four months now, a handful of lawyers and reporters had gathered every Monday at the Supreme Court building in the hope that the decision would come on that day. But the Mondays of January and February and March and April passed without event. And it seemed at first that Monday, May 17th, would go by in the same fashion. In fact, reporters were told before the Court convened that it "looks like a quiet day."

This was an illusion. But that did not become apparent until late in the session, which started promptly at twelve noon. Every seat in the high-ceilinged, marble-columned courtroom was filled long before the opening gavel was sounded. And although there had been no advance public notice, several celebrities were on hand, including Attorney General Herbert Brownell, former Secretary of State Dean Acheson, and three of the top lawyers in the school segregation cases—George E.C. Hayes and James M. Nabrit of Washington, D.C., and Thurgood Marshall, chief counsel of the NAACP.

At twelve on the dot, the court marshal brought celebrities and non-celebrities to their feet with a whack of his gavel and announced, "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States!" With a flourish, nine black-robed men strode through openings in the red velvet curtains and

moved to a long mahogany bench, which sat on a marble platform a foot or so above the floor. For the first time in several weeks, veteran reporters noted, all nine justices were in attendance. Associate Justice Robert Jackson was recovering from a heart attack, but he had checked out of the hospital that morning and dragged himself to court. What was the meaning of this? The justices gave no sign. They stood poker-faced behind their black leather swivel chairs while the marshal intoned the traditional chant:

"Oyez! Oyez! Oyez!!! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

The gavel sounded again. The justices and spectators took their seats. All eyes turned now to Chief Justice Earl Warren, who dominated the proceedings from his chair in the center of the high bench. Warren, big-shouldered, silver-haired, bespectacled, was sixty-two years old. On his immediate right sat the senior associate justice, Hugo Lafayette Black, an Alabamian and former member of the Ku Klux Klan who had become the court's most consistent defender of civil liberties. At Warren's left sat another senior justice and another Southerner, Stanley Reed, of Maysville, Kentucky. To the left and right of these men, in descending order of seniority, were Felix Frankfurter, a former Harvard Law School professor; Robert Jackson, the former chief counsel for the United States at the Nuremberg trials; Harold H. Burton, a former mayor of Cleveland, Ohio; Tom Clark, a former attorney general; and Sherman Minton, a former senator from Indiana.

The justices represented a broad spectrum of (white) American life. Three (Black, Clark, Reed) were from the South, two (Burton and Minton) were from the Midwest, two (Jackson and Frankfurter) were from the Northeast, and two (Warren and Douglass) were from the West. All, with the exception of Burton and Warren, were Democrats, and only two—Black and Douglass—had been conspicuous in the advocacy of equal rights for blacks.

It was in and through these men that America approached its date with destiny. The approach was singularly lacking in drama. The Court first disposed of routine business, including the admission of 118 lawyers to the Supreme Court bar. When at last that was done, Chief Justice Warren recognized Tom Clark, who announced and read the Court's opinion in a case dealing with alleged monopolistic

practices in the sale of milk in Chicago. Justice Douglass followed with two routine cases involving negligence and the picketing of retail stores.

All this was unbearably boresome, and the tourists who had come to the Court in search of history and drama were fidgeting and cursing themselves for their foolhardiness. At this precise moment, at the low ebb of the proceedings, Earl Warren picked up a document on his desk and said: "I have for announcement the judgment and opinion of the Court in No. 1, *Oliver Brown et al. v. Board of Education of Topeka.*" It was 12:52 p.m., and a shiver ran through the room. At the same time, clerk Harold Wiley slipped a note into a pneumatic tube that whisked it to the ground floor pressroom, where bored reporters were lounging and sipping coffee. Banning E. Whittington, the Court's press officer, extracted the note, read it, and put on his suit coat. This was noted by a number of reporters, including Louis Lautier of the Negro Newspaper Publishers Association. "I thought," Lautier said later, "he was going to say he was going to lunch." Instead Whittington said, as he ran out of the pressroom, "Reading of the segregation decisions is about to begin in the courtroom." The pressroom exploded, and the reporters scrambled for the courtroom with Whittington leading the way.

