

NEW YORK, FRIDAY, MARCH 8, 1996

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PRICE \$2.75

## Excerpts From the Joint Resolution

"To utilize the threat of sanction or removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable and incompatible with the preservation of a co-equal judicial branch of government."

"Efforts by either the executive or the legislative branches of government to intimidate judges and thereby diminish the independence of the judiciary must not be permitted. Enhanced vigilance is particularly necessary under the New York State governmental structure wherein judges do not enjoy life tenure during good behavior, but rather must periodically submit to a process of reappointment or reelection."

# 26 Bar Groups Join To Defend Judiciary

## 'Intemperate, Personal' Attacks Criticized

BY DANIEL WISE

A GROUP OF 26 BAR associations and six law school deans yesterday condemned a series of recent "intemperate and personal" attacks by politicians on judges as having "corrosive effects" on the "judiciary and the society it serves."

"To utilize the threat of sanction or

removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable," the group stated.

Among the organizations subscribing to the statement were The Association of the Bar of the City of New York, the New York County Lawyers' Association, the New York State Association of Criminal Defense Lawyers and the New York State Trial Lawyers Association, as well as the Legal Aid Society.

The New York State Bar Association, however, did not join. State Bar President Maxwell S. Pfeifer explained

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that it felt it more appropriate for the group to form its own independent "blue-ribbon panel." He added, "we are in general sympathy" with the views expressed and "have great concern for the independence of the judiciary."

The statement did not single out any attacks on judges that in recent weeks have grabbed headlines around the state. But in twice criticizing efforts to "sanction or remove" judges because of their decisions, the groups appeared to be referring to Governor Pataki's call for the removal of Crimi-

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### ADDENDA

3/11/96

A list, supplied by the New York County Lawyers' Association, of signatories to a joint statement condemning attacks by politicians on the judiciary (NYLJ, March 8) omitted the Bronx County Bar Association and the New York Criminal Bar Association.

# 26 Bar Groups Criticize Attacks on Judiciary

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nal Court Judge Lorin Duckman because of his decision to lower the bail of a suspect, who, after his release, killed his former girlfriend.

The Governor said that if the State Commission on Judicial Conduct did not act within 60 days to remove Judge Duckman, he would ask the State Senate to begin removal proceedings (NYLJ, Feb. 29). Senate Majority Leader Joseph Bruno also has called for Judge Duckman's removal.

With some commentators having criticized the Governor's approach as an effort to limit the Conduct Commission's options, the bar associations' statement underscored the importance of the Commission's "independent functioning."

With respect to Judge Duckman, Governor Pataki and other critics have focused as much on remarks that the judge made during the bail hearing, calling them insensitive to the plight of domestic violence victims, as the bail decision itself. The Governor also criticized Judge Duckman's remarks in other cases and his decision to give a sentence of probation to a defendant who five months later assaulted his former girlfriend.

## Call for Civility

Another judge who recently drew heavy fire from politicians was U.S. District Judge Harold Baer Jr. for suppressing the use of 80 pounds of heroin and cocaine seized in the Washington Heights neighborhood.

Again much of the criticism was aimed at a remark in the decision in which Judge Baer observed that, because many residents of Washington Heights tend "to regard police officers as corrupt, abusive and violent," it was not suspicious for the suspects to have fled as the police approached.

Mayor Giuliani called the decision "mind-boggling in its effect," and Police Commissioner William J. Bratton derided Judge Baer as "living in a fantasy land." U.S. Senator Daniel P. Moynihan went so far as to say the opinion caused him to regret that he had recommended Judge Baer for appointment to the bench.

Yesterday U.S. House Speaker Newt Gingrich, with the backing of 150 representatives, called upon President Clinton to ask for Judge Baer's resignation. A day earlier Judge Baer said he would reconsider the suppression ruling at a hearing set for March 15 (NYLJ, March 6).

The bar associations and law school deans asked public officials to tone down their rhetoric and debate the "the issues of the day with civility."

The group also asserted as an essential principle that judges in New York should not be subject to fear of sanction or removal "solely upon the basis of a decision, ruling or opinion."

The group is forming a standing joint committee to respond quickly to "partisan" attacks on individual judges or the judicial system.

