

## **ABA RESOLUTION**

### **Report to the House of Delegates**

#### **State Bar of Texas**

#### **Recommendation**

1. RESOLVED, the American Bar Association deplores attacks on the independence of the
2. judiciary that demean the judiciary as a separate and co-equal branch of government.
3. FURTHER RESOLVED, the American Bar Association affirms its belief that a fair,
4. impartial, and independent judiciary is fundamental to a free society and calls on all
5. Americans, including elected officials, to support and defend our judiciary and its role in
6. maintaining the fundamental liberties under the Constitution of the United States.
7. FURTHER RESOLVED, the American Bar Association will accelerate its effort to
8. provide public education on the system of justice and assist organized bars in responding
9. to unjustified criticisms and inaccuracies regarding the justice system.

## EXECUTIVE SUMMARY

Through this resolution, the American Bar Association affirms its belief that a fair, impartial, and independent judiciary is fundamental to a free society and calls on all Americans, including elected officials, to support and defend our judiciary and its role in maintaining the fundamental liberties under the Constitution of the United States. The American Bar Association commits to accelerate its effort to provide public education on the system of justice and assist organized bars in responding to unjustified criticisms and inaccuracies regarding the justice system.

This resolution calls on the ABA to strengthen its work with bar associations in educating the public on the legal system. It has and must continue to provide information that corrects inaccuracies and misstatements regarding the third branch of government so that timely responses can be made at the grass roots level through letters and calls to public officials, letters to the editor in local media, calls to reporters, or other public commentary. It must also continue to be a clearinghouse of talking points, speeches, and other tools for lawyers and bar associations.

## REPORT

The independence of the judiciary is a cornerstone of our system of democracy. It is essential to the system of checks and balances provided by the United States Constitution. Our judiciary is often the final guardian of our nation's constitutional liberties. As former Solicitor General Theodore Olsen recently noted, the American judicial system "is the most respected branch of our government and the envy of the world."<sup>1</sup>

The independence of the judiciary is also a well-established goal of the American Bar Association. Goal XI requires the ABA "to preserve the independence of the legal profession and the judiciary as fundamental to a free society." Judges must be able to decide cases from a position of neutrality, influenced solely by the facts and law, and not subjected to political and public pressure and reprisals. "Without our justice system, without jurors, without our judges, our democratic government based on the separation of powers could not exist. An independent judiciary—one free of intimidation and manipulation—is essential to our government of separate but equal branches, where cooperation and respect among the branches is vital."<sup>2</sup>

The judiciary, at all levels, recently has been subjected to severe and unprecedented attacks. Many of these attacks stem from current events and particular judicial decisions that have garnered national attention and debate. Much of the criticism is based on inaccuracies, misstatements, and misinformation regarding the functioning of our legal system and the role of the judiciary as a co-equal branch of government. The public is often not informed of the facts of a case, its procedural posture, or the underlying legal principles that may influence the decision-making of a judge in a particular case. Judges have been the target of unjustified criticism simply because decisions conflict with the personal philosophies and beliefs of those who attack them. In other instances, misinformation and harsh criticism are intended directly to interfere with the independent decision-making of judges.

While vigorous and healthy debate regarding our system of government is welcome and encouraged in our democracy, the stridency and intensity of recent attacks, especially to the extent they are based on misinformation and inaccuracies, has serious consequences to our system. Such attacks often shake the faith of the public in the fairness and independence of our judiciary. Also, such attacks can be harmful to our system of checks and balances and unnecessarily thrust judges into the political arena. As the ABA recently noted in "An Independent Judiciary":

Criticism of our legal system and of particular judicial opinions can serve a vital corrective function and should not be discouraged; such criticism need not be viewed as a threat to the principle of judicial independence. However, dangers arise when the expression of opinion becomes an attempt to influence the

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<sup>1</sup> Article by former Solicitor General Theodore Olsen, Wall Street Journal, April 21, 2005, p A-66.

<sup>2</sup> Speech by ABA President Robert Grey, April 29, 2005.

appropriate exercise of judicial discretion or exhort unwarranted disrespect of the judicial process.<sup>3</sup>

During these difficult times, it is important that the ABA affirm its support for the independence of the judiciary and the role of lawyers in the justice system. As the leader of lawyers in this country, the ABA must continue its vital role as the voice of the legal profession that denounces unwarranted attacks on the judiciary. It must publicly correct the record when judges cannot speak. Importantly, the ABA must accelerate its work with organized bars in educating the public regarding the proper role of lawyers and the judiciary in our system of government.

Indeed, recent examples by ABA leadership have shown that the ABA is a strong and timely voice on issues related to the judiciary and can arm lawyers and the public with information necessary to combat misinformation regarding the judiciary.<sup>4</sup> The ABA, however, must strengthen its work with bar associations in educating the public on the legal system. It must provide information that corrects inaccuracies and misstatements regarding our judicial system so that timely responses can be made at the grass roots level through calls and letters to public officials, letters to the editor in local media, calls to reporters, or other public commentary. It must also continue to be a clearinghouse of talking points, speeches, and other tools for lawyers and bar associations.<sup>5</sup>

Through these efforts, the ABA, working with organized bars throughout the country, strengthens Goal XI and affirms its bedrock support for the independence of the judiciary.

Respectfully submitted,



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2004-05 President, State Bar of Texas  
(through June 2005)



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2005-06 President, State Bar of Texas

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<sup>3</sup> An Independent Judiciary, Report of the ABA Commission on Separation of Powers and Judicial Independence, Overview, August 1997.

<sup>4</sup> See Statement of Robert J. Grey, Jr. President, American Bar Association, "Attacks On the Judiciary in the Terri Schiavo Case," March 25, 2005; Allow Judgment without Fear-Attacks on the Judiciary Erode a Free Society," Houston Chronicle, Op-ed by Kelly Frels, President of State Bar of Texas, April 17, 2005.

<sup>5</sup> As an example, in May 2005, the ABA staff prepared a compilation of statements, editorials, letters to the editor, and president's messages from bar leaders across the country who responded to the threats to judicial independence. See [www.abanet.org/barserv/supportourjudiciary/barleaser.pdf](http://www.abanet.org/barserv/supportourjudiciary/barleaser.pdf).