

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

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

**Introduction:
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American Law Institute**

**Prepared Remarks of
Attorney General Alberto R. Gonzales**

courtesy of the U.S. Department of Justice

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LANCE LIEBMAN: I have never before had the honor of introducing an attorney general of the United States, but I did once introduce a deputy attorney general of the United States. In 1962, I was an undergraduate at Yale who needed a speaker for the Yale Daily News banquet, and another student had a connection to someone called Byron White, who was deputy attorney general. (Laughter.) And Mr. White agreed to come. Then one day at breakfast in Ligate's (sp) drugstore I was reading the New York Times and it said, Kennedy nominates White for the Supreme Court. And I was so naïve then and now, that for 24 hours I thought, isn't this great, our speaker has been promoted to the Supreme Court.

But sometime on Sunday it hit me just maybe we were going to lose our speaker. (Laughter.) And sure enough on Monday, I had a telegram – some of you are too young, but there used to be telegrams – (laughter) – and the exact content was, from Mr. White, recent events make it impossible, but I can send you my successor, Nick Katzenbach. And so I introduced Deputy Attorney General Katzenbach. Therefore, it took me 44 years to get from introducing the deputy attorney general to introducing an attorney general. And it's an amazing coincidence that Mr. Katzenbach is here in this room, at this moment.

So given the subject of this meeting, the serious conversation yesterday, the excellent presentations, it is of course essential that the attorney general be a participant in this meeting. And we are very honored and very happy that he's here, and I'm sure he will have important things to say to us. I will not review, because all of you know it, the

important life in public service he has had, leading up to the position which he holds now. The only compliment I want to pay him is to say that my successor as Dean of the Columbia Law School was David Leebron, who is now the president of Rice University. And when I told David the other day that I would be introducing the attorney general, David said, he is the most distinguished living alumnus of Rice University. Now, that may not be scientifically provable, but that's the kind of compliment that all of us would like.

Ladies and gentlemen, the attorney general.

ALBERTO GONZALES: Thank you and good morning. It is an honor to be here and to share a few thoughts with you on the importance of judicial independence.

I want to begin by thanking all judges for their sacrifice to our country and their contribution to the rule of law. There is no question that my views on the importance of an independent judiciary were molded and defined while I served as a justice of the Texas Supreme Court. I must confess that I accepted the appointment to the court with some reluctance, since I was not an appellate law specialist at the time-I practiced corporate law-and I had never aspired to be a judge. I enjoyed my job as Texas Secretary of State. But I accepted the appointment as a judge because I could think of no better way to continue to serve both my profession and my beloved State of Texas.

While serving on the bench, I learned some lasting lessons pertaining to the topic of this conference.

First, the character of person who sits on the bench is fundamentally important. Second, the process by which a judge renders a decision is crucial.

And third, it is essential that judges be courageous enough to do the right thing, motivated solely by a respect for the law, undeterred by criticism or the possible outcome of the next election.

I mention elections here because judges in Texas and several other states are required to run in partisan elections. Following my appointment to the court, for example, I - like all other judges on my court - had to raise enough money to run print ads and place television spots around the state in order to retain my seat.

As many of you know, there has been a great deal of debate in recent years about the wisdom of partisan judicial elections. A number of states have implemented other means of judicial selection, including merit selection and appointment with retention elections, in response to this debate.

I remain concerned about the fact that judicial elections require judges to raise funds - because most contributions to judicial campaigns come from lawyers and law firms, many of whom have had, or will have, cases before the court. The appearance of a conflict of interest is difficult to dismiss.

While I am sure that the number of elected judges who are actually influenced by campaign contributions in deciding cases is very small, surveys in Texas and elsewhere indicate that a significant percentage of voters believe that judges are influenced by campaign funds.

Public perception may be as important as reality in this case. I believe that popular beliefs about the influence of campaign funds on judges' decisions tend to have a corrosive effect on public confidence in a state's judicial system. And if Americans come to believe that judges are simply politicians, or their decisions can be purchased for a price, state judicial systems will be undermined.

Of course, at the federal level, our judges are appointed and have lifetime tenure. Principles of judicial independence are woven tightly into the fabric of our nation's government. Alexander Hamilton championed the concept of life tenure for judges in Federalist 78, arguing that lifetime tenure would be the "best expedient [that] can be devised in any government, to secure a steady, upright, and impartial administration of the laws."

Our Constitution provides lifetime tenure to our federal judges and provides compensation that cannot be diminished because it affords judges the opportunity-and the duty-to make difficult, courageous and at times unpopular decisions.