Following is the text of the organizations' statement:

## Text of Statement

In recent weeks we have seen that the threat to an independent judiciary is no less prevalent today that it was when the federal Constitution adopted the important principle of separation

of powers. Members of the executive and legislative branches of government, together with various organs of the modern media, have launched attacks upon federal and state judges with whose decisions they disagree. We believe that in a democratic society fair, open and vigorous debate and criticism of judges and judicial decisions is necessary and appropriate. But these recent attacks have gone well beyond the criticism from which no judicial decision or judge should ever be immune. Rather they have been both intemperate and personal in nature. The corrosive effects of these attacks upon the judicial system and the society it serves cannot be overstated.

The leaders of this profession must resist the propagation of misinformation concerning the law and the legal process. We must be no less vigilant in resisting efforts to undermine the independence of the judiciary. To utilize the threat of sanction or removal solely to punish a judicial decision which is unpopular or, in retrospect, turns out to have been unwise, is unacceptable and incompatible with the preservation of a co-equal judicial branch of government.

Efforts by either the executive or the legislative branches of government to intimidate judges and thereby diminish the independence of the judiciary must not be permitted. Enhanced vigilance is particularly necessary under the New York State governmental structure wherein judges do not enjoy life tenure during good behavior, but rather must periodically submit to a process of reappointment or reelection.

It is a responsibility of the members of this profession to act as guardians of those liberties which form the bedrock of a free society. We must, by our collective actions, show that liberty depends upon keeping separate the power of judging from the legislative and executive powers.

Accordingly, we hereby endorse and agree to the following principles and take the following action:

1. Judges in New York should not be subject to the fear of sanction or removal from office solely upon the basis of a decision, ruling or opinion, lawfully taken pursuant to the exercise of judicial discretion.

2. We call upon all public officials to debate the issues of the day with civility and in a responsible manner. We urge all members of the legislative and executive branches of government to respect our historic constitutional commitment to an independent judiciary.

3. We support the independent functioning of the constitutionally created New York State Commission on Judicial Conduct.

**Creation of a Joint Committee to Preserve the Independence of the Judiciary**

4. In order to preserve and promote liberty, respect, and public understanding for the legal system and the rule of law, and to insure the preservation of an independent judiciary, we hereby undertake to create a "Joint Committee to Preserve the Independence of the Judiciary."

It shall be the mission of the Joint Committee to develop proposals for insuring the independence of the judiciary from partisan attack

and to coordinate timely responses to intemperate or misleading attacks upon individual judges or the judicial system.

Additionally, the Joint Committee shall initiate efforts to foster public awareness and understanding of the workings of the legal system and the importance of an independent judiciary.

In discharging its responsibilities, the Joint Committee shall seek input from all segments of the legal profession.

(1) At the dawn of our nation, in urging the People of the State of New York to ratify the Constitution, Alexander Hamilton wrote that, "The complete independence of the courts of justice is peculiarly essential in a limited Constitution." Recognizing that the judiciary "may be said to have neither FORCE NOR WILL, but merely judgment..." he argued that "there is no liberty, if the power of judging be not separated from the legislative and executive power." THE FEDERALIST, Number 78 (Hamilton, A.), 1788.

## Committee to Preserve the Independence of the Judiciary\* Member Organizations

Asian American Bar Association of New York  
Association of Black Women Attorneys Inc.  
The Association of the Bar of the City of New York  
Brooklyn Bar Association  
Brooklyn-Manhattan Trial Counsel  
Capital District Black Bar Association  
Eastchester Bar Association  
Kings County Criminal Bar Association  
Lawyers Torah Club  
Legal Aid Society  
Long Island City Lawyers Club  
Metropolitan Black Bar Association  
Middletown Bar Association  
Nassau Lawyers' Association of Long Island Inc.  
National Lawyers Guild,  
New York City Chapter  
New York Women's Bar Association  
New York Council of Defense Lawyers  
New York County Lawyers' Association  
New York State Association of Criminal Defense Lawyers  
New York State Defenders Association Inc.  
New York State Trial Lawyers Association  
Protestant Lawyers Association of New York  
Puerto Rican Bar Association  
Queens County Bar Association  
Suffolk County Bar Association  
Upstate Trial Lawyers Association  
Wyoming County Bar Association  
Howard A. Glickstein; Dean, Jacob D. Fuchsberg Law Center, Touro College  
Rudolph C. Hasl; Dean, St. John's University School of Law  
Lance Liebman; Dean, Columbia University School of Law  
Archibald R. Murray; Chair of the Board, Legal Aid Society  
Stuart Rabinowitz; Dean, Hofstra University School of Law  
Harry H. Wellington; Dean, New York Law School  
Joan G. Wexler; Dean, Brooklyn Law School

\* Where an individual is listed, the organization has not agreed to join the committee.