

MSBA member-proposed Resolution addressing the escalating attacks on the judiciary . . .

No resolution presented herein reflects the policy of the Minnesota State Bar Association until approved by the Assembly. Informational reports, comments, and supporting data are not approved by their acceptance for filing and do not become part of the policy of the Minnesota State Bar Association unless specifically approved by the Assembly.

Whereas basic information about the legal framework of our republic and the inter-relationship of its three-branches is being ignored or distorted as part of an attack on the judiciary; and

Whereas these attacks are increasing in severity and threaten the foundations of our system of government; and

Whereas action consistent with MSBA members' oath to defend the Constitution has never been more timely,

NOW THEREFORE, in exercise of its public education function, the MSBA will

- 1) give priority to communicating that an independent judiciary and independent judicial oversight of legislative and executive actions are key, non-negotiable components of our constitutionally established three-branch government;
- 2) join the public discourse in defense of the state and federal judiciary's free exercise of its vital role under the constitution of the United States; and
- 3) direct its Council, between meetings of the Assembly, to monitor developments, identify legislative or executive branch initiatives to undermine the proper role of the state and federal judiciary, and report these developments to the Assembly, to the MSBA membership, and to the public.

Report

pursuant to Section 6(d) of the MSBA Bylaws
regarding a resolution responding to the escalating attacks on the judiciary

Section 6(d)(i): Reasons for the resolution

Basic information about the legal framework of our republic and the inter-relationship of its three branches is being ignored or distorted as part of an attack on the judiciary.

These attacks are increasing in severity, as reflected in the following reports, and threaten the foundations of our system of government:

- “Activist judges” are out of control and waging a war on faith, religious conservatives are charging. That’s why - even as the United States Senate prepares for a battle over the president’s judicial nominations - a conservative coalition is working to broaden the fight to the federal judiciary as a whole. Its ultimate goal is to force Congress to reign in the judges. (“Bringing the Case Against Judges”, by Jane Lampman, Christian Science Monitor, April 13, 2005; entire article attached)
- Senate Republicans Sunday said Congress should scrutinize some federal court decisions and would not rule out impeaching activist judges for imposing their own preferences on public policy. Washington Times; see entire article at <http://www.washingtontimes.com/national/20050410-115624-7429r.htm>.
- Representative Tom DeLay, the House majority leader, escalated his talk of a battle between the legislative and judicial branches of government on Thursday, saying federal courts had “run amok,” in large part because of the failure of Congress to confront them. “Judicial independence does not equal judicial supremacy,” Mr. DeLay said in a videotaped speech delivered to a conservative conference in Washington entitled “Confronting the Judicial War on Faith.” NY TIMES; see weblink to entire article on attachment.
- Supreme Court Justice Anthony M. Kennedy is a fairly accomplished jurist, but he might want to get himself a good lawyer – and perhaps a few more bodyguards. Conservative leaders meeting in Washington yesterday for a discussion of “Judicial Tyranny” decided that Kennedy, a Ronald Regan appointee, should be impeached or worse. Washington Post, “And the Verdict on Justice Kennedy Is: Guilty”. See weblink to entire article on attachment.

The seriousness of current attacks has not gone unnoticed by members of the judiciary:

- Marking the first time a Supreme Court Justice has addressed the Congress since criticism of the federal courts generated by the Terri Schiavo’s death, Justice Anthony

Kennedy defended the judiciary's independence in remarks to a House subcommittee Tuesday, but said criticism of the courts was "very healthy." Kennedy and Justice Clarence Thomas appeared for an otherwise routine hearing on the Court budget, which included a request for 11 more police officers, one of whom would focus on "threat assessment." LEGAL TIMES; see entire article at <http://www.law.com/jsp/articl.jsp?id=1113296710622>

- Concerned about recent attacks, federal judges urged Congress Wednesday to provide them with more protection, including increased services by U.S. marshals and \$12 billion for home security systems. AP; see entire article at <http://wwwlaw.com/jsp/article.jsp?id=1112778310131>

Nor has this concern gone unnoticed in the MSBA's official publication, Bench and Bar. See, for example George W. Soule's excellent article in the April 2005 edition of Bench and Bar, "Protecting an Independent and Qualified Judiciary". Copy attached.

