

# On Doing the Right Thing and Giving Public Satisfaction

Remarks of William H. Rehnquist

I am honored to open the National Conference on Public Trust and Confidence in the Judicial System this morning. . . . The goal of this conference is a very important one: to maintain and build public trust in our system of justice.

On the federal side, recent survey results are encouraging. At the federal level, in the February 1999 survey by the Gallup poll, eighty percent of Americans said they had a great deal or a fair amount of trust in the judicial branch of the government, compared with sixty-four percent in the executive branch and fifty-seven percent in the legislative branch. And a February 1999 ABA comprehensive, nationwide survey on the U. S. justice system concluded that, at least conceptually, there is strong support for the justice system. The data indicated that eighty percent of all respondents either strongly agree or agree, based on a five-point scale, that in spite of its problems, the American justice system is still the best in the world. But the surveys also revealed areas in need of improvement and a variation of level of confidence for specific components of the system, and comparisons with the other branches of government and other judicial systems should not lead us simply to rest on our laurels.

How do we go about maintaining and building public confidence in our judicial system? If we were talking about the motor vehicle department of any particular state, the question would be much easier to answer. Prompt and efficient serving of all applicants for driver's licenses, title changes and the like would be the goal. And since the overwhelm-

ing majority of people who visit the motor vehicle division get what they want — a renewal of a driver's license, a transfer of title — it is a relatively easy goal to accomplish. Even the rare individual who fails the eye examination will



not blame the motor vehicle division. Prompt and courteous treatment of all applicants is all that is required.

With the courts, however, it is different. It is not so easy. In the prototypical lawsuit, one party will win, and one party will lose. Many of the losers will understandably be disappointed, and some may feel that they got a raw deal from the court. There is little that the judicial system can do to change this perception if it is based only on the fact that the litigant lost. But there will also

be criticism of particular decisions of courts, not only by losing litigants, but by lawyers, laymen, editorial commentators and legal journals, which disagree with the doctrine which underlies a particular decision.

In a country such as ours, where both federal and state courts have the power of judicial review — that is, the power to declare an act of the legislature unconstitutional — there is bound to be such criticism. One would hope that the criticism would be informed and rational. But as Justice David Brewer of our Court said more than a century ago, "True, many criticisms may be like their authors — devoid of good taste. But better all sorts of criticism than no criticism at all."

How, then, do the courts respond to such criticism? In the federal system, Article 3 of the Constitution and the failure of the efforts to remove Justice Samuel Chase of our Court in 1805 have meant that a federal judge is not removable for his judicial acts, however aberrant they may appear. This is the way we assure that we have a genuinely independent federal judiciary.

The protections in state judiciaries vary, I know, with retention elections in many states providing a lesser degree of protection of judges' tenure than is provided in the federal system. But in the latter, at least, a judge, or the judges of a collegial court, will remain in office even though a large segment of the public may disagree with a particular decision they have rendered. This is the price we pay for an independent judiciary.

Now, of course, it is possible, in the name of building public trust and confi-

dence in the judicial system, to say that judges who have rendered an unpopular decision should reconsider it if a majority of the public does not agree with it. But whatever such a practice might do to increase public trust and confidence in the judicial system — and I think it might be quite counterproductive — it would be quite contrary to the idea of an independent judiciary. Recall of judicial decisions by some sort of a popular mandate, endorsed by Theodore Roosevelt in his Bull Moose campaign for the presidency in 1912 — and notably, he did not get elected — is too high a price to pay for public approval.

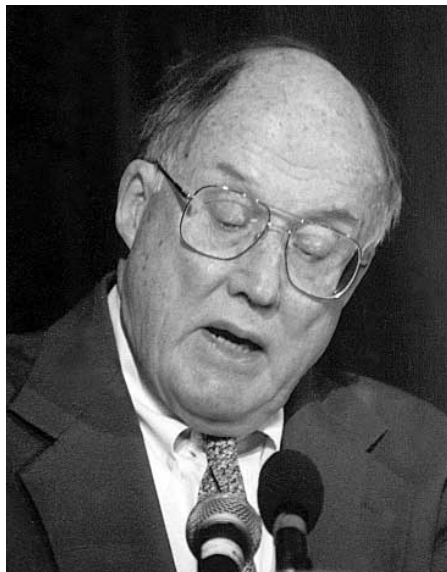
This doesn't mean that public criticism of judicial decisions doesn't serve a useful purpose. Appellate judges who rendered a decision may later change their minds in response to criticism. And as judges of an appellate court resign, retire or die, public opinion through the appointing process, by which the political branches choose their successors, may change the judicial philosophy of a court. This is a slow process, but it is the only one consistent with the idea of an independent judiciary.

Whatever may be the merits or demerits of a poll-driven executive or a poll-driven legislature, the specter of a poll-driven judiciary is not an appealing one. So the search for greater public trust and confidence in the judiciary must be pursued consistently with the

idea of judicial independence. This does not mean that there is not a great deal that can be done along that line. Improved juror utilization; arrangements by which jurors play a more active part in the deliberation of a court, such as are now being carried out in Arizona and some other states; [and] courts giving plain reasons for reaching a result are all useful steps in that direction. Particular attention should be paid to traffic court, where most people have their only personal contact with our judiciary system. . . .

People today are far better educated and more aware of their rights than they were when this nation began more than

two centuries ago. Yet the first Chief Justice of the Supreme Court of the United States, John Jay, said at that time, "Next to doing right, the great object in the administration of justice should be to give public satisfaction." Surely this remains a sound maxim to guide a conference such as this two centuries later.



*Chief Justice William H. Rehnquist was appointed to the United States Supreme Court by President Nixon in 1971, taking his oath of office, following confirmation, on January 7, 1972. He became the nation's 16th Chief Justice in 1986 on appointment by President Reagan. A Stanford law graduate, he clerked for Justice Robert H. Jackson in 1952-53. Rehnquist practiced law in Phoenix and served as an Assistant U.S. Attorney General prior to his appointment to the Court.*