


FAIR & IMPARTIAL
JUDICIARY
Symposium

LUNCHEON PANEL: “A THOUGHT LEADER DIALOGUE”

Honorable Marjorie Rendell, Senior Judge, U.S. Court of Appeals for the Third Circuit (host)
Paul Clement, former U.S. Solicitor General
Kathleen M. Sullivan, former Dean of Stanford University Law School

Summary: Judge Marjorie Rendell moderates this luncheon discussion with two influential legal authorities who frequently appear before the U.S. Supreme Court. Their discussion focuses on the unique role the Court plays in U.S. politics and society, in general, and confronts the attention it attracts and how this interest may provide an unrealistic image of what role courts in America normally play.

1. Mr. Clement, Ms. Sullivan, and Judge Rendell agree that the media and the general public focus so much attention on the U.S. Supreme Court and its most controversial decisions that there is little appreciation for how different the lower courts perform. Do you agree with this theory? If yes, how do you think this understanding and assessment can be changed? If you don't agree with their opinion, explain your view.
2. If the U.S. Supreme Court is vastly different from the lower courts, then some believe that term limits should be applied to the Justices, helping to de-politicize the Court. The most common proposal for this line of thinking involves a two-pronged approach: 1.) the President, in the first and third year of each term, would nominate a Justice subject to Senate approval; and 2) each new Justice would serve a non-renewable term of 18 years. (This term limit would not apply to the current justices. And if a justice retired or died during their term, a new justice would be nominated to complete THAT term. The replacement justice would not be eligible for a new 18-year term.) What do you think of this

proposal? What benefits or detriments do you think such a change would mean for the Supreme Court?

3. The role that politics has always played in the selection of U.S. judges is unique among the world's democracies. Do you think this uniqueness is a positive that should be preserved? Or do you think the U.S. should implement a system whereby judges are chosen through a form of merit selection, as in a system of civil service like those in civil law countries such as France?
4. One of the panelists argued that the reason the Supreme Court finds itself with so many controversial, and therefore political decisions, is because the other two branches of government seem unable to deal with many of the major issues confronting the United States today. Do you agree or disagree with this theory? Explain your position and provide examples.
5. All oral arguments made before the U.S. Court of Appeals are now filmed. Some think that oral arguments made before the U.S. Supreme Court also should be filmed, believing that it would show the nation how independent and serious the process is in that court. Those opposed to this idea fear that it would encourage justices to "grandstand", and that the media would only showcase controversial segments of the oral arguments. What do you think – should oral arguments made before the Supreme Court be filmed? Be prepared to explain your reasoning.
6. The panelists point out that although party affiliation sometimes influences the decisions made by justices, there are also instances in which members of the judiciary vote in a way not expected, and sometimes against their own expressed values. How can this be given more attention?
7. Judge Rendell spoke about the trial of a woman prosecuted for violating the Chemical Weapons Treaty. Ordinarily, the woman's actions would have fallen under state criminal law for prosecution, but in this instance the U.S. Attorney chose to prosecute her under federal law for violating a statute enacted by Congress under its treaty power. Judge Rendell stated that she was bound by

precedent in upholding the woman's conviction, but the U.S. Supreme Court reversed the conviction. What does this tell us about the different roles played by the Supreme Court and other federal courts?