

AN INTRODUCTION TO THE WORK OF THE COMMISSION FOR IMPARTIAL COURTS

By
Ming W. Chin

When Chief Justice Ronald M. George asked me last August to serve as chair of the Commission for Impartial Courts, my first thought was, “Not another committee!”

Nonetheless I accepted, because 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. Courts should be accountable, not to politicians and special interests, but to well-established codes of conduct that require them to follow the law and the Constitution.

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, the media, law schools, the 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.

Californians 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 significant, 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 increasingly are coming under attack from partisan and special interests seeking to influence judicial decision-making, and judicial elections are becoming more like elections for political office: expensive, nasty, and overly politicized.

We cannot ignore these national developments and simply rest on the California courts’ strong record of objectivity. In November 2006, 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*. So the time to strengthen support for fair and impartial courts is now. We must start building the intellectual bulwark against those who would seek to insert political and special interests into our judiciary; if we wait until such a campaign begins, it may be too late. Part of our effort will involve explaining the core value of courts' dispensing justice free from undue political pressure.

Participants in the Judicial Council's 2006 summit 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 established the Commission for Impartial Courts with four task forces, each to study one of the four approaches identified at the summit. In 18 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.

The commission's creation reflects widespread concern that unless we exercise leadership in addressing the contemporary challenges to nonpartisan 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 M. 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 And he has also said: "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

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to consider the concerns of America’s founders when they first sought to ensure the independence and impartiality of our federal courts more than 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 who have these outstanding qualities.

The founders also recognized the importance of judicial accountability. For improper judicial behavior they provided 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 branch, the Legislature, or the People creates an incentive “to consult popularity” in judicial decision-making. The challenge, then, is how to maintain judicial impartiality while providing for appropriate mechanisms of accountability.

Finally, as we approach our task, we also would 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.

MR

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For more information about the Commission for Impartial Courts, including full lists of task force members, news, and upcoming meetings, see

www.courtinfo.ca.gov/jc/tflists/commimpart.htm

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Notes

1. *Mistretta v. United States* (1989) 488 U.S. 361, 407.
2. Stephen Talbot et al., “Justice for Sale,” *Frontline* (PBS television broadcast, Nov. 23, 1999).
3. Anthony M. Kennedy, Associate Justice of U.S. Supreme Court, “The Role of the Judiciary in Promoting the Rule of Law,” remarks at the American Bar Association’s International Rule of Law Symposium, Nov. 10, 2005.
4. Frederick Quinn, ed., *The Federalist Papers Reader* (Seven Locks Press, 1993), pp. 163–167.
5. *Ibid.*