

COMMENTARY

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As a prosecutor and former judge, I have been at both the receiving and pitching end of criticism of the judiciary. Criticism of judges is nothing new. It is something that we have engaged in throughout the course of our history, but now, because of the technological age in which we live, more and more people are aware of such criticism. My feeling is that if the judge cannot take public scrutiny and outcry, the judge should not be on the bench.

A judge has the obligation not only to follow precedent but to issue a reasoned decision. There is no question that some bashing of court decisions has been appropriate. For example, in the 1950s, when the Supreme Court in *Dennis v. United States*¹ and *Yates v. United States*² upheld the convictions of individuals for being Communists under statutes outlawing Communist views, the Court flouted the First Amendment, and criticism was appropriate.

Occasionally, responsible criticism encourages legislators to overturn court decisions. As a prosecutor, I can tell you that we suffered the loss of many, many convictions in drug cases when the New York Court of Appeals, in *People v. Ryan*,³ said that, as prosecutors, it was our obligation to prove not just that a defendant possessed a certain amount of cocaine and that the defendant knew he possessed that cocaine, but also that the defendant knew exactly how much cocaine was on his person. Without criticism of that decision, it is unlikely that the legislature would have addressed the issue. Criticism of judicial decisions is important and, at times, necessary.

What happens ultimately is that we have a checks-and-balances system. There are times in our history when I think we can be embarrassed of the type and extent of the criticism of the courts; there are times when we can be proud of the criticism directed at the courts. Intelligent criticism that is based upon reason must be encouraged. Criticism that calls for the impeachment or resignation of judges, however, absent egregious circumstances, crosses the line of responsibility and should roundly be condemned. But I think that the bottom line

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¹ 341 U.S. 494 (1951).

² 354 U.S. 298 (1957).

³ 626 N.E.2d 51 (N.Y. 1993).

here is that we need to have judges who have the strength and the stamina to recognize that they have a job to do, and, provided they exercise their duties in a thoughtful, responsible manner, they must be willing to stand by their decisions regardless of public criticism.