Now is the time for the MSBA to take formal collective action. As attorneys, we have all taken an oath or made an affirmation to uphold the constitution, including the separation of powers. And the MSBA as a body has an important role as a well-established voice of the profession, advocate for the courts, and protector of the justice system. See MSBA Membership Guide at page 15: http://www2.mnbar.org/membership/web_membership_guide.pdf Adopting this resolution will be a small but significant part of living out those responsibilities.

Section 6(d)(2) — No commitment beyond the resolution

This report contains no language committing the MSBA to policy not set forth in the resolution.

Section 6(d)(3) — Expenditures

The resolution calls for no action that may result in expenditures.

Section 6(d)(4) — Designated Spokesperson

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from the April 13, 2005 edition - <http://www.csmonitor.com/2005/0413/p15s02-usju.html>

Bringing the case against judges

Are 'activist judges' ruining America? That's the fear of a newly formed coalition of religious conservatives who are urging Congress to push back.

By Jane Lampman | Staff writer of The Christian Science Monitor

WASHINGTON - "Activist judges" are out of control and waging a war on faith, religious conservatives are charging. That's why - even as the United States Senate prepares for a battle over the president's judicial nominations - a conservative coalition is working to broaden the fight to the federal judiciary as a whole. Its ultimate goal is to force Congress to rein in the judges.

The Terri Schiavo case is but the latest in a litany of court decisions that have sparked conservatives' ire. Many were also outraged by rulings that called the words "under God" in the Pledge of Allegiance unconstitutional and that removed the Ten Commandments and Chief Justice Roy Moore from the Alabama high court.

"An atmosphere of atheism is being forced upon us by the courts," says the Rev. Rick Scarborough, a Baptist pastor from Texas who heads the new alliance of Evangelicals, Catholics, and Jews that is leading the charge.

The coalition - called the Judeo-Christian Council for Constitutional Restoration - is unabashedly pressing for radical steps. Congress has the power to undertake these, it says, given its authority to establish federal courts under Article III of the US Constitution.

Proposed steps include withdrawing the courts' jurisdiction over all cases related to the acknowledgment of God or to the protection of marriage. They would extend to impeaching judges that substitute "their own views for the original meaning of the Constitution," or base a decision on foreign law; and to reducing or eliminating funding for the federal courts when judges "overstep their constitutional authority."

"This is the shot over the bow," said Dr. Scarborough last Friday in Washington, as the group - which represents some 40 organizations - held the first of a series of conferences it plans to organize across the country to marshal grass-roots support. "We are trying to restore this country to its constitutional moorings so we are ruled by law and not by judges," he says.

The coalition has backing from members in both houses of Congress, including House majority leader Tom DeLay (R) of Texas. Mr. DeLay addressed Friday's meeting via video, telling the group that the "judiciary has run amok" and that "Congress needs to reassert its authority."

Concerns about the judiciary are simmering on several fronts at once. Senate majority leader Bill Frist (R) of Tennessee, who is trying to keep the focus on judicial nominations, responded to DeLay's statements saying, "We have a fair and independent judiciary today."

Dr. Frist is fighting for his own controversial plan - dubbed the nuclear option - to end the Senate filibuster so that Democrats can't block votes on judicial nominees.

Countering Frist's initiative is the Coalition for a Fair and Independent Judiciary - an alliance of human rights and civil liberties groups - which is mounting a public advertising campaign to save the filibuster and keep extreme right-wing nominees off the federal bench.

The one point on which conservatives and liberals tend to agree is that in a fight over the judiciary the stakes are huge.

"The future of the judiciary is perhaps the most important domestic priority facing the country at this time," says Ralph Neas, president of People for the American Way. Speaking to reporters on a conference call last week, CFIJ leaders worried that conservatives were seeking total governmental control.

