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ACCUSATIONS OF CODDLING CRIMINALS AIMED AT TWO JUDGES IN NEW YORK

(By John M. Goshko)

NEW YORK.—Two recent judicial decisions here—one throwing out evidence in a big narcotics case and the other freeing a defendant who then killed his former girlfriend—have ignited a firestorm of outrage about alleged coddling of criminals.

The controversy has been so intense that many legal experts fear it could disrupt the dispensing of justice in local courts and spread beyond New York to become part of the election year debate about what ails America.

Several judges and legal scholars, while acknowledging that the decisions were controversial, nevertheless expressed concern that the abbreviated versions provided by much of the media have distorted the public's understanding of some very complex legal issues.

The unrelenting criticism directed against the two decisions, and the two judges, has put their colleagues at all levels here under heavy pressure to demonstrate in rulings and sentences that they are not soft on crime, these experts said. In an era of growing social conservatism, the rulings are providing fodder for those who think it is time for the courts to stop fine-combing evidence and simply lock up criminals.

Gov. George E. Pataki (R) recently fired the first salvo in such a campaign when he announced legislative plans to limit the powers of the state's highest court, the Court of Appeals, to impose what he called burdensome restrictions on the police and prosecutors. New York City's law-and-order police commissioner, William J. Bratton, also denounced ''the screwball Court of Appeals,'' saying it ''is living off in Disneyland somewhere. They're not living in the streets of New York.''

The two decisions at the heart of the controversy did not, in fact, emanate from the Court of Appeals, but from other, widely disparate levels of the criminal justice hierarchy.

First, in late January, Judge Harold Baer, Jr. of the U.S. District Court that serves Manhattan ruled that 80 pounds of cocaine and heroin found by police in a car could not be used as evidence. The fact that four men seen putting the narcotics in the car ran away when they spotted a police officer was understandable, given fear of the police in many inner-city neighborhoods, and did not constitute cause to search the car; the judge decided.

''As long as there are judges like that, criminals will be running wild in the streets,'' said Louis Materazzo, president of the New York Patrolmen's Benevolent Association. That actually was one of the milder comments in the chorus of criticism immediately sounded by Pataki, Bratton and even Mayor Rudolph W. Giuliani (R), an old friend and colleague of Baer from the days when Giuliani was the U.S. attorney in Manhattan and Baer was one of his aides.

By this week, the ripples from Baer's decision had spread to Congress, where 150 House members signed a letter to President Clinton calling on him to ask for the federal judge's resignation. Among the signers was House Speaker Newt Gingrich (R-Ga.), who told a news conference: ''This is the kind of pro-drug dealer, pro-crime, anti-police and anti-law enforcement attitude that makes it so hard for us to win the war on drugs.''

On Feb. 12, the dispute about what New York's raucous tabloids dubbed ''junk justice'' took a new turn. Benito Oliver, a convicted rapist with a history of domestic violence, walked into a car dealership where his former girlfriend, Galina Komar, worked, shot her to death and then killed himself. It quickly came out that three weeks earlier, Judge Lorin Duckman of the Criminal Court in Brooklyn, the lowest rung on New York's judicial ladder, had turned aside Komar's request for protection and allowed Oliver to go free while he awaited trial on charges of harassing her.

In transcripts of the court hearing Duckman sounded dismissive of the injuries Oliver had inflicted on Komar, noting that she had been ''bruised but not disfigured.'' The judge expressed repeated concern about the well-being of a dog that Oliver had left in Komar's care.

The uproar only intensified when it was further revealed that Duckman, in a similar case last summer, allowed a Brooklyn man, Maximino Pena, to go free hours after a jury had convicted Pena of attacking his former girlfriend. On Feb. 15, Pena was back in jail, this time charged with dragging the same woman down two flights of stairs and punching her in the face.

Duckman has since gone on an indefinite vacation. But his temporary retreat from the bench has not halted the torrent of denunciations from officials, women's rights advocates and newspaper editorialists. Giuliani said Duckman displayed ''a frightening lack of common sense'' that showed he ''should be doing something else for a living.''

Pataki, asserting that ''Judge Duckman is unfit to serve,'' called on the State Commission on Judicial Conduct to remove him from the bench. The governor added that if the commission fails to do so, he would ask the state Senate to oust Duckman, a punishment that it has administered only once before, in 1872.

The churning caused by these two cases has even been given a philosophical counterpoint by the coincidental publication of a new book, ''Guilty: The Collapse of Criminal Justice,'' written by state acting Supreme Court Justice Harold J. Rothwax. Rothwax argues that judges today often apply principles about evidence and defendants' rights so rigidly that the guilty go free.

However, there is real concern in legal circles that the fallout from these two cases is causing judges to protect themselves against charges of being excessively pro-defendant.

