

Statement by former federal judges Thomas B. Griffith and David F. Levi

The Supreme Court is the most admired of the three branches in our democracy and for good reason. Many of the rights and liberties that Americans cherish have been protected by the Supreme Court in its sworn duty to support and defend the Constitution of the United States. The Supreme Court's Equal Protection decisions protecting the civil rights of racial minorities, women and others, its First Amendment decisions protecting free speech and the free exercise of religion, its decisions requiring Presidents to submit to legal process, and its criminal procedure decisions assuring basic due process and protecting against unlawful government searches and intrusions are among the great achievements of any Court in human history. For over 230 years, Americans have looked to their courts and to the Supreme Court in particular as a place where they could seek resolution of difficult legal questions and controversies from neutral, wise, and unbiased judges.

It is not just Americans who revere our courts. All around the world, aspiring democracies look to our independent judiciary as the model for their own judiciaries and as an essential pillar of democracy. They know that the rule of law depends upon an independent judiciary.

The Supreme Court is also the government institution that gives the fullest explanations for its decisions thus exposing itself to criticism. Every decision issued by the Court, with the exception of emergency or routine orders, is explained and supported by reasons in lengthy opinions. Nearly half of the cases decided every term are decided by unanimous vote of the Justices. Where there is disagreement within the Court, those disagreements are fully explored for all to see.

We are two Commissioners who were also federal judges for many years. At a time when our constitutional framework and institutions are under attack from all sides, we take this opportunity to

assure our fellow citizens that, from our experience and observation, the courts and judges of this country are doing their level best every day to adhere to their oath of office— to interpret the law properly and deliver justice to the American people without fear or favor.

Federal judges are not politicians. They do not identify with political parties or the president who appointed them. They have different life experiences and bring different points of view to the craft of judging, but they are united in their commitment to listening with an open mind to the litigants before them, studying the issues presented, and fairly finding the facts and applying the law as they see it. On those few occasions where judges lose their way, they fall short of the high standard we set for them.

It is against this background that this Commission was created. Because the Commission was charged with examining proposals by critics of the Court, it might be lost on some that we are examining one of the most, if not the most, effective and justly admired of our institutions. Any proposal to change the role or structure of the Court that fails to take into account its historic success in preserving the rule of law falls short of the mark. We are wary of such proposals, especially those that assume that judging is little more than a political act to advance favored interests. Such proposals misapprehend the role of a judge under the Constitution and do damage to public confidence in the Supreme Court and the courts more generally.

In our view, most of the proposed reforms discussed in the Commission report— including “court packing” and term limits— are without substantial merit; they are not related to any defect or deficiency in the Court or its procedures and they threaten judicial independence. We must not permit the Supreme Court to become collateral damage in the divisiveness that marks the current age. Nor should we fundamentally alter the Court because of disappointment in

particular decisions of the Court. There is far more at stake than the outcome of any case.

This is a time in our national history for Americans to protect their constitutional institutions and the precious legacy handed down to us. Democracies are fragile. Even as we may discuss possible reforms, let us do so in the spirit of supporting and defending our Supreme Court and all of our courts as essential components of the rule of law and our great experiment in democracy.