"This president has the executive branch, the Republican Party has the legislative branch, and they aren't satisfied; they want the crown jewel of our democracy, and that is a fair and independent judiciary," says Nan Aron, head of the Alliance for Justice.

The new religious coalition strongly backs Frist's filibuster fight, but sees its effort in bigger and broader terms.

Pointing to the statement in the Declaration of Independence that the Creator is the source of inalienable rights, they say the US Constitution has a biblical basis and charge that the federal courts are seeking to turn America into a secular humanist nation by removing all mention of God from public life. In response, they assert the right to acknowledge God in various ways, from creationism and prayer in the schools to religious symbols in the public square.

"Without a recognition of God, we lose our freedom of religion," says former Alabama Chief Justice Roy Moore, who was ousted from his post in November 2003 for refusing to remove a Ten Commandments monument he had placed in the state judicial building. A federal court ruled that the monument was unconstitutional, and the US Supreme Court declined to hear an appeal.

Moore received a hero's welcome at Friday's conference from the more than 200 activists who had come from 25 states. But his low-key, faith-infused talk was more the exception than the rule.

Many speakers used tough language and urged extreme remedies. Several attacked Supreme Court Justice Anthony Kennedy, with some calling for his impeachment. Justice Kennedy (appointed to the court by former president Ronald Reagan) was excoriated for opinions against capital punishment for juveniles and a Texas antisodomy law, and also for citing international norms in his opinions. One speaker charged him with upholding "Marxist, Leninist, satanic principles drawn from foreign law."

Other speakers called for new law schools, saying Ivy League and even some Catholic law schools are responsible for producing secularist lawyers and judges.

At the center of the struggle is the debate over separation of church and state. Conservatives point out that the notion of a "wall of separation" between church and state is not an idea contained in the Constitution but rather a phrase taken from a letter written by Thomas Jefferson. But in recent decades, they complain - starting with the banning of organized school prayer and Bible reading in the 1960s - the courts have enshrined that idea of that "wall of separation" in their rulings.

"Separation" arguments, they suggest, are modern and antireligious and thus should be abandoned.

Other experts in the field of law and religion say it isn't that clear-cut.

Those who favor a firm "wall" and those who seek to eliminate it both "are misguided - there is a middle way between the two," says John Witte, professor at Emory University Law School in Atlanta. America's founders, he says, saw several distinct understandings of church-state separation (see story below).

"It's the changes [in court rulings] since the '60s that make [conservatives] see this as judicial activism, but that's a misunderstanding," says Eric Mazur, associate professor of religion at Bucknell University in Lewisburg, Pa. "The court is simply ruling in a way that reflects a greater diversity in American society."

Some legal experts say "judicial activism" actually cuts both ways today, with conservative and liberal judges both going far beyond the Constitution text in their opinions.

The Constitution Restoration Act - which conservatives have introduced in the House and Senate - would restrict the federal judiciary, including the Supreme Court, in cases involving the acknowledgment of God. The act also defines a basis for impeachment.

"We've had 200 years of history in which the federal courts have exercised jurisdiction over religious matters," says Dr. Witte. "It would be remarkable, to say the least, to undercut that jurisdiction today."

The coalition, however, plans to go all out to mobilize support for the legislation. Whether it wins that battle or not, it intends to send a powerful message.

What did the Founders intend?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These phrases of the First Amendment to the US Constitution have been called "articles of peace." For 200 years they have protected freedom of conscience and saved America from the religious wars that have plagued history.

In the US, controversies over the practice of faith have been fought in the courts, and not on battlefields.

But court decisions in recent decades have sparked growing anger among religious conservatives, who speak of "judicial tyranny" and a "judicial war on faith." They charge judges have made new law on the basis of a "mythical wall of separation" between church and state never intended by the founding fathers.

Others say the founders intended the principle of separation to ensure several different forms of protection: protection of church and state from one another, of individual liberty of conscience from both, of states from the federal government, and of society from unwelcome participation in and support for religion.

