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Protect Judges From Politicians

By Barbara Paul Robinson

We all know about places like China and Peru, where the courts are a Government-controlled sham. Americans justifiably feel that our legal system with its independent judiciary is superior. But recent events in New York show that not even our state's system is impervious to political pressure.

Gov. George Pataki has called for the removal of Lorin Duckman, a Criminal Court judge in Brooklyn, for lowering the bail of a defendant who later killed his former girlfriend. The Governor has asked the State Senate to remove Judge Duckman if the state's Commission on Judicial Conduct does not.

The Governor's actions are part of a growing trend of political attacks on the judicial system. Judge Phoebe Greenbaum of Family Court and Acting Justice David Friedman, of the State Supreme Court, were also recently unfairly savaged by political leaders.

It is easy to attack judges and the

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courts. Judges are not allowed to speak out in their own defense. But politicians should not use the judiciary system for political purposes. They should know that an independent judiciary is essential to our system of justice.

New York has a good system for disciplining or even removing a judge for misconduct: the Commission on Judicial Conduct.

This independent 11-member group includes judges, lawyers and nonlawyers, who are appointed by the Governor, the Legislature and the state's Chief Judge. It has removed more than 100 judges from the bench since it was created two decades ago.

Unfortunately, the New York State Constitution contains provisions — relics of a prior age — that provide for unseating judges. In one, the State Assembly presses charges; then a trial follows in the Senate, where a two-thirds majority can vote to remove the judge.

Another method, which is applicable to all but State Supreme Court justices, allows the Governor to recommend to the Senate that a judge be removed "for cause" — though no standard is given as to what constitutes cause, and there are no procedures to follow. A two-thirds vote is sufficient for removal. This is the procedure Governor Pataki said he would call for if the commission does

Pataki attacks, and the court system suffers.

not remove Judge Duckman.

The last time the Senate removed a judge was in 1872. Since then, the Legislature and the executive branch have properly recognized that judges must be able to decide cases without fear of political retribution.

There are judges who deserve to be disciplined. And it turns out sometimes that judges make the wrong decisions. They work in crumbling buildings, under enormous pressure, with huge caseloads. It is astonishing that they do so well.

A judge's error can be appealed. Judges who behave improperly should be disciplined by the proper authority, the Commission on Judicial Conduct. But no judge should worry that a politically unpalatable decision could lead to removal.

Our officials must stop their vitriolic attacks on individual judges. This intimidates all judges and threatens the system of justice that protects us all. □

Ex "A-i"

LETTERS

To the Editor

Wednesday, March 6, 1996

Rush to Judgment By Pataki Criticized

Governor Pataki's recent call for the impeachment and removal of Judge Lorin Duckman, regardless of the findings of the Commission on Judicial Conduct, threatens the independence of the entire judiciary.

The Association of the Bar of the City of New York was formed 125 years ago to fight rampant corruption in the judiciary; indeed we led the charge the last time a New York judge was successfully removed by executive and legislative action — over a century ago in 1872. That action followed an exhaustive investigation and a finding that the judge was corrupt, made rulings after hearing only one side and completely disregarded basic judicial rules and safeguards; and occurred at a time when no other appropriate procedures were in place.

The very fact that those extraordinary powers of impeachment have not successfully been utilized in more than 100 years underscores the exceptional nature of that process and reaffirms that only in response to the most outrageous cases of corruption should one branch of government seek to remove a member of a separate, independent branch.

The New York State Legislature wisely proposed, and the people overwhelmingly approved, the creation of the Commission on Judicial Conduct. This independent, impartial body — which includes nonlawyers, lawyers and judges — has removed over 100 judges from the bench, and is the appropriate forum to prosecute complaints against judges. That Commission makes its decision on the basis of a thorough investigation and an examination of a full record. It should be allowed to continue to review the complaint against Judge Duckman, without being rushed to judgment.

The only protection that any of us has against overreaching by the legislative or executive branches of government lies in the independence of the judicial branch. It is precisely that separation that distinguishes our legal system and defines us as a nation.

Our public officials, particularly those who are lawyers, should realize that vitriolic attacks on individuals and specific court decisions intimidate all judges, not only those few that deserve scrutiny and, in doing so, undermine our system of justice.

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