Judith Kaye, New York's chief judge, recently said she was worried that the castigation of Baer and Duckman could subtly affect the way cases are decided. And many lawyers say that, in contrast to just two or three months ago, they now see signs of defendants being subjected to higher bail, rulings that lean heavily toward the prosecution and tougher sentences when found guilty.

The most glaring example of how these pressures appear to be operating was the agreement by Judge Baer to permit a new hearing on the narcotics evidence that he earlier suppressed to such an outcry. A reconsideration like this is almost never done by federal judges. Moreover, many lawyers said they will not be surprised if Baer finds reasons to rule that the drug evidence is admissible.

''I have no idea what he'll do, but you'd have to be superhuman not to be affected by all the criticism and abuse that the man has taken over that ruling,'' said Albert Alschuler, a law professor at the University of Chicago.

The case turned on a judgment about whether police had a ''reasonable suspicion'' to stop and search a car at 5 a.m. in Washington Heights, a largely Hispanic enclave of Manhattan that is a known center of drug activity. Before becoming a judge, Baer had served on a commission investigating police brutality in that neighborhood. In his opinion, he noted that people there regard the police as ''corrupt, abusive and violent,'' and he said that under those circumstances it was not unusual for the suspects to run away.

''I'm a native New Yorker from the East Bronx,'' said Yale Kamisar, a University of Michigan law professor and a leading expert on criminal procedure. ''When we played stickball as kids and hit the ball through someone's window, everyone ran because you knew if the cops caught you, they'd give you a hard time. It's human nature to run from what you think might be trouble.''

Kamisar said Baer appears to have decided that the police used the flight as grounds for searching the car without following other procedures that might have safeguarded the legality of their actions.

Even in the Duckman controversy some lawyers think there were legal considerations involved that have been overlooked in the tragic aftermath of the case. ''He made what are undeniably some stupid and insensitive remarks,'' said one lawyer who asked not to be identified. ''But the facts are that this fellow, Oliver, had been in jail for 40 days and the Brooklyn district attorney's office failed to present any strong evidence that he posed a danger to the woman that justified holding him longer in what arguably would be a violation of his constitutional rights.''

The judge also appeared to be reacting to some ''sloppy handling'' of the case by the prosecutors, and the judge decided to ''teach them a lesson,'' the attorney said: ''The only problem with a judge doing something like that—trying to regulate the way a prosecutor's office works—was that the rights of the victim got overlooked.''

SHORT-TERM FUNDING OF OUR GOVERNMENT IS SHORTSIGHTED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. STUPAK] is recognized for 5 minutes.

Mr. STUPAK. Mr. Speaker, just one word before I talk about the continuing budget resolution we passed earlier today. My friend from the other side of the aisle, the gentleman from Michigan [Mr. UPTON], who I have great respect for, and I did sign his letter, when we fight drugs, and being a former law enforcement officer myself, the responsibility is with everyone from Judge Baer, to President Clinton, to the Speaker of the House, and that is why I am disturbed about the continuing budget resolution that was passed today in which the money for drug-free schools zones was deleted from the budget, so there will be no money for drug-free school zones. So, when the Speaker points to this as an example of merely words, I would have to remind the Speaker that his budget priorities have encouraged the use of drugs in drug-free school zones in schools across this country and not fight them. So, while we may ask for Judge Baer to resign, maybe we should ask the Speaker to renew the funding for drug-free school zones.

But, Mr. Speaker, funding of our Government on a week-to-week basis is shortsighted, destructive, and an irresponsible way that we could possibly manage the risks and the tasks of running the greatest country in the world.

Shortsighted has more than one meaning here. In the near term, we are being destructive and wasteful by forcing Government agencies to limp along on partial funding, continuing to operate, but unable to give full service to the American public. In the long term we are hurting our investment in that most basic and important of all services, public education.

Today we voted on an 11th continuing budget resolution to keep the Government going. This resolution was for 7 days, it was for 1 week. Underneath the new majority we have become a government by the week, for the week, and of the week. I voted ''no'' on this continuing resolution because of the drastic cuts in education, not only title I, not only Head Start, but also, as I said earlier, the drug-free safe school zones have been cut.

Here are some facts I would wish that the majority will remember:

A recent Gallup Poll showed two-thirds of all Americans ranked the quality of education as their top priority over such issues as crime, health care, and the deficit.

A January Wall Street Journal poll says 9 of 10 Americans favor the same or increased spending on education.

The January Washington Post poll says 8 out of 10 Americans oppose cutting education. Yet the current budget resolution, which was continued today, if extended for the year, will cut $3.1 billion from education, the largest education cut in our Nation's history.

Are such cuts in step or out of step with the will of the American public? The polls I cited would indicate that such cuts could not be more out of step.

If we extend this continuing budget resolution to the year's end, more than 1 million young people will be deprived of services in the title I program alone.