As these events unfolded, bells started ringing in pressrooms all over the world. The first public alert came from Associated Press: Chief Justice Warren today began reading the Supreme Court's decision in the public school segregation cases. The Court's ruling could not be determined immediately.

Warren read this, his first major opinion, in a clear and undramatic voice. He began by tracing the twisted paths that brought America and one hundred years of American history to the bar of justice. The paths that framed his words began in slavery. They branched out then, crossed and doubled back on one another before halting temporarily at the Supreme Court, which ruled in the infamous Dred Scott decision that black people had no rights in America that white people were bound to respect. The Civil War reversed that decision, and the Thirteenth and Fourteenth amendments opened up new paths of controversy which again led to the Supreme Court, which again ruled in favor of reaction and injustice. The Fourteenth Amendment said clearly that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court interpreted this language narrowly, ruling in *Plessy v. Ferguson*, an 1896 case, that laws requiring segregation were a reasonable use of state police power.

There was also concern and speculation at the White House. According to Warren's posthumously published book, President Eisenhower made an indirect but unmistakable appeal to him on behalf of the Southern cause. This was unconscionable and possibly illegal, but it was too transparently clumsy and it came too late to affect the words Earl Warren read on May 17.

> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does. . . . We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.
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> The words, clear, firm, unequivocal, resounded in the courtroom, evoking frowns, smiles, tears. Thurgood Marshall leaned over and said to an aide, "We hit the jackpot!"[3]

That was an excerpt from a book by Lerone Bennett, Jr., called *Great Moments in Black History*.[4] Only he could make the pronouncement of a Supreme Court decision seem like an exciting event.

Thanks to the Mississippi Humanities Council and Mississippi College for this opportunity to follow in the footsteps of an impressive group of distinguished lecturers since 1990 when the Judge William Keady Lecture Series was begun. I am honored by the invitation, humbled by the towering legacy of Judge Keady, and intimidated by the noted scholars among us this evening.

Judicial independence has been defined as the freedom of the judiciary to render justice fairly, impartially, in accordance with the law and the

3. LERONE BENNETT, JR., GREAT MOMENTS IN BLACK HISTORY: WADE IN THE WATER (2d ed. 1992).

4. *Id.*

United States Constitution; without threat, fear of reprisal, intimidation, or other influence or consideration.

Alexander Hamilton, one of the framers of the Constitution, wrote in the Federalist #78 to defend the role of the judiciary in the constitutional structure of government. He was emphatic that "'there is no liberty, if the power of judging be not separated from the legislative and executive powers.' . . . [L]iberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments . . . ."[5]

Article III, Section 1 of our Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.[6]

This was clear evidence of an intention to insulate judges from the public pressures that may, and indeed should, affect elected officials. Courts are a venerable institution in our democracy.

The security of lifetime appointment and a guaranteed salary certainly helps to insure an independent judiciary. However, those benefits apply only to the federal courts. In Mississippi state courts we have judicial elections. For appellate courts, the terms are eight years and for trial judges, four. So, while the issue of judicial independence is in the front of many minds, particularly in light of the recent vacancies on the United States Supreme Court, distinctions must be drawn when discussing that issue.

Challenges to judicial independence at the federal and state levels include the unwarranted criticism of the judges; single-issue campaigns against sitting judges; inadequate funding of the judiciary; judicial recall elections; proposed term-limit constitutional amendments; partisan delay in confirmation of federal judicial nominees; threats of impeachment/calls for resignation; and reductions in state and federal sentencing power and discretion. The implications of these challenges to our justice system are far reaching, and they undermine court legitimacy and democratic ideals.

Let us first look at the decision in *Brown v. Board of Education* and why it is so important in the context of a discussion of judicial independence. Here is why it is so illuminating:

First, those justices, those nine white men from all over the country, decided to do what was right. They did the right thing for the right reason. Unfortunately, there are some people, even among today's judiciary, who

5. THE FEDERALIST No. 78 (Alexander Hamilton) (McLean's ed.) *available at* http://thomas.loc.gov/home/histdox/fed_78.html (last accessed Oct. 17, 2006).