The latter idea was the most controversial, says John Witte of Emory University. In 1800 it started a long battle that is still under way today.

The Federalist party "accused [Thomas] Jefferson of being the anti-Christ ... and a secularist bent on destruction of the necessary religious foundations of law," Dr. Witte says. And the Republican party "accused [John] Adams of being a Puritan pope and religious tyrant bent on subjecting the whole nation to his suffocatingly narrow beliefs."

In the 19th century, the Supreme Court had relatively few religious cases on its docket. But clashes between Protestants and Catholics kept the church-state separation debate simmering.

In the 20th century, religion cases grew dramatically, as religious pluralism increased. The US became more litigious and groups such as the ACLU and American Jewish Congress began challenging traditional practices.

In a 1947 case, the court spoke of a wall of separation that "must be kept high and impregnable," paving the way for controversial decisions on schools and public displays. Christian legal firms have won some victories in recent years that represent a partial retreat from the strict separation interpretation.

•• Sources: Edwin S. Gaustad, *Church and State in America*, Oxford University Press; John Witte, *Facts and Fictions of Separation of Church and State*.

from the April 13, 2005 edition of the Christian Science Monitor - <http://www.csmonitor.com/2005/0413/p15s02-usju.html>

MSBA Legal News Digest

4/13/05

Judges and Lawyers

http://www2.mnbar.org/digest/LND_JL.htm#judges

Attacks on the Judiciary

"Activist judges" are out of control and waging a war on faith, religious conservatives are charging. That's why - even as the United States Senate prepares for a battle over the president's judicial nominations - a conservative coalition is working to broaden the fight to the federal judiciary as a whole. Its ultimate goal is to force Congress to rein in the judges. The Terri Schiavo case is but the latest in a litany of court decisions that have sparked conservatives' ire. Many were also outraged by rulings that called the words "under God" in the Pledge of Allegiance unconstitutional and that removed the Ten Commandments and Chief Justice Roy Moore from the Alabama high court. "An atmosphere of atheism is being forced upon us by the courts," says the Rev. Rick Scarborough, a Baptist pastor from Texas who heads the new alliance of Evangelicals, Catholics, and Jews that is leading the charge. The coalition - called the Judeo-Christian Council for Constitutional Restoration - is unabashedly pressing for radical steps. Congress has the power to undertake these, it says, given its authority to establish federal courts under Article III of the US Constitution. CHRISTIAN SCIENCE MONITOR

<http://www.csmonitor.com/2005/0413/p15s02-usju.html>

Senate Republicans Sunday said Congress should scrutinize some federal court decisions and would not rule out impeaching activist judges for imposing their own preferences on public policy. House Majority Leader Tom DeLay suggested such a review of judges last week in response to the Terri Schiavo case, words that Democrats interpret as a threat to impeach judges. Pennsylvania Sen. Rick Santorum, chairman of the Senate Republican Conference, says judges who violate the law have been impeached and that the Constitution gives Congress the task of judicial oversight. "Should we look at situations where judges have decided to go off on their own tangent and disobey the statutes of the United States of America? I think that's a legitimate area for oversight," Mr. Santorum told ABC's "This Week." Mr. Santorum said he would not support impeachment of Justice Anthony M. Kennedy for his decision in the Schiavo case. Sen. John Cornyn, Texas Republican, added that no member of Congress has suggested impeaching Justice Kennedy, but agreed that Senate oversight of the judiciary is needed. WASHINGTON TIMES <http://www.washingtontimes.com/national/20050410-115624-7429r.htm>

President Bush appeared to distance himself on Friday from recent comments by the House Republican leader, Representative Tom DeLay, that Congress should crack down on unaccountable judges. Asked in a conversation with reporters about statements by Mr. DeLay that judges were out of control and should be held accountable, the president said: "I believe in an independent judiciary. I believe in proper checks and balances. And we'll continue to put judges on the bench who strictly and faithfully interpret the Constitution." Trent Duffy, a spokesman for the White House, said Friday night that the president was only "saying what his view of the judiciary is," in the same terms he has always used. Dan Allen, a spokesman for Mr. DeLay, said the lawmaker's views were consistent with the president's statement. "Congressman DeLay as well as House Republicans have made it clear that Congress has a role to play here to ensure there are checks and balances and the judiciary doesn't run amok," Mr. Allen said. NY TIMES

