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Circuit Judge Sharply Critical of High Court (New York Law Journal)

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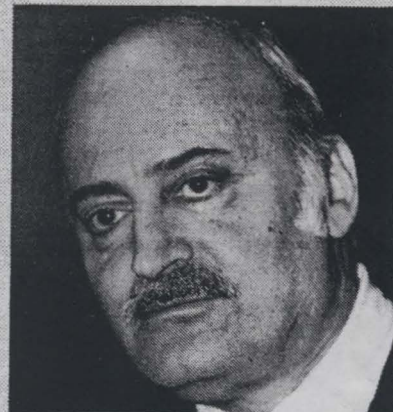
A SECOND CIRCUIT judge has placed the blame for the backlog in the lower federal courts squarely at the foot of the U.S. Supreme Court, taking the Justices to task for limiting the number of cases decided and for issuing long, unclear decisions that generate further litigation.

Judge Roger J. Miner, of the U.S. Court of Appeals for the Second Circuit, in a speech before the American Judicature Society Saturday, said the Supreme Court is failing to "resolve inter-circuit conflicts, to identify and decide important procedural and substantive issues before they ripen into inter-circuit conflicts and to provide clear, crisp and certain opinions for the guidance of the lower courts, the bar and the American citizenry."

In a sometimes sharply worded speech, delivered in conjunction with

Excerpt From Judge Miner's Speech

"... Let us hope that Justice Ginsburg is able to persuade her colleagues of the importance of one voice. Too often is heard the cacaphony of what appears to be nine separate courts. Each Supreme Court opinion need not read as if it were the History of the World, Part I. If brevity is a virtue for judges of other courts and for lawyers, it should also be a virtue for Justices of the Supreme Court."



PHOTOGRAPH BY FAYE ELLMAN

the American Bar Association's Annual Meeting here, Judge Miner called himself a "confused victim of the Su-

preme Court's uncertain trumpet. It is bad enough to interpret unclear stat-

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Circuit Judge Critical of Justices

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utes, but it is even worse to interpret some Supreme Court decisions."

Referring to the numerous 5-4 and plurality decisions in which the Justices have issued separate concurrences and dissents, Judge Miner criticized "the cacophony of what appears to be nine separate courts." He called on the newest member of the Court, Ruth Bader Ginsburg, to persuade her colleagues to speak with "one voice."

In a telephone interview yesterday, Judge Miner said the Supreme Court "should factor in the notion that other people have to be guided by this. I and my colleagues have to refer to those decisions. Sometimes, it's not so easy."

However, Professor Mary Daly of Fordham University School of Law, said in an interview that the differing opinions of the Justices have a traditional, judicial purpose. "Sometimes ambiguity is necessary to hold a fragile majority together," she said. The Court also will establish a legal principle, but it wants "to see how it will play out in the lower courts."

18th Century Relic

In his speech, Judge Miner accused the High Court of "lumbering into the 21st century at the leisurely pace of the 19th century, seemingly oblivious to the needs of the federal judicial

system The Court certainly is trimming its docket in the face of an explosive growth of cases in the lower courts. This makes no sense. We need to get the Supreme Court up to speed."

While he acknowledged that the backlog of federal cases is due, in part, to the expansion of federal court jurisdiction and the vacancies on the federal bench, Judge Miner suggested that the Supreme Court also do its part. One recommendation he made was cutting the summer recess from three months to two. "That lengthy recess really is a relic of the 18th century, and I know of no Justice who must return to the farm at harvest time," Judge Miner said in his speech.

He also criticized the infrequency with which the Supreme Court is granting certiorari. The result is unsettled law and unresolved circuit conflicts which generate more litigation, adding to the massive backlog of cases at the district and circuit court levels.

An increase in the number of cases decided and changes in the decision-making process would go far toward alleviating the problems of the lower courts, he said. "Federal court reform should start at the top."

Judge Miner also suggested that the Court issue shorter opinions. "Each Supreme Court opinion need not read as if it were the History of the World, Part I. If brevity is a virtue for judges of other courts and for lawyers, it should also be a virtue for Justices of the Supreme Court."