6. U.S. CONST. art. III, § 1.

lack the courage and the conviction to do that. That act alone was courageous when you consider the times. It was May 1954, a year and a half before Rosa Parks's refusal to give up her seat on the bus gave birth to the Civil Rights Movement. It was a unanimous decision. That is very hard to do. Trust me. But those nine men recognized the importance of a united front in such an important decision. Justice Robert Jackson left the hospital and dragged himself to the Court for the announcement. It was important for our democracy that he be there. Justice Black was a former Ku Klux Klansman from Alabama. It was significant that he too voted with the majority.

Judicial independence—without fear of reprisal—Justice Black knew that he would go home to Alabama. Absent any undue influence—according to Chief Justice Warren's memoirs, President Eisenhower made an indirect but unmistakable appeal on behalf of the Southern cause.[7] That was unconscionable and inappropriate, but it did not affect Justice Warren's decision.

Unquestionably, there were some personal views that were set aside in the interest of justice. In light of the Court's earlier precedent in *Plessy v. Ferguson,* those justices were certainly labeled judicial activists. What was then viewed by so many as activism is now highly praised as justice.

A judicial activist is any judge who makes a decision with which a very vocal group, large or small, disagrees. However, there is today almost universal praise for the decision and almost universal disdain for the Jim Crow system that compelled it. "Judicial activism" is usually associated with liberals, but lately conservatives have been far more likely to strike down laws passed by Congress.

Allow me to pause and say that I detest labels. Liberal, conservative, or moderate; Republican, Democrat or Independent—I think labeling allows people to presume that they know all that they need to know about a person, based on the label. It allows people to avoid engaging in any in-depth study, examination, or analysis. It makes convenient our tendencies toward presumption and stereotype. With that in mind, I note that according to Yale Law Professor Paul Gewirtz, Justice Clarence Thomas has voted to invalidate sixty-five percent of the laws that have come before him in cases, while those Justices least likely to do so were Ruth Bader Ginsburg and Stephen Breyer. So I guess liberals, conservatives, and moderates can all be activists.

There have been several major attempts throughout our history to interfere with judicial independence. This is not a new issue. Judges are often accused of being activists, unaccountable and out of the mainstream. Life tenure should allow a judge to hear and benefit from informed criticism from the bar, the other branches of government, and the public.

The historical attempts at interference include the case of Justice Samuel Chase. He was on the Supreme Court in 1805 when the House voted

7. EARL WARREN, THE MEMOIRS OF EARL WARREN (1977).

to impeach him. The charges had to do with Chase's charge to a Baltimore grand jury and with allegations that he had shown a high degree of impartiality in two high-profile trials.

Chase was a Federalist who had been appointed by President George Washington. But by 1805, Thomas Jefferson and the Republicans controlled the Presidency and the Senate.

Although there were twenty-five Jeffersonian Republicans and nine Federalists in the Senate, the Republicans failed to get the two-thirds vote necessary to convict. The Senate's failure to convict was not an endorsement of Chase, but instead was a recognition by the Senate that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. That political precedent has governed the use of impeachment to remove federal judges ever since. That is as it should be. Any other rule would destroy judicial independence—instead of trying to apply the law fairly, regardless of public opinion, judges would be concerned about inflaming any group that might be able to muster the votes in Congress to impeach and convict them.

Historical aside: At Samuel Chase's trial, the Vice-President of the United States and presiding officer of the Senate was Aaron Burr. Burr was a dapper man with piercing black eyes. Although he sat as the presiding officer of the impeachment court, he himself was a fugitive from justice. Burr had recently killed Alexander Hamilton in a duel in New Jersey. An indictment against him for murder was outstanding. Hence, someone remarked that although in most courts the murderer was arraigned before the judge, in this court the judge was arraigned before the murderer!

Congress again confirmed this principle when it passed the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980,[8] which authorized the filing of a complaint against a federal judge for misconduct or disability affecting the judge's ability to discharge his/her duties. If the charges are substantiated, then the judge may be subject to various kinds of discipline short of removal from office. Congress made clear, though, that the statute did not authorize complaints "directly relating to the merits of a decision or a procedural ruling." The appellate process is the sole remedy for challenges to decisions or rulings.