[http://www.nytimes.com/auth/login?URI=http://www.nytimes.com/2005/04/09/politics/09judges.html&OP=7783196f/Q25Tz|Q25k!Q3CiB!!VQ5DQ25Q5D99aQ2592Q2596Q25R!\(Q60VQ60Q3CiQ2596q/k\)zilfVZ\(](http://www.nytimes.com/auth/login?URI=http://www.nytimes.com/2005/04/09/politics/09judges.html&OP=7783196f/Q25Tz|Q25k!Q3CiB!!VQ5DQ25Q5D99aQ2592Q2596Q25R!(Q60VQ60Q3CiQ2596q/k)zilfVZ()

Representative Tom DeLay, the House majority leader, escalated his talk of a battle between the legislative and judicial branches of government on Thursday, saying federal courts had "run amok," in large part because of the failure of Congress to confront them. "Judicial independence does not equal judicial supremacy," Mr. DeLay said in a videotaped speech delivered to a conservative conference in Washington entitled "Confronting the Judicial War on Faith." Mr. DeLay faulted courts for what he said was their invention of rights to abortion and prohibitions on school prayer, saying courts had ignored the intent of Congress and improperly cited international standards and precedents. "These are not examples of a mature society," he said, "but of a judiciary run amok." "The failure is to a great degree Congress's," Mr. DeLay said. "The response of the legislative branch has mostly been to complain. There is another way, ladies and gentlemen, and that is to reassert our constitutional authority over the courts." NY TIMES

http://www.nytimes.com/auth/login?URI=http://www.nytimes.com/2005/04/08/politics/08judges.html&OP=5920a0ca/-IQ3EE-I1YNb11Q2BQ24-Q24ddQ5D-dz-dB-Q511!5Q2B5YN-dBQ23PI_Q3ENtuQ2BQ26!

Concerned about recent attacks, federal judges urged Congress Wednesday to provide them with more protection, including increased services by U.S. marshals and \$12 million for home security systems. The request by the Judicial Conference of the United States follows the February murder of a federal judge's family in Chicago, the March courtroom shooting deaths in Atlanta and some critics' emotional comments after judges refused to order the reinsertion of Terri Schiavo's feeding tube. AP <http://www.law.com/jsp/article.jsp?id=1112778310131>

- Avowed white supremacist Mathew Hale was sentenced to 40 years in prison Wednesday for trying to have a federal judge killed. "Mr. Hale is not concerned about taking someone's life, but rather how to do it without getting caught," federal Judge James Moody said in imposing the sentence. Hale was convicted in 2004 of soliciting an undercover FBI informant to murder U.S. District Judge Joan Humphrey Lefkowitz of Chicago in retaliation for her ruling against him in a trademark dispute. AP

<http://www.law.com/jsp/article.jsp?id=1112778309959>

Railing against activist judges is nothing new in American politics. The nation's judicial wars erupt infrequently but at times with painful intensity, often brought on by the stress of a particularly divisive case. Indeed, it's not surprising that the current outbreak of judge-bashing is particularly virulent: With long-standing grievances (abortion, school prayer) still simmering, the courts have been busying themselves, as critics see it, with promoting same-sex marriage and censoring the Ten Commandments. Meantime, a showdown over filibusters is looming, and a Supreme Court nomination looks to be in the offing after a lengthy stretch without a resignation. In that context, the dispute over Terri Schiavo was the inevitable tipping point. But the current uproar is particularly worrisome -- both because of the extreme nature of the restraints being proposed and the degree to which such sentiments are being voiced not by a powerless fringe but by those in positions of authority: It's not just Phyllis Schlafly anymore. WASHINGTON POST commentary <http://www.washingtonpost.com/wp-dyn/articles/A42691-2005Apr10.html>

