

Chief Justice Ronald D. Castille
Remarks to Visiting Chinese Jurists
"How Elected Judges Maintain Independence"
November 7, 2008

My name is Ronald Castille. I am the Chief Justice of the Supreme Court of Pennsylvania. On behalf of my court, I am pleased to welcome you to Philadelphia, the city where our nation was founded. We are honored to have this distinguished delegation of visitors here seeking an understanding of our legal system. We are interested, in turn, to know more about the courts and the legal system in the People's Republic of China.

In the United States we have two parallel but entirely separate court systems: The federal courts and the state courts.

The federal courts have jurisdiction over federal law -- the U. S. Constitution and laws adopted by the United States Congress.

In addition, each of the 50 states has its own state court system with jurisdiction over the Constitution of that state and the laws of that state.

Here in Pennsylvania, my court is the highest court in the state of Pennsylvania. The lower courts in our state include the magisterial district courts, where minor cases are heard; the Common Pleas Courts, where civil and criminal trials are held; and the intermediate appellate courts, the Superior Court and the Commonwealth Court, where appeals from the trial courts are heard. Final appeals from the appellate courts are taken to the Supreme Court.

Our court structure in Pennsylvania is much the same as the structure in the federal court system. Most state court systems are organized in a similar manner.

But there are distinct differences in the way federal judges and judges in Pennsylvania are chosen for their positions.

Federal judges are nominated by the President of the United States and confirmed by the Senate.

In Pennsylvania, judges are advanced as candidates of political parties and elected by popular vote. The members of my court and our other appellate courts are elected by all the registered voters of the state. Trial and magisterial judges are elected locally by the people whose communities they serve either by county or by township.

It is worth noting that even in a system where judges are appointed, such as the federal system, politics play a role.

From the founding of our nation, it has been recognized that the appointment of federal judges is a political process. But federal judges are theoretically insulated from political influence after they take office. Once confirmed, they serve for life.

In states like Pennsylvania where judges are elected, no such insulation is provided. Judges are elected to specific terms of office. At the end of that term, the judge must run for reelection.

Candidates must seek endorsement from political leaders. In statewide elections, they must raise money for advertising. They must publicly campaign for office.

All these factors can be troubling.

The question then arises: How do judges, elected through a political process, maintain their independence after taking office?

Particularly, how do they maintain their independence when they know that at some point in the future they must run for reelection - and at that point, they once again will need the support of politicians and financial contributors?

In Pennsylvania, our state Constitution provides a safeguard that helps to ensure a judge's ability, after being elected to office, to remain independent.

Our Constitution establishes a special method of reelection for judges known as retention.

Retention is designed to shield judges serving in office from politics when they face reelection, while at the same time allowing voters the opportunity to evaluate judges on their performance in office.

Judges seeking retention are not required to face opponents in partisan political elections. Instead, their names are placed before voters for a yes-or-no vote. Politics and political parties are removed from the process. Voters simply choose to retain, or not to retain, the judge in office for an additional term.

People often talk about "merit selection" when speaking of a system of appointing judges rather than electing them.

In Pennsylvania, retention is our form of "merit selection." If a judge has served for 10 years and performed well in office, the voters have the opportunity to retain that judge based on merit.

Retention is one of the most important ways that judges in Pennsylvania are able to maintain their independence even though they attain their offices by popular election.

There are many other factors that buttress judicial independence within a political system.

One of these is so basic as to be almost inherent. There are fundamental principles in every profession. For a judge, perhaps the most abiding principle is the pledge to uphold the Constitution and the law, uninfluenced by any form of outside influence or pressure. This is what we promise to do, whether elected or appointed, when we take the oath of office, and this, in my experience, is what judges in Pennsylvania do in practice and reality. They abide by and live up to their oath.

To ensure that we live up to that oath, we have an ethical code known as the Code of Judicial Conduct.

The first provision of that code requires judges to "uphold the integrity and independence of the judiciary." I quote:

"An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved."

The second provision of the code holds that "Judges should avoid impropriety and the appearance of impropriety in all their activities."

The third provision states that "Judges should perform the duties of their office impartially and diligently."

So you hear the words repeatedly throughout the code of conduct: Independence. Impartiality. Integrity.

Judges also are prohibited by the code of conduct from engaging in politics, except as it relates directly to their own election or retention -- and then only in limited ways.

We do not take these ethical rules lightly. We have a disciplinary system to enforce them. The Judicial Conduct Board investigates and prosecutes judges who violate the Code of Judicial Conduct. A special court, the Court of Judicial Discipline, hears these cases and imposes punishment on violators that can range from an admonishment to removal from office.

Our judges also have self-regulating authority to disqualify themselves in situations where they believe their impartiality may be subject to question. No actual conflict-of-interest need exist. A judge can step aside whenever he or she believes it appropriate.

The code of conduct, in fact, specifies that judges should disqualify themselves in any proceeding where their impartiality "might reasonably be questioned."

In conclusion, I should say that there is a continuing debate in the United States over the best way to choose judges. The debate has been going on for a very long time.

Some favor an appointive system as the best way to ensure judicial independence. Others favor an elective system.

Those who favor appointing judges believe their way is less political and therefore preferable. They believe a quality screening process can produce a high-caliber pool of candidates from which judges are then appointed. These judges, in theory, are more independent. But who advanced them for office? Who served on the screening committee? And who ultimately chose them?

Those who favor popular election believe that judges should be accountable to the people and therefore they, the people, should be the ones to do the screening and the choosing. They believe the elective process is more likely to produce judges who are free of ties to special interests and elite power-brokers.

Both systems can work well. It also has been demonstrated that both systems can work poorly.

In Pennsylvania, voters determined in a statewide referendum in 1969 that statewide appellate judges -- those who sit on the Supreme, Superior and Commonwealth courts -- would be chosen by an elective system rather than by appointment. That was a decision made by the people of this state based on a provision in our state Constitution.

Our elective system does not function perfectly, but it functions well.

We justices and statewide appellate judges attain our positions on the courts as candidates of the established political parties -- the Republicans and the Democrats -- but when we reach the bench, we leave those political labels behind.

When we put on our judicial robes, we do not approach our work as Republicans or Democrats, but as jurists striving to the best of our ability to uphold the law and the Constitution in a fair and neutral manner. That is what we must do to honor our oath of office.

Again, thank you for your interest in our courts and our legal system. It is a pleasure to have you here as guests in our city and I hope you will have time to see some of the historic sites during your visit.

Thank you.