Another example of a historical attempt to interfere with judicial independence is what Franklin D. Roosevelt attempted to do in the 1930s. The Supreme Court had invalidated legislation that Roosevelt thought was essential to restore prosperity during the Great Depression. Roosevelt, and an overwhelmingly Democratic Congress, faced a Court that had for thirty years been reading into our Constitution a doctrine of "freedom of contract" that was unfriendly to social legislation.

In FDR's view, the Court was a roadblock to the progressive reforms needed in the nation, and he planned to use his immense political resources to bring it into step. Roosevelt proposed a plan to "reorganize" the judicial

8. Pub. L. No. 96-458 (1980), codified at 28 U.S.C. 332(a) & 28 U.S.C. 372.

branch by, among other things, appointing an additional six Justices. He argued that the older Justices needed the additional help. Clearly, his intent was to pack the Court with Justices who would be sympathetic to his New Deal. Notwithstanding the huge majorities in both the House and the Senate, the proposal failed. And it should have. It was a blatant assault on judicial independence.

President Roosevelt eventually was able to change the judicial philosophy of the Supreme Court. Through the appointment process and over the course of his several terms in office, FDR appointed seven associate Justices and one Chief Justice. He changed the judicial philosophy of the Court in a way that the framers of our Constitution intended—through the appointment process.

The framers of our Constitution struck a balance between accountability and judicial independence. Hence, judges have the security of lifetime appointments, which are made by the executive branch with the advice and consent of the legislative branch. In other words, elected officials who are accountable to the public make the decisions regarding service in the judicial branch. It is indeed a system that facilitates judicial independence.

The judicial independence of state courts is an entirely different matter, but not really. It is different because most states have elections for state court judges. It is not different because citizens want justice in whatever courts they find themselves, whether by chance or by choice. However, in state court elections, the landscape has changed dramatically in the last ten to fifteen years.

It was a lawsuit before Judge Keady in the early seventies that led to massive changes in the conditions at Parchman.[9] David Oshinsky, in his book *Worse Than Slavery,* describes Judge Keady's visits as follows:

> Keady visited Parchman on four occasions, once taking his minister along. Wandering through the cages, talking privately to the inmates, he discovered an institution in shambles, marked by violence and neglect. The camps were laced with open ditches, holding raw sewage and medical waste. Rats scurried along the floors. . . . At one camp, Keady found "three wash basins for 80 men which consist of oil drums cut in half." At all camps, he saw filthy bathrooms, rotting mattresses, polluted water supplies, and kitchens overrun with insects, rodents, and the stench of decay.
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> The convicts told him stories that supported [the claims made in the suit]. Parchman was a dangerous, deadly place. Shootings and beatings were common; murders went unreported; the maximum security unit was a torture chamber. Trusties brutalized inmates, who, in turn, brutalized each

9. The Mississippi State Penitentiary at Parchman, Miss.

> other. "One part of me had always suspected such things," the judge recalled. "The rest of me was angry and ashamed."[10]

Judge Keady required prison officials to protect inmates from physical assaults by other inmates, stop housing them in barracks unfit for human habitation, end racial discrimination against inmates, provide medical care, and end other barbaric and patently unconstitutional practices. What a perfect and comprehensive example of an independent judiciary.

Stephen Bright wrote in a *Georgia State Law Review* article that:

> Federal courts had to enforce the Constitution in these and other areas because the state courts simply were not independent and did not enforce the law. A Georgia Supreme Court justice acknowledged that the elected justices of that court may have overlooked errors, leaving federal courts to remedy them via habeas corpus, because "(federal judges) have lifetime appointments. Let them make the hard decisions."[11]

How much has changed since then. Mississippi still has judicial elections. And now more than ever before, special interest groups seek to secure the election, not of fair and impartial judges, but judges who will decide in their favor. From oil, tobacco, and pharmaceutical companies, to the insurance defense bar, to prosecutors, to the religious right, to labor unions, to the plaintiff's personal injury bar, to medical doctors and other health care providers—all seek to control the courts and the judges. So a judge can (a) try to please everybody, (b) try to please whoever has the most money, (c) try to please whoever controls the most votes, or (d) try to serve the interest of justice.