On March 30, 11th Circuit Judge Stanley F. Birch Jr. chastised Congress and President Bush for acting "in ways inimical to basic constitutional principles" when they hurriedly pushed through a law requiring the federal courts to review the Terri Schiavo case -- a widely-quoted rebuke that has led to impeachment calls from angry lawmakers. Ironically, Birch is considered one of the 11th Circuit's most conservative voices. But in the culture wars, the judge has perplexed both sides in his decisions. FULTON COUNTY DAILY REPORT

<http://www.law.com/jsp/article.jsp?id=1112991010919>

MSBA Legal News Digest

4/13/05

News

www2.mnbar.org/digest/LND_News.htm

U.S. Supreme Court

Marking the first time a Supreme Court justice has addressed Congress since the criticism of the federal courts generated by Terri Schiavo's death, Justice Anthony Kennedy defended the judiciary's independence in remarks to a House subcommittee Tuesday, but also said criticism of the courts was "very healthy." Kennedy and Justice Clarence Thomas appeared for an otherwise routine hearing on the Court budget, which included a request for 11 more police officers, one of whom would focus on "threat assessment." LEGAL TIMES

<http://www.law.com/jsp/article.jsp?id=1113296710622>

And the Verdict on Justice Kennedy Is: Guilty Supreme Court Justice Anthony M. Kennedy is a fairly accomplished jurist, but he might want to get himself a good lawyer -- and perhaps a few more bodyguards. Conservative leaders meeting in Washington yesterday for a discussion of "Remedies to Judicial Tyranny" decided that Kennedy, a Ronald Reagan appointee, should be impeached, or worse. Phyllis Schlafly, doyenne of American conservatism, said Kennedy's opinion forbidding capital punishment for juveniles "is a good ground of impeachment." To cheers and applause from those gathered at a downtown Marriott for a conference on "Confronting the Judicial War on Faith," Schlafly said that Kennedy had not met the "good behavior" requirement for office and that "Congress ought to talk about impeachment." Next, Michael P. Farris, chairman of the Home School Legal Defense Association, said Kennedy "should be the poster boy for impeachment" for citing international norms in his opinions. "If our congressmen and senators do not have the courage to impeach and remove from office Justice Kennedy, they ought to be impeached as well." WASHINGTON POST

<http://www.washingtonpost.com/wp-dyn/articles/A38308-2005Apr8.html>



ESSAY

PROTECTING AN INDEPENDENT AND QUALIFIED JUDICIARY

BY GEORGE W. SOULE

Recent years have not been kind to judges in many respects. They have been the targets of physical attacks and political hostilities. It is important to measure the impact of these events on the judicial process and recruitment efforts.

The recent killings of a judge and courthouse and law enforcement personnel in Atlanta, and of a judge's family members in Chicago, are the most tragic. While such attacks certainly raise security concerns, fortunately they are rare.

The politicization of the judiciary has been more widespread in recent years. In 2002 the U.S. Supreme Court ruled that broad restrictions on campaign speech by judicial candidates are unconstitutional. As a result, judicial candidates can now be pressed for their opinions on hot-button issues, such as abortion, gay marriage, and the death penalty. Judges who do take positions on issues may disqualify themselves from deciding those issues, or their impartiality may be questioned.

Political parties and special interest groups have turned to judicial elections as battlegrounds in many states. They spend vast sums of money to elect judges friendly to their interests. Business interests often square off against unions and trial lawyers in these races. These groups and others invested over \$10 million in the race for one Illinois Supreme Court seat in 2004.

Some Minnesota legislators are pressing for a county-by-county account of the number of judicial consents for minors seeking abortions without parental consent. Such legislation may make judges who do grant consents targets in elections and/or discourage such orders. Ironically, judges may be vulnerable for doing exactly what the Legislature required them to do when it adopted the judicial bypass procedure.