Here are some other ways to view the problem:

Failure to have assured funding in place is affecting the operations of America's 110,000 elementary and secondary schools that serve roughly 50 million students. State legislators and school administrators in all 50 States and in more than 14,000 school districts are unable to develop detailed financial plans for the coming year. Without these plans in place, this affects the hiring of teachers, the signing of contracts. Impact aid districts are squeezed by partial payments. This will affect roughly 2,000 school districts, including those in my home State of Michigan, and 1.3 million children. The Brimley School District in the Upper Peninsula of Michigan is looking at a $600,000 shortfall because title I has not been completed. Antrim County stands to lose $100,000; Benzie County schools, $58,200; Charlevoix schools, $77,700; Cheboygan schools, $140,200.

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Crawford County will be over 70,000, Emmet County over 67,000, Grand Traverse, over 200,000.

Mr. Speaker, unless the Department of Education can make full payments, many schools will receive impact aid or run out of funds later this spring and will be unable to pay teachers' salaries. People with disabilities will not receive rehabilitation services. Vocational rehabilitation programs prepare some 1 million individuals each year to get a hold of and to hang onto their jobs.

This is only a partial look at the problem, but it lets us draw some sad conclusions. One of the tragedies of this Congress is that we have gotten away from rational discourse and debate. We have gotten away from the notion of agreeing to disagree, while completing the basic business of the people of the United States. There certainly can be rational debates over the long-team or long-range value of programs like drug resistance education, drug-free school zones, title I, and other specific education programs. In fact, having a debate over these programs is an excellent opportunity to restate their value and their importance to the American people.

However, Mr. Speaker, this process of destruction by attrition, of week-to-week continuing budget resolutions, of the slow wearing down of those who struggle in the field of education, is not rational, and it is not a debate. It is irrational, and the American people recognize it as the wrong way to do business.

Mr. Speaker, we would ask that when we come back next week and work on a continuing budget resolution, that we take into consideration the cuts we have made in education, the cuts we have made in the environment, in the enforcement of the Clean Water Act, the Safe Drinking Water Act, the gutting of the Clinton COPS Program. We ask that these be put forth in a continuing budget resolution, and we stand ready to work with the minority and the majority to work together to find the $8 billion we need to cut.

The SPEAKER pro tempore (Mr. FOLEY). Under a previous order of the House, the gentleman from Michigan [Mr. EHLERS] is recognized for 5 minutes.

[Mr. EHLERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

MEDICAID BUDGET CUTS THREATEN TO IMPAIR THE QUALITY OF LIFE FOR MANY AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. TOWNS] is recognized for 5 minutes.

Mr. TOWNS. Mr. Speaker, balancing the budget is important, but the debate has taken the wrong turn. We should be focusing on saving lives and the quality of care, not just balancing the budget, balancing the budget at the expense of losing people, and at the expense of creating turmoil in the lives of so many.

For the past 30 years, Mr. Speaker, America has prided herself on protecting those vulnerable populations who, because of many circumstances, are not able to afford the health care they desperately need.

Last week, Mr. Speaker, the Committee on Commerce which I serve on, held a hearing on the Medicaid proposal by the National Governors Association. During the recess, we had a hearing in which six Governors came to testify. Due to the fact that many Members could not be there, we required another day of hearings.

The Governors' proposal is a bipartisan consensus which I must admit has done a lot to contribute to the debate and finding solutions to reforming the Medicaid program. I applaud them, Mr. Speaker, for trying to help. However, I am still concerned with several very, very important issues which, in my opinion, must be further reviewed.

Under the NGA proposal, not only will the recipients of the Medicaid safety net program suffer, but so will the inner cities, which house many of our great teaching institutions that train the majority of our Nation's physicians. New York alone trains 15 percent of the Nation's physicians. Public hospitals which care for over 30 million uninsured will also suffer much more than ever imagined.

If enacted, Mr. Speaker, the Medicaid cuts would deliver a blow to New York City that is double its proportionate share. Over the next 7 years, cuts to New York hospitals will total approximately $12 billion, that is B as in boy, billion, in New York City, and billions more in New York State. Payments for long-term care and personal health services will decline by approximately $7 billion in New York City, and $1 billion in New York State.

Furthermore, the Medicaid cuts will reduce needed service levels, and access to care will also suffer, as well as reduced projected employment by over 100,000 in New York City and 200,000 in New York State, and cause the personal income of New Yorkers to decline by at least 2.7 percent.

While the debate over Medicaid reform has largely focused on cost savings, it is important to refocus the debate on saving lives and quality of care. Mr. Speaker, let me just say that we need to recognize the fact that people are living longer, and as they live longer, they will need additional care. In order for them to have that care, we need to make certain that the resources are there to provide that care.

People in nursing homes today are doing a fantastic job. For a long time, we did not have standards like we have today. Of course, we had a mess. We had some nursing homes that were creating all kinds of problems for our elderly. However, we were able to get some statutes in the law that sort of turned that around. We now seem to be moving back toward where we were before those statutes came into being.