



Statement of the New York City Bar Association

October 30, 2018

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City Bar Supports Independence of Judiciary in Response to Attorney General Sessions' Complaint about "Unacceptable" Rulings

The New York City Bar Association issues this statement to express its significant concerns about a recent speech made by Attorney General Jeff Sessions in relation to the role of the judicial branch and to ongoing litigation pending in the federal courts, including in the U.S. District Court for the Southern District of New York. In a [speech](#) delivered to the Heritage Foundation on October 15, 2018, the Attorney General decried "judicial encroachment" and stated that judges who "subject" the executive branch to discovery are acting improperly as "roving inspectors general for the entire Executive branch" and that they have issued "unacceptable" rulings, making the judges "fairly subject to . . . calls for their replacement." (The full speech is [here](#).)

Removal of a federal judge is an extraordinary and highly unusual event in the history of the United States, and such a measure should not be casually threatened. To guarantee their judicial independence and to insulate them from political influence or pressure, Article III of the U.S. Constitution provides that federal judges have lifetime tenure, protecting them from removal except in the rarest of circumstances. The [Federal Judicial Center](#) lists only 15 federal judges who have been impeached in the history of the United States (13 district judges, one court of appeals judge, and one Supreme Court Justice). Of the district judges, seven were convicted and removed, three were acquitted, and three resigned. All those removed were for criminal, corrupt, or personal misconduct, and one, during the Civil War, for "refusing to hold court and waging war against the U.S. government[.]" Justice Samuel Chase was acquitted of "charges of arbitrary and oppressive conduct of trials" in 1805. One Court of Appeals judge was convicted and removed from office in 1913 for an "improper business relationship with litigants[.]" No federal judge has been impeached or removed because of disagreement with his or her judicial decisions.

The City Bar expresses strong support for the members of the judiciary, all of whom have sworn an oath to administer justice in a fair and impartial way. Like representatives of the executive branch and members of Congress, federal judges also have taken an oath to uphold the

Constitution. Unlike members of the executive branch and Congress, however, federal judges are not permitted to speak publicly in defense of a particular decision. It is up to lawyers, bar associations and others to speak out in support of the important role played by judges in our system of government.

The statements by Attorney General Sessions imperil the independence of the judiciary and the rule of law. Contrary to his implication, judges who rule against the government in the course of enforcing the constitutional and statutory limitations on the government's power are not acting illegally or inappropriately. Rather, by suggesting that those judges should be subject to replacement due to their rulings, it is the Attorney General who is jeopardizing the fundamental principles that underpin our Constitutional order, including bedrock concepts such as the separation of powers and checks and balances.

The cases at issue here were brought before judges who were obligated to decide the issues presented according to the best of their ability. As a party to these cases, the United States has the right to publicly disagree with the rulings against it, to appeal adverse decisions to the Courts of Appeals and to seek Supreme Court review - which, in fact, it has done. That is the appropriate remedy when the executive branch disagrees with a judge's decision.

Here, the Attorney General's speech is particularly disconcerting because – as our nation's chief law enforcement officer – he has a special obligation to see that justice is done and that public confidence in the federal judiciary is reinforced, not undermined. As members of the legal profession, we steadfastly support the judiciary and the vital constitutional principle of judicial independence. We encourage other members of the public to do the same.

About the Association

The City Bar's mission is to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. The Association has a long history of speaking out in support of judicial independence, including when it expressed concerns regarding comments made by the Administration about federal judges presiding over the "travel ban" cases; when it issued a statement in support of an independent immigration court system; and when it spoke out concerning comments made by members of Congress about state and federal judges hearing the Terri Schiavo cases. The Federal Courts Committee addresses substantive and procedural issues relating to the practice of law in the federal courts. The mission of the Task Force for the Independence of Lawyers and Judges is to foster the independence of lawyers and judges in their professional activities in the United States and abroad.