Elected judges in the states, on the other hand, are not shielded by lifetime tenure from the public's perceptions of their opinions. Nevertheless, I regularly hear about the pressures of public criticism from federal judges.

Now I want to be candid here...respectful, but candid. Virtually every time a judge makes a decision in the pursuit of justice, he or she is going to make someone unhappy. The nature of the job guarantees criticism. I know its uncomfortable at times, tradition and canons of ethics make it more difficult for a judge to respond to criticism. But the concept of judicial independence has never meant, and should never mean, that judges or their decisions should be immune from public scrutiny. We live in a society of free speech and lively debate, and criticism has long been a part of judicial history. In fact, I received my fair share of it when I served on the Texas Supreme Court.

Some criticism is unquestionably inappropriate. For example, the suggestion that judicial decisions might somehow be an explanation or rational for violence is wrong. But most criticism should not be a source of legitimate serious concern for the federal judiciary because they enjoy constitutional protections against its consequences.

Recognizing that criticism will come, judges must resist the temptation to craft opinions to avoid it or to seek approval, whether from the public, from the press, from academia, from elected leaders in the halls of Congress, from other judges, or from a court of appeals.

As a consequence of the independence that the Constitution's Framers provided, federal judges are relatively unaccountable for their decisions. This is why it is so important that judges understand their role in our constitutional democracy and hold themselves accountable to it. When the Constitutional text demands an unpopular result, judges cannot shirk from their responsibilities. They might be criticized; but that's America. In addition, respectfully, when courts issue decisions that overturn longstanding traditions or policies without proper support in text or precedent, they cannot -- and should not -- be shielded from criticism. A proper sense of judicial humility requires judges to keep in mind the institutional limitations of the judiciary and the duties expressly assigned by the Constitution to the more politically accountable branches.

The Constitution, for example, clearly makes the President the Commander in Chief of the armed forces, and assigns other important war powers to the Congress. The Supreme Court has long recognized, moreover, the Executive's pre-eminent role in foreign affairs. The Constitution, by contrast, provides the Courts with relatively few tools to superintend military and foreign policy decisions, especially during war time. Judges must resist the temptation to supplement those tools based on their own personal views about the wisdom of the policies under review. This is why President Bush has sought to appoint judges who will not carry out a personal agenda on the bench.

During the past five years, as I have had the privilege of advising President Bush on the selection of many of our nation's judges, I have come to appreciate these lessons more than ever.

From my experience, I can tell you that the selection and appointment of judges who are committed to upholding the law, and to serve our country to the best of their ability is extremely important to the President, as it is to me. I have often said that few presidential decisions are more important than lifetime appointments to the federal bench. Many of a president's policies and programs, no matter how popular or worthy, can be undone by the very next president or the next Congress. But a judicial appointment lasts a lifetime. Indeed, these judicial appointments often represent a president's most enduring legacy.

Of course, this legacy has not been limited to filling vacancies in the federal courts of appeals and the district courts. This past year, we saw the passing of a great Chief Justice of the United States, William Rehnquist, and the retirement of another distinguished justice, Sandra Day O'Connor. The President selected two of our country's most outstanding jurists, Chief Justice John Roberts and Justice Samuel Alito, to fill their seats and to carry on the mission entrusted to our nation's Supreme Court.

During their respective confirmation hearings, America's citizens came to know Chief Justice Roberts and Justice Alito as judges who are intelligent, principled, and committed to the rule of law and to the independence of our judiciary. Their testimony before the United States Senate served as a powerful civics lesson, reminding us of the role of judges and the judiciary in our democratic and constitutional systems.

Notably, both Chief Justice Roberts and Justice Alito emphasized the importance of an independent judiciary during their hearings. For example, Chief Justice Roberts succinctly stated: "An independent judiciary is one of the keys to safeguarding the rule of law."

Justice Alito said: "[T]he [federal courts] should be insulated from public opinion. They should do what the law requires in all instances. That's why the members of the judiciary are not elected. We have a basically democratic form of government, but the judiciary is not elected. And that's the reason: so that they don't do anything under fire. They do what the law requires."

I could not say it any better.

In closing, I can tell you that I am confident that the conference's distinguished and learned speakers and participants will provide you with thoughtful and well-informed examinations of the state and health of the nation's judiciary. Above all, I hope that you will leave this conference with a renewed faith in the rule of law and an independent judiciary as cornerstones of our system of government.

Thank you.