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**Georgetown University Law Center &
American Law Institute**

**"Fair and Independent Courts: A Conference on the State of
the Judiciary"**

Remarks By:

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JUSTICE SANDRA DAY O'CONNOR: Thank you, Michael. I am going to get you on my next book tour, if I ever have one. (Laughter.) That's fun. And thank you, my wonderful former colleagues for showing up today, Justice Thomas, Justice Souter, and I think Justice Alito is going to join us, if he's not already here. And thank every one of you for coming and participating in this conference.

I think you've already heard from President DeGioia and Michael Traynor why we're doing this, and it's already been mentioned that 100 years ago this year, Roscoe Pound, who went on to become dean of the Harvard Law School, gave his well publicized address to the American Bar called "On Causes of Popular Dissatisfaction with the Administration of Justice." And he warned in that speech that we must not be deceived into overlooking or underrating the real and serious dissatisfaction with courts and lack of respect for the law, which exists in the United States today. And I think that statement holds true today as well.

We have promoted in this country the notion of the rule of law as a means for helping ensure peace around the world. In our work with the emerging nations with the breakup of the Soviet Union and in other countries, we have actively urged upon every nation that we be concerned with the rule of law and that the key component to that is a fair, impartial, and independent judiciary. For a long time, I think the federal judiciary in this country has certainly been noted in other countries and admired, and many would want to copy it. I don't know if that could be said to be true today in the face of all the criticism that we are hearing today about activist judges. It appears to be a common mantra today.

And the notion of the rule of law, you know, is not new. Aristotle believed the rule of law to be nothing less than the rule of reason balanced by considerations of equity so that just results may be achieved in particular cases. The framers of our constitution looked in part to the views of Montesquieu. And Montesquieu said that if the power of judging were joined to the legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. Now, maybe that's the concern today. I don't know. But we also heard from our late Chief Justice Rehnquist who said that he believed the creation of an independent constitutional court with the authority to declare unconstitutional laws passed by the state or federal legislatures is probably the most significant single contribution the United States has made to the art of governing.

Now, directing anger toward judges has had a long tradition in our nation, I'm sorry to say. President Thomas Jefferson was a very spirited antagonist of judges appointed by the Federalists. And that great former president, President Franklin Roosevelt, took issue with certainly the decisions of the Supreme Court at that time striking down some of his New Deal legislation. And I well remember as a youngster driving around the highways near the Lazy Bee Ranch and seeing Impeach Earl Warren signs all over the highways. So while scorn for some judges is not altogether new, I do think that the breadth of the unhappiness being currently expressed, not only by public officials but in public opinion polls in the nation shows that there is a level of unhappiness today that perhaps is greater than in the past and is certainly cause for great concern.

Now, we have often cited Alexander Hamilton in these discussions of judging, and he said that a steady, upright, and impartial administration of the laws is essential, because no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be the gainer today. And Woodrow Wilson who – he was not my favorite president, I'll confess – but he had this very interesting thing to say – he said government keeps its promises or does not keep them in its courts. For the individual, therefore, who stands at the center of every definition of liberty, the struggle for constitutional government is a struggle for good laws indeed, but also for intelligent, independent, and impartial courts.

Now, one last point that I think is well made is that the public needs to understand that the notion of judicial independence is not only for the benefit of judges. Judicial

independence is for the benefit of all of society. I made a trip in recent weeks to meet with a conference of judges in Australia, and I noted there that Australia's tenth chief justice, Sir Gerard Brennan, said this: judicial independence does not exist to serve the judiciary, nor to serve the interests of the other two branches of government. It exists to serve and protect not the governors, but the governed. He's right, and I thank you for putting your thinking caps on today, telling us what's wrong, telling us what's right, and if things are wrong, what we ought to do to fix it. Thanks.

(Applause.)

(End of remarks.)

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