The answer is obvious—but not so fast. The Maxwell Poll reveals the following:

> Despite all the partisan squabbling over the courts, the public has decidedly ambivalent views about the nature of judicial decision-making and whether there should be more political intrusion into the courts. These results come from a nationwide survey done during October [2005] by the Maxwell School at Syracuse University. Does the public think that judges draw on their personal or partisan views, do they think that there should be more political intrusion

10. DAVID M. OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 251 (1997).

11. Stephen B. Bright, *Can Judicial Independence Be Attained in the South? Overcoming History, Elections, and Misperceptions About the Role of the Judiciary*, 14 GA. ST. U. L. REV. 840 (citing Katie Wood, *Not Just a Rubber Stamp Anymore*, FULTON COUNTY DAILY REP., Jan. 25, 1993, at 1, 4).

into the courts, and do they trust the process of selecting judges?

When asked whether the partisan backgrounds of judges influences their decisions, 42% say a lot, 44% say some, and only 10% say not much at all. When asked if "in many cases judges are really basing their decisions on their own personal beliefs," 56% agree and only 36% disagree.

While there is an apparent majority that sees a significant role for partisan and personal views, there is not a majority that is critical of the courts. When asked if the courts are out of step with the American public, 47% agree and 44% disagree. When asked if judges should be shielded from outside pressure, 73% agree. When asked if judges should be more accountable to elected officials, 41% agree and 54% disagree. There is no indication of a consensus to intrude more. Further, the differences that do exist are not reflective of a partisan split. Republicans and Democrats agree in these responses.

Despite these responses and the partisan agreement about these issues, the partisanship of Washington has seeped into the process of selecting judges. When asked how much they trust the President and the Senate to pick good judges, only 20% say a lot and 31% say not much at all. These responses differ significantly by party identification. 8% of Democrats have a lot of trust, while 44% of Republicans do. The courts are less of a problem to the public than is the partisan process of selecting judges.[12]

II. CONCLUSION

Justice Rehnquist said in his remarks on judicial independence in March 2003:

> I suspect the Court will continue to encounter challenges to its independence and authority by the other branches of government because of the design of our Constitutional system. The degree to which that independence will be preserved will depend again in some measure on the public's respect for the judiciary. Maintaining that respect

12. Campbell Public Affairs Institute, Maxwell School of Syracuse University, *Judges and the American Public's View of Them: Results of the Maxwell Poll* (Oct. 2005) *available at* http://www.maxwell.syr.edu/news/releases/051017_poll.asp.

> and a reserve of public goodwill, without becoming subservient to public opinion, remains a challenge to the federal judiciary in the new millennium.[13]

And I would add, to the state judiciary as well.

Chief Justice Francis Nyalali of the United Republic of Tanzania:

> The people have to value an independent judiciary and be willing to defend it. And to win public affection, we, the judges, must do our jobs well. The courts must work. People must feel that they can resolve disputes satisfactorily and in a reasonable amount of time. If they do, then the people will support us. You see, it is really the quality of justice that determines whether we remain independent.[14]

Judges and justices must conduct themselves, both in their on-court activities and judicial decisions, and in their everyday lives, in a manner that fosters public confidence in the judiciary. Unfortunately, there are a few who pander to special interests and thereby lessen the public's confidence in what is a venerable institution in our democracy. While the institutions are much larger and much more important than any of the individuals among us who serve, it is important to remember that individuals can dilute the quality of justice handed down by these institutions. It is important that those of us who serve seek to rise to the level of quality that the citizens deserve and expect.

George Will once said that America's business is justice.

I want to thank you, the citizens, for entrusting me to handle America's business. Godspeed.

13. Chief Justice William Rehnquist, Remarks at the D.C. Circuit Judicial Conference: Reflections on the History and Future of the Supreme Court of the United States (June 16, 2000), *available at* http://www.supremecourtus.gov/publicinfo/speeches/sp_06-16-00.html.

14. Jennifer Widner, *Building Judicial Independence in Common Law Africa*, paper presented to the 93d Annual Meeting of the Am. Pol. Sci. Ass'n, Aug. 29, 1997.