
Luncheon Remarks

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And Safeguarding Integrity
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It is a privilege for me to address this important international conference. Your motivating goals were well summarized many years ago by President Kennedy, when he said,

“There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest, ”

Today we are asking how we can achieve that “unwavering integrity” in practice. As important’ how can we convince the citizens of our nations that we have done so? Answers to these questions are necessary if our governments are to maintain the public trust that underlies the proper functioning of democratic institutions.

I am a judge of our Supreme Court. I shall speak about the judiciary. And I shall make five related general points relevant to the effort to maintain an honest, independent judicial institution.

First, an obvious point: A growing number of nations throughout the world now understand that both ~~the~~liberty the prosperity of their citizens depend upon the development and maintenance of a strong independent judiciary. The “globalization” of communications, i.e., television, has led to a broader understanding of the way in which independent judges help to assure that basic human rights are guaranteed, not simply on paper, but also in practice. At the same time, the “globalization” of industry has led to a greater insistence by both businesses and consumers upon honest, efficient court systems as an important condition for the investment that leads to prosperous economies. That is why some prominent economists have suggested that a nation’s economic difficulties may often reflect, not economic, but legal, difficulties.

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Second, “judicial independence,” a critical element of a strong judicial system, imposes obligations both upon other, nonjudicial branches of government and upon the judges themselves. That independence requires judges whose service is not dependent upon the will of political officials; whose salaries cannot be reduced when they make unpopular decisions; and who receive resources adequate to do the job for which they are appointed. That independence also requires a judiciary that is itself able to assure the public that it is honest and effective. These latter characteristics mean freedom from corruption and an ability to deal effectively with the legal problems of ordinary citizens.

They are important because judicial independence, which necessarily implies insulation from the vicissitudes of public opinion, ultimately depends upon public understanding and support for the principle of independence. But unless the public believes that the judges are honest, it will not and should not support that principle of independence.

Third, there is no single set of laws that can guarantee judicial integrity — that is, honesty and freedom from conuption. Several years ago I attended a meeting of 500 Russian judges, who gathered in Moscow from across the nation. Those judges learned about President Yeltsin's plan for judicial reform. And they discussed judicial independence. "What about the telephone call from the party boss?" they asked. "How can we eliminate telephone justice?" The conditions for judicial independence had previously been missing. The Russian judges were trying to build them anew. They asked me, a visitor, "What is the secret to an honest, independent judiciary?" I said I did not know of any secret.

As every country, including my own, has learned, building an honest, independent judiciary is easier said than done. There is no magic formula. An institution's honesty and integrity in practice depends upon expectations, customs, and habits. These can be built only slowly, over the course of many years. I believe that our own judiciary is truly independent — as reflected by the fact that citizens obey judicial interpretations of laws with which they may strongly disagree. But that independence reflects a two-hundred year history that includes both a Civil War and a process of racial desegregation, which, among other things, required the President in 1957 to send paratroopers to Arkansas to enforce court decrees requiring racial equality. We, like all nations, have from time to time faced problems of judicial dishonesty. We have had to build the integrity of our own institutions, asserting the principle of judicial independence, slowly, over time. And it is a task that never ends.

Fourth, while no specific set of laws can guarantee honesty, I do believe that certain laws do help. My own experience leads me to emphasize the importance, in the United States, of laws requiring financial disclosure by judges, particularly when combined with the free press that our Constitution guarantees. The disclosure laws require that a federal judge each year report all positions held, every penny earned, all other income received, every asset owned, by the judge, his spouse or his minor children. All reports are made public. The press reads them, investigates

them, and writes about them. Judges may sometimes find that the resulting press reports make them uncomfortable or are irritating, for there is no guarantee that the press always will accurately interpret the reports, nor will it always respect the privacy of individuals. But any such irritation is a small and necessary price to pay for public reports that assure confidence in the judiciary's integrity. "Sunshine," said Justice Brandeis, "is the greatest disinfectant." When the public can learn comprehensively about, because the press is free to write about, a judge's financial affairs, the result is a valuable weapon in the fight against dishonesty and corruption.

Finally, I should like to focus for a moment upon one important aspect of the problem of judicial integrity, namely "evaluation." Because building institutional expectations and habits is such a complicated task, it would seem particularly important to be able to identify where special problems of corruption exist and then to evaluate the effectiveness of different efforts to resolve those problems. Moreover, an evaluation system itself can provide an incentive for change. Evaluation, however, is often difficult, not least because of the difficulty of measuring such matters as the "quality" of a nation's judicial system.

Yet evaluations do exist. Human rights organizations, for example, frequently report on the conditions of judicial systems. While evaluations of judicial systems have not been made as frequently by those interested in investing in different nations, perhaps they will become more common in the future. After all, efforts to rate the quality of a law firm, or of a business, are made routinely in the private sector; and those ratings themselves, by channeling the flow of customers or investment, provide an important incentive for change. Thus, one might ask whether such private efforts could include the quality of a judicial system as part of a measurement of investment risk — for a judicial system's honesty is often related to the risk associated with investment. One might further ask whether any such evaluations could be made in ways that would provide an appropriate incentive for change.

Consider in this respect the European Union's recent expression of interest in the quality of the judicial systems in nations now seeking EU membership. In 1993, when the European Council in Copenhagen agreed that "associated countries . . . shall become members of the European Union," it added that "membership requires that the candidate country has achieved stability of institutions guaranteeing" among other things, "democracy, the rule of law, [and] human rights." In evaluating

these matters, EU institutions have attached an “important priority” to “the development of effective” judicial “institutions free from corruption.” Will the EU systematically evaluate those judicial institutions? Will that evaluation help the effort to achieve better judicial systems. If so, will the EU’s methods for evaluation prove useful elsewhere in the world? It may prove worthwhile to look closely at the EU’s experience.

In sum, as these comments and questions suggest, I believe that developing and maintaining the integrity of any judiciary, including our own, is a complex task, requiring time to build habits and expectations. That very fact, however, means that each small improvement helps, for like a snow-ball it builds upon itself by changing expectations and producing expectations of further improvements to follow. Once achieved the integrity of a judicial system is a national treasure. Government itself must earn and deserve the public’s trust. And, to close where I began, integrity is a necessary condition for judicial independence, which itself helps to protect basic human liberties and to promote the prosperity of the citizens of all our nations.