Financial pressures are also of concern to the judiciary. In what is becoming a bi-annual ritual, the Minnesota court system and its allies must plead with the Legislature and Governor for enough money to operate effectively. Certainly, when public money is scarce, the courts must run a lean operation. But proper staffing is needed to deal effectively with

“Judicial independence is the principle that judges should reach legal decisions free from outside pressures, strictly according to the law, and without fear of reprisal.”

the host of cases and problems that the Legislature and society ask modern courts to resolve.

Until recent years, judges' salaries in Minnesota had not kept pace with compensation for other lawyers or the cost of living. District court judges now earn \$118,141 annually, although that number is frozen through 2006 unless the Legislature acts soon. Still, judges make less than some first-year associates in Twin Cities law firms.

These factors may harm the judiciary in two principal ways: They threaten judicial independence and they may deter good lawyers from seeking appointment or election. Minnesota lawyers should be concerned about both possible results.

THREAT TO JUDICIAL INDEPENDENCE

Judicial independence is the principle that judges should reach legal decisions free from outside pressures, strictly according to the law, and without fear of reprisal. If judges are independent and fair and impartial, then justice should be served.

Each of the factors listed above may threaten judicial independence, either in a particular judge or in the Judiciary as an

institution. Threats of violence can jeopardize independent justice in particular cases. Judicial independence is threatened when judges are thinking about how partisans or special interests may be affected by a decision, what campaign contributions can be gained or lost, or how a ruling may sit with the Legislature.

The withholding of adequate funding system-wide or in compensation of judges may have insidious results, and may impair the courts' ability to administer justice.

Judicial independence is not absolute, but must be balanced with accountability. In Minnesota, judicial accountability is achieved on a case-by-case basis through the appeals process. Judges are also accountable for their conduct through enforcement of the Code of Judicial Conduct. Finally, judicial elections make judges broadly accountable to the people they serve.

Accountability can be achieved without impairing judicial independence. Minnesota's system of nonpartisan judicial elections provides a safety valve — a method for voters to replace a judge who has behaved poorly or has not performed adequately. But turning elections into partisan contests with special interests picking sides is a direct threat to judicial independence.

IMPACT ON JUDICIAL SELECTION

Acts of hostility toward judges, further politicization of the judiciary, and under funding of the courts may also diminish their effectiveness in the long term by deterring good lawyers from seeking judicial positions.

While a judge's salary may exceed the compensation of most public lawyers,

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ESSAY

many private practice lawyers must take a pay cut to become a judge. A balance of public and private law backgrounds is good for the bench. Judicial salaries should at least keep pace with inflationary pressures. Individuals may make sacrifices to hold this prestigious, public service position, but good lawyers may not apply if the gap between judicial salaries and private sector opportunities grows.

Good lawyers may also be discouraged from seeking judgeships if the courts do not have sufficient staff to get the work done. Judges should have law clerks, for example, to operate effectively. There must be sufficient funding, funding should be directed to the public service level, and security concerns should be addressed to make judicial positions attractive.

Turning judicial elections into partisan battlegrounds, targeted by special interests with large war chests, may provide the greatest disincentive for prospective judicial candidates. Many lawyers who would be good judges have little political background and are wary of running a high-profile election campaign. They want to focus on being good judges, not politicians. If elections turn out to be highly partisan, expensive battles, many will be scared off.

Any retreat in the merit selection process for judges would also deter good candidates. The Commission on Judicial Selection is established by statute, but its goals could be subverted by a governor who stacks the commission with partisan friends, or ignores its recommendations. The process has been used for 15 years with good results, so a governor would likely pay a political price for a return to partisan selections.

LAWYERS' SPECIAL RESPONSIBILITY

Minnesota lawyers are in a unique position to provide leadership in defending against attacks on judicial independence and in fostering a judicial selection process that will attract the best and the brightest candidates. As day-to-day participants in and observers of the judicial process, lawyers understand the importance of a process unfettered by partisan politics and other pressures and staffed by the best judges. While we each have our own legal agenda, our common special interest is in having such a process. Minnesota lawyers should fulfill our special responsibility by being advocates for an independent and qualified judiciary. □